

1 ENGROSSED SENATE
2 BILL NO. 798

By: Daniels and Floyd of the
Senate

3 and

4 Kannady of the House

5
6 An Act relating to eyewitness identification
7 procedures; defining terms; requiring law enforcement
8 agencies to adopt certain written policies; directing
9 policies to include certain requirements; providing
10 for codification; and providing an effective date.

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

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

15 As used in this section:

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

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

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

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

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

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

8 b. four blank folders are placed behind the six folders
9 that contain photographs, and

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

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

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

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

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

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

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

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

20 4. After the eyewitness makes an identification, the eyewitness
21 shall be asked to state in his or her own words the level of
22 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 Passed the Senate the 25th day of February, 2019.

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Presiding Officer of the Senate

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11 Passed the House of Representatives the ____ day of _____,

12 2019.

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Presiding Officer of the House
of Representatives

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