

SENATE BILL No. 280

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-31.5-2; IC 35-33-4.5.

Synopsis: Eyewitness identification procedures. Establishes a procedure to be used by a law enforcement agency in conducting a lineup. Makes conforming amendments.

Effective: July 1, 2024.

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January 16, 2024, read first time and referred to Committee on Corrections and Criminal Law.



Second Regular Session of the 123rd General Assembly (2024)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2023 Regular Session of the General Assembly.

SENATE BILL No. 280

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 35-31.5-2-126.5 IS ADDED TO THE INDIANA
- 2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 3 [EFFECTIVE JULY 1, 2024]: **Sec. 126.5. "Eyewitness", for purposes**
- 4 **of IC 35-33-4.5, has the meaning set forth in IC 35-33-4.5-1.**
- 5 SECTION 2. IC 35-31.5-2-132.3 IS ADDED TO THE INDIANA
- 6 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 7 [EFFECTIVE JULY 1, 2024]: **Sec. 132.3. "Filler", for purposes of**
- 8 **IC 35-33-4.5, has the meaning set forth in IC 35-33-4.5-2.**
- 9 SECTION 3. IC 35-31.5-2-168.5 IS ADDED TO THE INDIANA
- 10 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 11 [EFFECTIVE JULY 1, 2024]: **Sec. 168.5. "Independent**
- 12 **administrator", for purposes of IC 35-33-4.5, has the meaning set**
- 13 **forth in IC 35-33-4.5-3.**
- 14 SECTION 4. IC 35-31.5-2-183, AS AMENDED BY P.L.144-2018,
- 15 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 16 JULY 1, 2024]: **Sec. 183. (a) "Law enforcement agency," for purposes**
- 17 **of receiving information concerning a violation of IC 35-42-3.5-1**



1 through IC 35-42-3.5-1.4 (human trafficking), means:

2 (1) an agency or department of:

3 (A) the state; or

4 (B) a political subdivision of the state;

5 whose principal function is the apprehension of criminal
6 offenders; and

7 (2) the attorney general.

8 (b) "Law enforcement agency", for purposes of IC 35-47-15 and
9 **IC 35-33-4.5**, has the meaning set forth in IC 35-47-15-2.

10 SECTION 5. IC 35-31.5-2-187.3 IS ADDED TO THE INDIANA
11 CODE AS A NEW SECTION TO READ AS FOLLOWS
12 [EFFECTIVE JULY 1, 2024]: **Sec. 187.3. "Lineup", for purposes of**
13 **IC 35-33-4.5, has the meaning set forth in IC 35-33-4.5-4.**

14 SECTION 6. IC 35-31.5-2-187.4 IS ADDED TO THE INDIANA
15 CODE AS A NEW SECTION TO READ AS FOLLOWS
16 [EFFECTIVE JULY 1, 2024]: **Sec. 187.4. "Lineup administrator",**
17 **for purposes of IC 35-33-4.5, has the meaning set forth in**
18 **IC 35-33-4.5-5.**

19 SECTION 7. IC 35-31.5-2-187.5 IS ADDED TO THE INDIANA
20 CODE AS A NEW SECTION TO READ AS FOLLOWS
21 [EFFECTIVE JULY 1, 2024]: **Sec. 187.5. "Live lineup", for purposes**
22 **of IC 35-33-4.5, has the meaning set forth in IC 35-33-4.5-6.**

23 SECTION 8. IC 35-31.5-2-235.6 IS ADDED TO THE INDIANA
24 CODE AS A NEW SECTION TO READ AS FOLLOWS
25 [EFFECTIVE JULY 1, 2024]: **Sec. 235.6. "Photo lineup", for**
26 **purposes of IC 35-33-4.5, has the meaning set forth in**
27 **IC 35-33-4.5-7.**

28 SECTION 9. IC 35-33-4.5 IS ADDED TO THE INDIANA CODE
29 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
30 JULY 1, 2024]:

31 **Chapter 4.5. Eyewitness Identification Procedures**

32 **Sec. 1. As used in this chapter, "eyewitness" means a person**
33 **whose identification by sight of another person may be relevant in**
34 **a criminal proceeding.**

35 **Sec. 2. As used in this chapter, "filler" means a person or a**
36 **photograph of a person who is not suspected of the offense under**
37 **investigation and is included in a lineup.**

38 **Sec. 3. As used in this chapter, "independent administrator"**
39 **means a current employee of a law enforcement agency, regardless**
40 **of the person's primary job description, who is not participating in**
41 **the investigation of a criminal offense and is unaware of which**
42 **person in the lineup is the suspect.**



1 **Sec. 4. As used in this chapter, "lineup" means a photo lineup or**
2 **live lineup.**

3 **Sec. 5. As used in this chapter, "lineup administrator" means**
4 **the person who conducts a lineup.**

