

SENATE AMENDMENT NO. _____

Offered by _____ of _____

Amend SS/SCS/Senate Bill No. 590, Page 52, Section 400.9-501, Line 8,

by inserting after all of said line the following:

"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

1 persons not suspected of the offense, is displayed to an
2 eyewitness for the purpose of determining whether the eyewitness
3 identifies the suspect as the perpetrator;

4 (6) "Showup", an identification procedure in which an
5 eyewitness is presented with a single suspect for the purpose of
6 determining whether the eyewitness identifies such individual as
7 the perpetrator;

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

10 2. By January 1, 2018, any law enforcement agency
11 conducting one or more of the identification procedures listed in
12 subsection 1 of this section shall adopt written policies
13 governing the procedures. Each agency shall provide a copy of
14 its written policies to the director of the department of public
15 safety by February 1, 2018.

16 3. In developing policies under this section, a law
17 enforcement agency shall adopt practices shown by reliable
18 evidence to enhance the accuracy of identification procedures and
19 minimize mistaken identifications. The policies shall include
20 the following:

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

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

28 (3) A requirement that specific instructions be given to
29 the eyewitness prior to a live or photo lineup to minimize the

1 likelihood of an inaccurate identification. The list of
2 instructions shall include a directive that the perpetrator may
3 not be in the lineup, the administrator does not know if the
4 suspect or perpetrator is in the lineup, the investigation will
5 continue if a suspect is not identified during the lineup, and if
6 the eyewitness does make an identification during the procedure,
7 the eyewitness will be required to give a statement regarding his
8 or her confidence level in the identification;

9 (4) A requirement for a minimum of four fillers to appear
10 in each live lineup, a required minimum of five fillers in each
11 photo lineup, and a requirement that all fillers generally
12 resemble the description of the perpetrator provided by the
13 eyewitness while ensuring no lineup member stands out;

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

17 (6) A prohibition on allowing more than one suspect to be
18 present, or have his or her photograph present, at a lineup; and

19 (7) If videotaping or digital video recording of the lineup
20 is not practicable, a requirement that the lineup be documented
21 by taking a photograph of each lineup and creating a detailed
22 record that describes all identification and nonidentification
23 results obtained during the identification procedures, signed by
24 the eyewitnesses, including the eyewitnesses' confidence
25 statements; the names of all persons present at the
26 identification procedure, including the names of the lineup
27 administrator and whether the administrator knew the identity of
28 the suspect or used a method that prevented him or her from
29 observing the lineup members being viewed by the eyewitness; the

1 date and time of the identification procedure; any eyewitness
2 identification of a filler; the names of the lineup members and
3 other relevant identifying information; and the sources of all
4 photographs or persons used in the lineup.

5 4. Nothing in this section shall be construed as a ground
6 to exclude evidence at trial. When evidence of compliance or
7 noncompliance with the requirements of this section has been
8 admitted and presented at trial, the jury shall be instructed
9 that it may consider the evidence of compliance or noncompliance
10 in assessing whether a pre-trial eyewitness identification was
11 reliable."; and

12 Further amend said bill, section B, page 132, line 26, by
13 striking the word "section" and inserting in lieu thereof
14 "sections 491.500 and"; and

15 Further amend the title and enacting clause accordingly.