

HOUSE BILL NO. 556

INTRODUCED BY F. GARNER

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS REGARDING EYEWITNESS IDENTIFICATIONS; REQUIRING LAW ENFORCEMENT AGENCIES TO ADOPT WRITTEN POLICIES FOR EYEWITNESS IDENTIFICATIONS; ESTABLISHING MINIMUM REQUIREMENTS AND BEST PRACTICES FOR EYEWITNESS IDENTIFICATION POLICIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 3] may be cited as the "Montana Eyewitness Identification Act".

NEW SECTION. **Section 2. Definitions.** For purposes of [sections 1 through 3], the following definitions apply:

- (1) "Administrator" means the person conducting a photo or live lineup of suspects.
- (2) "Blinded administration" means a technique that may be used when the administrator may know the identity of the suspect but is prevented from seeing which suspect or photo of a suspect is being viewed by the witness at any given time.
- (3) "Filler" means individuals included in the lineup procedure other than the suspect.
- (4) "Folder shuffle" means a technique of blinded administration in which the administrator places photographs of the suspect and fillers in separate folders, shuffles the folders, and then presents each folder to the witness so that the administrator cannot physically see which photograph is being viewed by the witness until the procedure is complete.
- (5) "Law enforcement agency" has the meaning provided in 44-11-303.
- (6) "Showup" means a procedure in which a witness is presented with a single individual for the purposes of identifying the suspect.

NEW SECTION. **Section 3. Eyewitness identification -- policies and procedures required.** (1) By January 1, 2018, every law enforcement agency in the state of Montana that conducts eyewitness identification



1 procedures shall adopt written policies and protocols concerning lineups and showups.

2 (2) A law enforcement agency may adopt the model policy issued by the Montana law enforcement
3 academy or its own written policy that, at a minimum, includes the following best practices:

4 (a) A lineup must be conducted by an independent administrator or, if that is not practical, a functionally
5 equivalent procedure such as the folder shuffle must be used.

6 (b) An administrator shall provide instructions to the eyewitness prior to the presentation of the lineup
7 that the suspect may or may not be present and that the investigation will continue regardless of whether the
8 eyewitness makes an identification.

9 (c) If using fillers, the administrator shall include fillers that match the eyewitness's description of the
10 suspect and that do not make the suspect stand out.

11 (d) An administrator shall immediately after an identification is made ask the eyewitness to describe in
12 the eyewitness's own words the level of certainty in the identification. The administrator shall document all
13 statements regarding the confidence of the eyewitness in the identification.

14 (3) A law enforcement agency shall submit a copy of its written eyewitness policy to the Montana public
15 safety officer standards and training council.

16 (4) A law enforcement agency that fails to comply with the provisions of this section is presumed to have
17 adopted the model policy adopted and issued by the Montana law enforcement academy.

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19 **NEW SECTION. Section 4. Codification instruction.** [Sections 1 through 3] are intended to be codified
20 as an integral part of Title 44, and the provisions of Title 44 apply to [sections 1 through 3].

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22 **NEW SECTION. Section 5. Effective date.** [This act] is effective on passage and approval.

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