5 **Sec. 6. As used in this chapter, "live lineup" means a procedure**
6 **in which a group of people is displayed to an eyewitness for the**
7 **purpose of determining if the eyewitness can identify the**
8 **perpetrator of a crime.**

9 **Sec. 7. As used in this chapter, "photo lineup" means a**
10 **procedure in which an array of photographs is displayed to an**
11 **eyewitness for the purpose of determining if the eyewitness can**
12 **identify the perpetrator of a crime.**

13 **Sec. 8. (a) Except as provided in subsection (b), a lineup**
14 **conducted by a law enforcement agency, or an employee of a law**
15 **enforcement agency, shall be conducted in accordance with this**
16 **chapter.**

17 **(b) If it is impossible or impracticable to use an independent**
18 **administrator or to follow the procedures set forth in this chapter,**
19 **a law enforcement agency may conduct a lineup using an**
20 **alternative procedure approved by the law enforcement training**
21 **board.**

22 **(c) Failure to comply with any of the requirements of this**
23 **chapter, or, if applicable, an alternative procedure approved by the**
24 **law enforcement training board, is admissible to support a claim**
25 **of eyewitness misidentification, if the evidence is not otherwise**
26 **inadmissible.**

27 **Sec. 9. Except as provided in section 8 of this chapter, a lineup**
28 **must be conducted as follows:**

29 **(1) An independent administrator shall conduct the lineup.**

30 **(2) Only one (1) suspect may be included in a lineup.**

31 **(3) No one may speak to the eyewitness concerning the**
32 **suspect's position in the lineup or regarding anything that**
33 **might influence the eyewitness's identification.**

34 **(4) Each filler in the lineup must generally resemble the**
35 **eyewitness's description of the perpetrator.**

36 **(5) The composition of the lineup must ensure that the suspect**
37 **does not unduly stand out from the fillers.**

38 **(6) The lineup must include at least five (5) fillers who**
39 **resemble, as much as practicable, the eyewitness description**
40 **of the perpetrator in significant features, including any**
41 **unique or unusual features.**

42 **(7) If the eyewitness has previously viewed a lineup in**



1 connection with the identification of another person suspected
2 of involvement in the offense, the fillers in the lineup in which
3 the current suspect participates must be different from the
4 fillers used in any prior lineups.

5 (8) If there are multiple eyewitnesses, the suspect must be
6 placed in a different position in the lineup for each eyewitness.

7 (9) If the eyewitness makes an identification during the lineup,
8 the lineup administrator shall document a clear statement
9 from the eyewitness, in the eyewitness's own words, as to the
10 eyewitness's confidence level that the person identified in the
11 lineup is the perpetrator.

12 Sec. 10. If the eyewitness is presented with a photo lineup, in
13 addition to the procedures set forth in section 9 of this chapter, the
14 following procedures must be followed:

15 (1) The person conducting the lineup must present each
16 photograph to the eyewitness sequentially, with each
17 photograph presented to the eyewitness separately, in a
18 previously determined order, and removed after it is viewed
19 and before the next photograph is presented.

20 (2) The photograph of the suspect must be recent and, to the
21 extent practicable, must resemble the suspect's appearance at
22 the time of the offense.

23 Sec. 11. If the eyewitness is presented with a live lineup, in
24 addition to the procedures set forth in section 9 of this chapter, the
25 following procedures must be followed:

26 (1) All lineup participants must be out of view of the
27 eyewitness before the lineup.

28 (2) Any identifying actions, such as speech, gestures, or other
29 movements, shall be performed by all lineup participants.

30 (3) Unless it is not practicable, a video record shall be made.

31 Sec. 12. (a) Before conducting a lineup, the independent
32 administrator shall instruct the eyewitness that:

33 (1) the perpetrator may or may not be in the lineup;

34 (2) the lineup administrator does not know the suspect's
35 identity;

36 (3) the eyewitness is not required to make an identification;

37 (4) it is as important to exclude innocent persons as it is to
38 identify the perpetrator; and

39 (5) the investigation will continue with or without an
40 identification.

41 (b) The eyewitness shall acknowledge, in writing, having
42 received a copy of the lineup instructions.



1 **(c) If the eyewitness refuses to sign a document acknowledging**
2 **receipt of the instructions, the lineup administrator must document**
3 **the refusal, and the lineup administrator must sign the**
4 **acknowledgment document.**

5 **Sec. 13. (a) Except as proved in subsection (b), upon a motion to**
6 **suppress, a court may suppress eyewitness identification evidence**
7 **on the grounds that a law enforcement agency, or an employee of**
8 **a law enforcement agency, failed to follow the procedures set forth**
9 **in this chapter.**

10 **(b) A court may not suppress eyewitness identification evidence**
11 **if:**

12 **(1) the motion to suppress is based on an immaterial defect in**
13 **the procedures used to procure an eyewitness identification;**

14 **or**

15 **(2) the law enforcement agency has substantially complied**
16 **with an eyewitness identification procedure approved by the**
17 **law enforcement training board.**

