WEST VIRGINIA CODE CHAPTER 62 ARTICLE 1E

WV Legislature

§62-1E-1. Definitions.

For the purposes of this article:

(1) "Administrator" means the person conducting the live lineup, photo lineup or showup.

(2) "Suspect" means the person believed by law enforcement to be the possible perpetrator of the crime.

(3) "Blind" means the administrator does not know the identity of the suspect.

(4) "Blinded" means the administrator may know who the suspect is, but does not know which lineup member is being viewed by the eyewitness.

(5) "Eyewitness" means a person whose identification of another person may be relevant in a criminal proceeding.

(6) "Filler" means either a person or a photograph of a person who is not suspected of an offense and is included in an identification procedure.

(7) "Folder shuffle method" means a procedure for displaying a photo lineup with the following steps:

(A) Photos used in a photo lineup are placed in their own respective folder, and the folders are shuffled, numbered and then presented to an eyewitness such that the administrator cannot see or track which photo is being presented to the witness until after the procedure is completed;

(B) The procedure is completed only when the eyewitness has viewed the entire array of numbered folders, even if an affirmative identification is made prior to the eyewitness viewing all of the numbered folders;

(C) If an eyewitness requests a second viewing, the eyewitness must be shown all of the lineup members again, even if the eyewitness makes an identification during this second showing; and

(D) The eyewitness shall be allowed to review the folders only once after the initial viewing is complete.

(8) "Lineup" means a live lineup or photo lineup of persons or photographs of persons matching as close as possible the eyewitness's description of the perpetrator.

(9) "Live lineup" means a procedure in which a group of people is displayed to an eyewitness for the purpose of determining if the eyewitness is able to identify the perpetrator of a crime.

WV Legislature

(10) "Photo lineup" means a procedure in which an array of photographs is displayed to an eyewitness for the purpose of determining if the eyewitness is able to identify the perpetrator of a crime.

(11) "Sequential presentation" means presenting live or photo lineup persons to the eyewitness one-by-one rather than all at once.

(12) "Showup" means an identification procedure in which an eyewitness is presented with a single suspect for the purpose of determining whether the eyewitness identifies this individual as the perpetrator.

WV Legislature

§62-1E-2. Eyewitness identification procedures.

(a) Prior to a lineup or showup, law enforcement should record as complete a description as possible of the perpetrator provided by the eyewitness, in the eyewitness's own words. This statement should also include information regarding the conditions under which the eyewitness observed the perpetrator including location, time, distance, obstructions, lighting and weather conditions. The eyewitness should also be asked if he or she wears or has been prescribed glasses or contact lenses and whether he or she was wearing them at the time of the witnessed event. The administrator should record whether or not the eyewitness was wearing glasses or contact lenses at the time of the lineup or showup.

(b) After completing the requirements of subsection (a) of this section, but before a lineup or showup, the eyewitness should be given the following instructions:

(1) That the perpetrator may or may not be present in the lineup, or, in the case of a showup, may or may not be the person that is presented to the eyewitness;

(2) That the eyewitness is not required to make an identification;

(3) That it is as important to exclude innocent persons as it is to identify the perpetrator;

(4) That the investigation will continue whether or not an identification is made; and

(5) That the administrator does not know the identity of the perpetrator.

(c) Nothing should be said, shown or otherwise suggested to the eyewitness that might influence the eyewitness's identification of any particular lineup or showup member, at any time prior to, during or following a lineup or showup.

(d) All lineups should be conducted blind unless to do so would place an undue burden on law enforcement or the investigation. If conducting a blind lineup would place an undue burden on law enforcement or the investigation, then the administrator shall use the folder shuffle method.

(e) All lineups should be conducted in a sequential presentation. When there are multiple suspects, each identification procedure shall include only one suspect.

(f) At least four fillers should be used in all lineups. The fillers shall resemble the description of the suspect as much as practicable and shall not unduly stand out.

(g) In a photo lineup, there should be no characteristics of the photos themselves or the background context in which they are placed which shall make any of the photos unduly stand out.

(h) In a live lineup, all lineup participants must be out of view of the eyewitness prior to the identification procedure.

WV Legislature

(i) If there are multiple eyewitnesses for the same lineup:

(1) Each eyewitness should view the lineup or lineups separately;

(2) The suspect should be placed in a different position in the lineup for each eyewitness; and

(3) The eyewitnesses should not be permitted to communicate with each other until all identification procedures have been completed.

(j) Showups should only be performed using a live suspect and only in exigent circumstances that require the immediate display of a suspect to an eyewitness. A law-enforcement official shall not conduct a showup with a single photo; rather a photo lineup must be used.

(k) Law-enforcement officers should make a written or video record of a lineup which shall be provided to the prosecuting attorney in the event that any person is charged with the offense under investigation. The written record shall include all steps taken to comply with this article which shall include the following information:

(1) The date, time and location of the lineup;

(2) The names of every person in the lineup, if known, and all other persons present at the lineup;

(3) The words used by the eyewitness in any identification, including words that describe the eyewitness's certainty or uncertainty in the identification at the time the identification is made;

(4) Whether it was a photo lineup or live lineup;

(5) The number of photos or individuals that were presented in the lineup;

(6) Whether the lineup administrator knew which person in the lineup was the suspect;

(7) Whether, before the lineup, the eyewitness was instructed that the perpetrator might or might not be presented in the lineup;

(8) Whether the lineup was simultaneous or sequential;

(9) The signature, or initials, of the eyewitness, or notation if the eyewitness declines or is unable to sign; and

(10) A video of the lineup and the eyewitness's response may be included.

WV Legislature

§62-1E-3. Training of law-enforcement officers.

The Superintendent of State Police may create educational materials and conduct training programs to instruct law-enforcement officers and recruits how to conduct lineups in compliance with this section. Any West Virginia law-enforcement agency, as defined in section one, article twenty-nine, chapter thirty of this code, conducting eyewitness identification procedures shall adopt specific written procedures for conducting photo lineups, live lineups and showups that comply with this article on or before January 1, 2014.

WV Legislature