

Police Prosecutor Update

JUNE 2025

ISSUE 370 SUPPLEMENTAL

New Law Change to Eyewitness Identification Procedures

Effective July 1, 2025

Hey all! To clear up any confusion from the regular newsletter about the Eyewitness Identification section, I'm attaching the entire Indiana Code section for this statute. I had incorrectly included some of S.B. 141 that was NOT included in the final bill signed into law. This supplemental corrects that and is what the new law is currently as of July 1, 2025.

IC 35-33-4.5 Chapter 4.5. Eyewitness Identification Procedures

[35-33-4.5-1](#) "Eyewitness"

[35-33-4.5-2](#) "Facial recognition technology"

[35-33-4.5-3](#) "Filler"

[35-33-4.5-4](#) "Lineup"

[35-33-4.5-5](#) "Lineup investigator"

[35-33-4.5-6](#) "Photo lineup"

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[35-33-4.5-11](#) In person witness identification procedure

IC 35-33-4.5-1 "Eyewitness"

Sec. 1. As used in this chapter, "eyewitness" means a person whose identification by sight of another person may be relevant in a criminal proceeding.

As added by P.L.127-2025, SEC.8.

IC 35-33-4.5-2 "Facial recognition technology"

Sec. 2. As used in this chapter, "facial recognition technology" means a computer application that uses biometric algorithms to analyze facial features and is used to assist in the unique personal identification of individuals in still or video images.

As added by P.L.127-2025, SEC.8.

IC 35-33-4.5-3 "Filler"

Sec. 3. As used in this chapter, "filler" means a person or a photograph of a person who is not suspected of the offense under investigation and is included in a lineup.

As added by P.L.127-2025, SEC.8.

IC 35-33-4.5-4 "Lineup"

Sec. 4. As used in this chapter, "lineup" includes a photo lineup.

As added by P.L.127-2025, SEC.8.

IC 35-33-4.5-5 "Lineup investigator"

Sec. 5. As used in this chapter, "lineup investigator" means the person who conducts a lineup and who is a current employee of a law enforcement agency, regardless of the person's primary job description.

As added by P.L.127-2025, SEC.8.

IC 35-33-4.5-6 "Photo lineup"

Sec. 6. As used in this chapter, "photo lineup" means a procedure in which an array of photographs is displayed to an eyewitness for the purpose of determining if the eyewitness can identify the perpetrator of a crime.

As added by P.L.127-2025, SEC.8.

IC 35-33-4.5-7 Lineup procedures; alternative lineup procedures

Sec. 7. (a) Except as provided in subsection (b), a lineup conducted by a law enforcement agency, or an employee of a law enforcement agency, shall be conducted in accordance with this chapter.

(b) If it is impossible or impracticable to follow the procedures set forth in this chapter, a law enforcement agency may conduct a lineup using an alternative procedure approved by the law enforcement training board.

(c) Failure to comply with any of the requirements of this chapter, or, if applicable, an alternative procedure approved by the law enforcement training board, is admissible to support a claim of eyewitness misidentification, if the evidence is not otherwise inadmissible.

As added by P.L.127-2025, SEC.8.

IC 35-33-4.5-8 Use of facial recognition technology

Sec. 8. If facial recognition technology is used to identify a suspect, a law enforcement agency, or an employee of a law enforcement agency, may not conduct a lineup unless there is other evidence, in addition to the use of facial recognition technology, to support a belief that the suspect committed the crime under investigation.

As added by P.L.127-2025, SEC.8.

IC 35-33-4.5-9 Requirements for conducting a lineup

Sec. 9. (a) Except as provided in section 7 of this chapter, a lineup must be conducted as follows:

(1) A lineup investigator shall conduct the lineup.

(2) Only one (1) suspect may be included in the lineup.

(3) No one may speak to the eyewitness concerning the suspect's position in the lineup or regarding anything that might influence the eyewitness's identification.

- (4) Each filler in the lineup must generally resemble the eyewitness's description of the perpetrator.
 - (5) The composition of the lineup must ensure that the suspect does not unduly stand out from the fillers.
 - (6) The lineup must include at least five (5) fillers who resemble, as much as practicable, the eyewitness description of the perpetrator in significant features, including any unique or unusual features.
 - (7) If the eyewitness has previously viewed a lineup in connection with the identification of another person suspected of involvement in the offense, the fillers in the lineup in which the current suspect participates must be different from the fillers used in any prior lineups.
 - (8) If there are multiple eyewitnesses, the suspect must be placed in a different position in the lineup for each eyewitness.
 - (9) If the eyewitness makes an identification during the lineup, the lineup investigator shall document any statement from the eyewitness as to the eyewitness's confidence level that the person identified in the lineup is the perpetrator.
- (b) Before conducting a lineup, the lineup investigator shall instruct the eyewitness that:
- (1) the perpetrator may or may not be in the lineup;
 - (2) the eyewitness is not required to make an identification;
 - (3) it is as important to exclude innocent persons as it is to identify the perpetrator; and
 - (4) the investigation will continue with or without an identification.

As added by P.L.127-2025, SEC.8.

IC 35-33-4.5-10 Use of photographs in a lineup

Sec. 10. If the eyewitness is presented with a photo lineup, the photograph of the suspect must be recent and, to the extent practicable, must resemble the suspect's appearance at the time of the offense. All procedures set forth in section 9 of this chapter must also be followed.

As added by P.L.127-2025, SEC.8.

IC 35-33-4.5-11 In-person witness identification procedure

Sec. 11. (a) This section applies to an in person witness identification procedure in which, shortly after the commission of a crime:

- (1) a law enforcement officer requests that a witness observe an individual in person; and
- (2) the witness is being asked to observe the individual for the purpose of determining whether the witness can identify the individual as the perpetrator of a crime.

(b) An in-person witness identification described in subsection (a) shall be recorded by video, unless a law enforcement recording device is not available to the officer and recording is otherwise not practicable under the circumstances.

(c) Failure to comply with the requirements of this section is admissible to support a claim of eyewitness misidentification, if the evidence is not otherwise inadmissible.

As added by P.L.127-2025, SEC.8.

Want to learn more?

ILEA is hosting a one-day class presented by the Innocence Project on Eyewitness Identification and Lineups. This will take place on July 29 at 9:00 a.m. at the ILEA in Plainfield. William G. Brooks, a retired Massachusetts police chief and recognized expert on eyewitness identification, will talk about the science, and about protocols that police are implementing across the U.S. This course is a “train-the-trainer” and officers who attend will receive access to instructor materials. Among other topics, the presentation will include:

- Cautions for dispatchers and first responders
- Interview techniques
- Witnesses instructions
- Handling multiple witness cases
- Assembling and showing photo arrays
- Blind administration
- Assessing witness confidence
- Issues with sketches and composites
- Identifying inanimate objects

This is a **FREE** training opportunity!! To register, please contact Winnie Ye at wye@innocenceproject.org.

This is a publication of Indiana Prosecuting Attorneys Council which will cover caselaw and various topics of interest to law enforcement officers. Please direct any questions or suggestions you may have for future issues to Dave Thornburg, Drug Resource Prosecutor at IPAC – DaThornburg@ipac.in.gov