

SECOND REGULAR SESSION

SENATE BILL NO. 842

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR KEAVENY.

Pre-filed January 5, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

5560S.02I

AN ACT

To amend chapter 491, RSMo, by adding thereto one new section relating to eyewitness identification procedures, with an effective date.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 491, RSMo, is amended by adding thereto one new section, to be known as section 491.500, to read as follows:

491.500. 1. As used in this section, the following terms mean:

(1) "Administrator", the person conducting the photograph or live lineup;

(2) "Eyewitness", a person who observes another person at or near the scene of an offense;

(3) "Filler", a person, or photograph of a person, who is not suspected of an offense and is included in an identification procedure that resembles the eyewitness's description of the perpetrator in significant features such as race, weight, build, or skin tone;

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

(5) "Photo lineup", 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 not suspected of the offense, is displayed to an eyewitness for the purpose of determining whether the eyewitness identifies the suspect as the perpetrator;

(6) "Showup", an identification procedure in which an eyewitness

22 is presented with a single suspect for the purpose of determining
23 whether the eyewitness identifies such individual as the perpetrator;

24 (7) "Suspect", the person believed by law enforcement to be the
25 possible perpetrator of the crime.

26 2. By January 1, 2018, any law enforcement agency conducting
27 one or more of the identification procedures listed in subsection 1 of
28 this section shall adopt written policies governing the
29 procedures. Each agency shall provide a copy of its written policies to
30 the director of the department of public safety by February 1, 2018.

31 3. In developing policies under this section, a law enforcement
32 agency shall adopt practices shown by reliable evidence to enhance the
33 accuracy of identification procedures and minimize mistaken
34 identifications. The policies shall include the following:

35 (1) A requirement that the administrator conducting the
36 photograph or live lineup either does not know the suspect's identity
37 or employs a procedure that prevents the administrator from observing
38 the lineup members being viewed by the eyewitness;

39 (2) A requirement that a statement of confidence be elicited and
40 documented verbatim at the time that an identification is made;

41 (3) A requirement that specific instructions be given to the
42 eyewitness prior to a live or photo lineup to minimize the likelihood of
43 an inaccurate identification. The list of instructions shall include a
44 directive that the perpetrator may not be in the lineup, the
45 administrator does not know if the suspect or perpetrator is in the
46 lineup, the investigation will continue if a suspect is not identified
47 during the lineup, and if the eyewitness does make an identification
48 during the procedure, the eyewitness will be required to give a
49 statement regarding his or her confidence level in the identification;

50 (4) A requirement for a minimum of four fillers to appear in each
51 live lineup, a required minimum of five fillers in each photo lineup, and
52 a requirement that all fillers generally resemble the description of the
53 perpetrator provided by the eyewitness while ensuring no lineup
54 member stands out;

55 (5) Prohibitions on reusing fillers in lineups viewed by the same
56 eyewitness and allowing an eyewitness to participate in multiple
57 lineups that include the same suspect;

58 (6) A prohibition on allowing more than one suspect to be

59 present, or have his or her photograph present, at a lineup; and

60 (7) If videotaping or digital video recording of the lineup is not
61 practicable, a requirement that the lineup be documented by taking a
62 photograph of each lineup and creating a detailed record that describes
63 all identification and nonidentification results obtained during the
64 identification procedures, signed by the eyewitnesses, including the
65 eyewitnesses' confidence statements; the names of all persons present
66 at the identification procedure, including the names of the lineup
67 administrator and whether the administrator knew the identity of the
68 suspect or used a method that prevented him or her from observing the
69 lineup members being viewed by the eyewitness; the date and time of
70 the identification procedure; any eyewitness identification of a filler;
71 the names of the lineup members and other relevant identifying
72 information; and the sources of all photographs or persons used in the
73 lineup.

74 4. Nothing in this section shall be construed as a ground to
75 exclude evidence at trial. When evidence of compliance or
76 noncompliance with the requirements of this section has been admitted
77 and presented at trial, the jury shall be instructed that it may consider
78 the evidence of compliance or noncompliance in assessing whether a
79 pre-trial eyewitness identification was reliable.

Section B. The enactment of section 491.500 of this act shall become
2 effective January 1, 2017.

✓

Copy