

HB 1840 -- EYEWITNESS IDENTIFICATION

SPONSOR: Berry

This bill requires each law enforcement agency in Missouri to adopt written policies relating to eyewitness identification on or before October 1, 2014.

The written policy that is adopted by each law enforcement agency must, 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 must 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 the identification procedure or, in the case of a showup, may or may not be the person that is presented to the eyewitness;

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

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

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

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

(4) If the eyewitness makes an identification, the administrator must seek and document a clear statement from the eyewitness at the time of the identification and in the eyewitness's own words as to the eyewitness's confidence level that the person identified in a

given identification procedure is the perpetrator.

The bill requires each law enforcement agency to adopt and implement a detailed written policy regarding the administration of identification procedures. A law enforcement agency may adopt:

(1) The agency's own policy that, at a minimum, conformed to the requirements of these provisions; or

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

The bill requires each law enforcement agency in Missouri to file a copy of the written policy relating to eyewitness identification with the Department of Public Safety on or before November 1, 2014.

The bill requires the Department of Public Safety to compile the written policy relating to eyewitness identification of each law enforcement agency in Missouri and allow public inspection of each policy compiled on or before December 31, 2014.

All of the following must be available as consequences of compliance or noncompliance with the requirements of these provisions:

(1) Failure to comply with any of the requirements of these provisions must be considered by the court in adjudicating motions to suppress eyewitness identification;

(2) Failure to comply with any of the requirements of these provisions must be admissible in support of claims of eyewitness misidentification, as long as such evidence is otherwise admissible; and

(3) When evidence of compliance or noncompliance with the requirements of these provisions has been presented at trial, the jury must be instructed that it may consider credible evidence of compliance or noncompliance to determine the reliability of eyewitness identification.