

1 **SENATE FLOOR VERSION**

2 February 19, 2019

3 SENATE BILL NO. 798

By: Daniels and Floyd of the
Senate

4 and

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6 Kannady of the House

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

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

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

17 As used in this section:

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

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

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

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

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

7 a. the suspect photo and filler photos are each placed in
8 separate folders for a total of six photographs and
9 then shuffled,

10 b. four blank folders are placed behind the six folders
11 that contain photographs, and

12 c. each folder is then presented to an eyewitness such
13 that the administrator cannot see which photos are
14 being presented to the eyewitness until after the
15 procedure is completed;

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

21 7. "Photo array" means an identification procedure in which an
22 array of photographs, including a photograph of the suspected
23 perpetrator of an offense and additional photographs of other
24 persons who are not suspected of the offense, is displayed to an

1 eyewitness either in hard copy form or via electronic means for the
2 purpose of determining whether the eyewitness identifies the suspect
3 as the perpetrator; and

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

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

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

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

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

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

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

4 6. A protocol for documenting eyewitness identification
5 procedures.

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

7 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
8 February 19, 2019 - DO PASS

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