

West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 725. Criminal Procedure
Act 5. Code of Criminal Procedure of 1963 (Refs & Annos)
Title II. Apprehension and Investigation
Article 107A. Lineup and Photo Spread Procedure

725 ILCS 5/107A-0.1

5/107A-0.1. Definitions

Effective: January 1, 2015

Currentness

<Text of section added effective Jan. 1, 2015.>

§ 107A-0.1. Definitions.

For the purposes of this Article:

“Eyewitness” means a person viewing the lineup whose identification by sight of another person may be relevant in a criminal proceeding.

“Filler” means a person or a photograph of a person who is not suspected of an offense and is included in a lineup.

“Independent administrator” means a lineup administrator who is not participating in the investigation of the criminal offense and is unaware of which person in the lineup is the suspected perpetrator.

“Lineup” includes a photo lineup or live lineup.

“Lineup administrator” means the person who conducts a lineup.

“Live lineup” means a procedure in which a group of persons is displayed to an eyewitness for the purpose of determining if the eyewitness is able to identify the perpetrator of a crime, but does not include a showup.

“Photo lineup” means a procedure in which photographs are displayed to an eyewitness for the purpose of determining if the eyewitness is able to identify the perpetrator of a crime.

“Sequential lineup” means a live or photo lineup in which each person or photograph is presented to an eyewitness separately, in a previously determined order, and removed from the eyewitness’s view before the next person or photograph is presented, in order to determine if the eyewitness is able to identify the perpetrator of a crime.

“Showup” means a procedure in which a suspected perpetrator is presented to the eyewitness at, or near, a crime scene for the purpose of obtaining an immediate identification.

“Simultaneous lineup” means a live or photo lineup in which a group of persons or array of photographs is presented simultaneously to an eyewitness for the purpose of determining if the eyewitness is able to identify the perpetrator of a crime.

Credits

Laws 1963, p. 2836, § 107A-0.1, added by P.A. 98-1014, § 10, eff. Jan. 1, 2015.

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725 ILCS 5/107A-2

5/107A-2. Lineup procedure

Effective: January 1, 2015

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§ 107A-2. Lineup procedure.

(a) All lineups shall be conducted using one of the following methods:

(1) An independent administrator, unless it is not practical.

(2) An automated computer program or other device that can automatically display a photo lineup to an eyewitness in a manner that prevents the lineup administrator from seeing which photograph or photographs the eyewitness is viewing until after the lineup is completed. The automated computer program may present the photographs to the eyewitness simultaneously or sequentially, consistent with the law enforcement agency guidelines required under subsection (b) of this Section.

(3) A procedure in which photographs are placed in folders, randomly numbered, and shuffled and then presented to an eyewitness such that the lineup administrator cannot see or know which photograph or photographs are being presented to the eyewitness until after the procedure is completed. The photographs may be presented to the eyewitness simultaneously or sequentially, consistent with the law enforcement agency guidelines required under subsection (b) of this Section.

(4) Any other procedure that prevents the lineup administrator from knowing the identity of the suspected perpetrator or seeing or knowing the persons or photographs being presented to the eyewitness until after the procedure is completed.

(b) Each law enforcement agency shall adopt written guidelines setting forth when, if at all, simultaneous lineups shall be conducted and when, if at all, sequential lineups shall be conducted. This subsection does not establish a preference for whether a law enforcement agency should conduct simultaneous lineups or sequential lineups. Whether and when to conduct simultaneous lineups or sequential lineups is at the discretion of each law enforcement agency. If, after the effective date of this amendatory Act of the 98th General Assembly, a method of conducting a lineup different from a simultaneous or sequential lineup is determined by the Illinois Supreme Court to be sufficiently established to have gained general acceptance as a reliable method for eyewitness identifications and provides more accurate results than simultaneous or sequential lineups, a law enforcement agency may adopt written guidelines setting forth when, if at all, this different method of conducting lineups shall be used and, when feasible, the provisions of subsection (d) of this Section shall apply to the use of these methods.

