

An Act

ENROLLED SENATE
BILL NO. 798

By: Daniels and Floyd of the
Senate

and

Kannady of the House

An Act relating to eyewitness identification procedures; defining terms; requiring law enforcement agencies to adopt certain written policies; directing policies to include certain requirements; providing for codification; and providing an effective date.

SUBJECT: Eyewitness identification procedures

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 21 of Title 22, unless there is created a duplication in numbering, reads as follows:

As used in this section:

1. "Blind administration" means the lack of knowledge of the administrator of an eyewitness identification procedure as to the identity of the suspect;

2. "Blinded administration" means the administrator of an eyewitness identification procedure may know the identity of the suspect but not the position in which the suspect is placed in the photo array when it is viewed by the eyewitness;

3. "Eyewitness" means a person who observed another person at or near the scene of an offense;

4. "Filler" means either a person or a photograph of a person included in an identification procedure who is not suspected of the offense in question;

5. "Folder shuffle method" means a blinded procedure in which:

- a. the suspect photo and filler photos are each placed in separate folders for a total of six photographs and then shuffled,
- b. four blank folders are placed behind the six folders that contain photographs, and
- c. each folder is then presented to an eyewitness such that the administrator cannot see which photos are being presented to the eyewitness until after the procedure is completed;

6. "Live lineup" means an eyewitness identification procedure in which a group of persons, including the suspected perpetrator of an offense and other persons who are not suspected of the offense, is displayed to an eyewitness for the purpose of determining whether the eyewitness identifies the suspect as the perpetrator;

7. "Photo array" means an identification procedure in which an array of photographs, including a photograph of the suspected perpetrator of an offense and additional photographs of other persons who are not suspected of the offense, is displayed to an eyewitness either in hard copy form or via electronic means for the purpose of determining whether the eyewitness identifies the suspect as the perpetrator; and

8. "Show-up" means an identification procedure in which an eyewitness is presented with a single suspect in person for the purpose of determining whether the eyewitness identifies the individual as the perpetrator.

B. All law enforcement agencies in this state that conduct eyewitness identification procedures shall adopt a detailed, written policy that shall include, but not be limited to, the following requirements:

1. All photo arrays and live lineups shall be conducted using a blind administrator or a technique of blinded administration, such as the folder shuffle method;

2. The eyewitness shall be informed before the identification procedure that the person who committed the offense may or may not be present in the procedure;

3. Fillers shall be selected who match the description of the perpetrator provided by the eyewitness and do not make the suspect noticeably stand out;

4. After the eyewitness makes an identification, the eyewitness shall be asked to state in his or her own words the level of certainty in the selection, and the statement shall be documented;

5. A protocol guiding the use of show-ups procedures, including that show-ups should only be used when a suspect is detained within a reasonably short time frame following the offense; and

6. A protocol for documenting eyewitness identification procedures.

SECTION 2. This act shall become effective November 1, 2019.

Passed the Senate the 25th day of February, 2019.

Presiding Officer of the Senate

Passed the House of Representatives the 23rd day of April, 2019.

Presiding Officer of the House
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____