

SECOND REGULAR SESSION

HOUSE BILL NO. 1840

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES BERRY (Sponsor) AND SWEARINGEN (Co-sponsor).

5848L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 491, RSMo, by adding thereto one new section relating to eyewitness identification.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 491, RSMo, is amended by adding thereto one new section, to be known as section 491.550, to read as follows:

491.550. 1. On or before October 1, 2014, each law enforcement agency in this state shall adopt written policies relating to eyewitness identification in accordance with this section.

2. The written policy that is adopted by each law enforcement agency shall, at a minimum, contain the following:

(1) Any photo or live lineup shall be conducted by a blind administrator who does not know the suspect's identity:

(a) Through an automated computer program that is able to automatically administer the photo lineup directly to an eyewitness and prevent the administrator from seeing which photograph the witness is viewing until after the procedure is completed; or

(b) Through a procedure in which photographs are placed in folders, randomly numbered and shuffled, and presented to an eyewitness in such a manner that the administrator is not able to see or track which photograph is being presented to the witness until after the procedure is completed;

(2) The eyewitness shall be instructed, without other eyewitnesses present and prior to any photo or live lineup, that the perpetrator may or may not be among the persons in

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 the identification procedure or, in the case of a showup, may or may not be the person that
18 is presented to the eyewitness;

19 (3) In a photo or live lineup, fillers shall possess the following characteristics:

20 (a) All fillers selected shall resemble the eyewitness's description of the perpetrator
21 in significant features, such as face, weight, build, and skin tone, including any unique or
22 unusual features, such as scars or tattoos;

23 (b) At least five fillers in addition to the suspect shall be included in a photo lineup;

24 (c) At least four fillers in addition to the suspect shall be included in a live lineup;

25 (4) If the eyewitness makes an identification, the administrator shall seek and
26 document a clear statement from the eyewitness at the time of the identification and in the
27 eyewitness's own words as to the eyewitness's confidence level that the person identified
28 in a given identification procedure is the perpetrator.

29 3. Each law enforcement agency shall adopt and implement a detailed written
30 policy regarding the administration of identification procedures in accordance with this
31 section. A law enforcement agency may adopt:

32 (1) The agency's own policy that, at a minimum, conformed to the requirements of
33 subsection 2 of this section; or

34 (2) The International Association of Chiefs of Police's Model Policy of 2010.

35 4. On or before November 1, 2014, each law enforcement agency in the state shall
36 file a copy of the written policy relating to eyewitness identification with the department
37 of public safety.

38 5. On or before December 31, 2014, the department of public safety shall compile
39 the written policy relating to eyewitness identification of each law enforcement agency in
40 this state and allow public inspection of each policy compiled.

41 6. All of the following shall be available as consequences of compliance or
42 noncompliance with the requirements of this section:

43 (1) Failure to comply with any of the requirements of this section shall be
44 considered by the court in adjudicating motions to suppress eyewitness identification;

45 (2) Failure to comply with any of the requirements of this section shall be
46 admissible in support of claims of eyewitness misidentification, as long as such evidence is
47 otherwise admissible; and

48 (3) When evidence of compliance or noncompliance with the requirements of this
49 section has been presented at trial, the jury shall be instructed that it may consider credible
50 evidence of compliance or noncompliance to determine the reliability of eyewitness
51 identification.

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