(c) On and after the effective date of this amendatory Act of the 98th General Assembly, there is no preference as to whether a law enforcement agency conducts a live lineup or a photo lineup and to the extent that the common law directs otherwise, this direction is abrogated.

(d) If a lineup administrator conducts a sequential lineup, the following shall apply:

(1) Solely at the eyewitness's request, the lineup administrator may present a person or photograph to the eyewitness an additional time but only after the eyewitness has first viewed each person or photograph one time.

(2) If the eyewitness identifies a person as a perpetrator, the lineup administrator shall continue to sequentially present the remaining persons or photographs to the eyewitness until the eyewitness has viewed each person or photograph.

(e) Before a lineup is conducted:

(1) The eyewitness shall be instructed that:

(A) if recording the lineup is practical, an audio and video recording of the lineup will be made for the purpose of accurately documenting all statements made by the eyewitness, unless the eyewitness refuses to the recording of the lineup, and that if a recording is made it will be of the persons in the lineup and the eyewitness;

(B) the perpetrator may or may not be presented in the lineup;

(C) if an independent administrator is conducting the lineup, the independent administrator does not know the suspected perpetrator's identity or if the administrator conducting the lineup is not an independent administrator, the eyewitness

should not assume that the lineup administrator knows which person in the lineup is the suspect;

(D) the eyewitness should not feel compelled to make an identification;

(E) it is as important to exclude innocent persons as it is to identify a perpetrator; and

(F) the investigation will continue whether or not an identification is made.

(2) The eyewitness shall acknowledge in writing the receipt of the instructions required under this subsection and, if applicable, the refusal to be recorded. If the eyewitness refuses to sign the acknowledgement, the lineup administrator shall note the refusal of the eyewitness to sign the acknowledgement and shall also sign the acknowledgement.

(f) In conducting a lineup:

(1) When practicable, the lineup administrator shall separate all eyewitnesses in order to prevent the eyewitnesses from conferring with one another before and during the lineup procedure. If separating the eyewitnesses is not practicable, the lineup administrator shall ensure that all eyewitnesses are monitored and that they do not confer with one another while waiting to view the lineup and during the lineup.

(2) Each eyewitness shall perform the identification procedures without any other eyewitness present. Each eyewitness shall be given instructions regarding the identification procedures without other eyewitnesses present.

(3) The lineup shall be composed to ensure that the suspected perpetrator does not unduly stand out from the fillers. In addition:

(A) Only one suspected perpetrator shall be included in a lineup.

(B) The suspected perpetrator shall not be substantially different in appearance from the fillers based on the eyewitness's previous description of the perpetrator or based on other factors that would draw attention to the suspected perpetrator.

(C) At least 5 fillers shall be included in a photo lineup, in addition to the suspected perpetrator.

(D) When practicable, at least 5 fillers shall be included in a live lineup, in addition to the suspected perpetrator, but in no event shall there be less than 3 fillers in addition to the suspected perpetrator.

(E) If the eyewitness has previously viewed a photo lineup or live lineup in connection with the identification of another person suspected of involvement in the offense, the fillers in the lineup in which the current suspected perpetrator participates shall be different from the fillers used in the prior lineups.

(4) If there are multiple eyewitnesses, subject to the requirements in subsection (a) of this Section and to the extent possible, the suspected perpetrator shall be placed in a different position in the lineup or photo array for each eyewitness.

(5) Nothing shall be communicated to the eyewitness regarding the suspected perpetrator's position in the lineup or regarding anything that may influence the eyewitness's identification.

(6) No writings or information concerning any previous arrest, indictment, or conviction of the suspected perpetrator shall be visible or made known to the eyewitness.

(7) If a photo lineup, the photograph of the suspected perpetrator shall be contemporary in relation to the photographs of the fillers and, to the extent practicable, shall resemble the suspected perpetrator's appearance at the time of the offense.

