



2022 South Dakota Legislature

Senate Bill 173

Introduced by: **Senator Rusch**

1 **An Act to establish standards for live or photographic lineups conducted by law**
2 **enforcement.**

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 **Section 1. That chapter 23A-22 be amended with a NEW SECTION:**

5 A lineup conducted by any law enforcement agency of this state or any political
6 subdivision thereof must meet the following requirements:

7 (1) The administrator of a live or photogenic lineup shall be unaware of which person
8 in the lineup is the suspected perpetrator of the crime under investigation, or, if
9 that is not reasonably practical, the administrator shall use a photographic lineup
10 that prevents the administrator from seeing which member of the photographic
11 lineup is being viewed by the eyewitness;

12 (2) Before the lineup is administered, the eyewitness shall be instructed that the
13 perpetrator may or may not be in the lineup;

14 (3) Any person who is not the suspected perpetrator in the lineup shall be substantially
15 similar to the eyewitness's description of the perpetrator; and

16 (4) Immediately after an identification is made, the eyewitness shall provide a
17 statement in the eyewitness's own words that articulates the level of the
18 eyewitness's confidence in the identification.

19 **Section 2. That chapter 23A-22 be amended with a NEW SECTION:**

20 Failure to comply with any of the requirements of section 1 of this Act shall be:

21 (1) Considered by a court in adjudicating a motion to suppress eyewitness
22 identification; and

23 (2) Admissible in support of a claim of eyewitness misidentification if such evidence is
24 otherwise admissible.

1 When evidence of compliance or noncompliance with the requirements of section
2 1 of this Act is presented at trial, the jury shall be instructed that it may consider credible
3 evidence of compliance or noncompliance to determine the reliability of the eyewitness
4 identification.

5 **Section 3. That chapter 23A-22 be amended with a NEW SECTION:**

6 Terms used in sections 1 and 2 of this Act mean:

- 7 (1) "Eyewitness," a person whose identification by sight of another person may be
8 relevant in a criminal proceeding;
9 (2) "Live lineup," a group of people displayed to an eyewitness for the purpose of
10 determining if the eyewitness can identify the perpetrator of a crime;
11 (3) "Photographic lineup," an array of photographs displayed to an eyewitness for the
12 purpose of determining if the eyewitness can identify the perpetrator of a crime.