(8) If a live lineup, any identifying actions, such as speech, gestures, or other movements, shall be performed by all lineup participants.

(9) If a live lineup, all lineup participants must be out of view of the eyewitness prior to the lineup.

(10) The lineup administrator shall obtain and document any and all statements made by the eyewitness during the lineup as to the perpetrator's identity. When practicable, an audio or video recording of the statements shall be made.

(11) If the eyewitness identifies a person as the perpetrator, the eyewitness shall not be provided any information concerning the person until after the lineup is completed.

(12) Unless otherwise allowed under subsection (a) of this Section, there shall not be anyone present during a lineup who knows the suspected perpetrator's identity, except the eyewitness and suspected perpetrator's counsel if required by law.

(g) The lineup administrator shall make an official report of all lineups, which shall include all of the following information:

(1) All identification and non-identification results obtained during the lineup, signed by the eyewitness, including any and all statements made by the eyewitness during the lineup as to the perpetrator's identity as required under paragraph (10) of subsection (f) of this Section. If the eyewitness refuses to sign, the lineup administrator shall note the refusal of the eyewitness to sign the results and shall also sign the notation.

(2) The names of all persons who viewed the lineup.

(3) The names of all law enforcement officers and counsel present during the lineup.

(4) The date, time, and location of the lineup.

(5) Whether it was a photo lineup or live lineup and how many persons or photographs were presented in the lineup.

(6) The sources of all persons or photographs used as fillers in the lineup.

(7) In a photo lineup, the actual photographs shown to the eyewitness.

(8) In a live lineup, a photograph or other visual recording of the lineup that includes all persons who participated in the lineup.

(9) If applicable, the eyewitness's refusal to be recorded.

(10) If applicable, the reason for any impracticability in strict compliance with this Section.

(h) Unless it is not practical or the eyewitness refuses, a video record of all lineup procedures shall be made.

(1) If a video record is not practical or the eyewitness refuses to allow a video record to be made:

(A) the reasons or the refusal shall be documented in the official report required under subsection (g) of this Section;

(B) an audio record shall be made, if practical; and

(C) if a live lineup, the lineup shall be photographed.

(2) If an audio record is not practical, the reasons shall be documented in the official report required under subsection (g) of this Section.

(i) The photographs, recordings, and the official report of the lineup required by this Section shall be disclosed to counsel for the accused as provided by the Illinois Supreme Court Rules regarding discovery. All photographs of suspected perpetrators shown to an eyewitness during a lineup shall be disclosed to counsel for the accused as provided by the Illinois Supreme Court Rules regarding discovery. To protect the identity of the eyewitness and the identities of law enforcement officers used as fillers in the lineup from being disclosed to third parties, the State's Attorney shall petition the court for a protective order under Supreme Court Rule 415 upon disclosure of the photographs or recordings to the counsel of the accused.

(j) All of the following shall be available as consequences of compliance or noncompliance with the requirements of this Section:

(1) Failure to comply with any of the requirements of this Section shall be a factor to be considered by the court in adjudicating a motion to suppress an eyewitness identification or any other motion to bar an eyewitness identification. These motions shall be in writing and state facts showing how the identification procedure was improper. This paragraph

(1) makes no change to existing applicable common law or statutory standards or burdens of proof.

(2) When warranted by the evidence presented at trial, the jury shall be instructed that it may consider all the facts and circumstances including compliance or noncompliance with this Section to assist in its weighing of the identification testimony of an eyewitness.

(k) Any electronic recording made during a lineup that is compiled by any law enforcement agency as required by this

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Section for the purposes of fulfilling the requirements of this Section shall be confidential and exempt from public inspection and copying, as provided under Section 7 of the Freedom of Information Act, and the recording shall not be transmitted to any person except as necessary to comply with this Section.

Credits

Laws 1963, p. 2836, § 107A-2, added by P.A. 98-1014, § 10, eff. Jan. 1, 2015.

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