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Bill would create new rules for police lineups

By Zac Taylor

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CHARLESTON, W.Va. -- Lawmakers are hoping to curb instances when witnesses finger suspects for crimes they did not commit through new legislation that will push police agencies to create uniform rules for eyewitness identification procedures.

Last month, Sen. Bill Laird, D-Fayette, introduced a bill that would require every police department in the state to have a written policy for "lineups."

"I think eyewitness evidence can be very powerful and compelling evidence," said Laird, a former Fayette County sheriff.

"Therefore, I think it's important that we get it right."

The bill calls for investigators to keep a written or video record of each lineup that includes the date and time of the lineup, the names of every person in the lineup, and any words the witness uses to describe the person that supposedly committed the crime.

The legislation also strongly suggests that police agencies conduct "blind" lineups, or lineups conducted by an investigator that does not know the identity of the suspect.

But while the bill requires departments to have a written policy in place, police agencies can still implement their own protocol.

"I think it's important to realize that these are suggestive processes and procedures rather than what could be considered as required additional demands," Laird said. "It's not meant to usurp the discretionary standards within the framework of the law enforcement profession."

Eyewitness misidentification is one of the largest causes of wrongful convictions, according to the Innocence Project, a national nonprofit group that uses DNA testing to fight for prisoners who claim innocence.

Of the first 239 people that the Innocence Project has helped exonerate, 75 percent were victims of witnesses who pointed out the wrong suspect. In most of those instances, the false identification was attributed to either a faulty live lineup, or photo array.

During lineups, investigators sometimes give subtle hints to witnesses, either intentionally or unintentionally, that lead them to select the wrong suspect. In one Innocence Project case, a man was tried and convicted of rape after a witness picked his photo out of an array. Police had marked the photo with an R.

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In January, Charleston police charged Roland William Willis with three counts of malicious wounding after several people picked him out of a photo lineup, believing him to be the man involved in a stabbing at the Impulse nightclub downtown.

Police dropped the charges after they realized they had the wrong man.

"That's what this is about," said Valeena Beety, the head of the Innocence Project clinic at West Virginia University. "All of us want to get the same person. The real perpetrator is on the streets. None of us want that."

Other suggestions in the bill for lineup procedures include:

- For photo arrays, officers should place photos of suspects in their own folders and then shuffle them so that the administrator of the lineup cannot tell which photo is being presented to the witness until after the procedure is completed.
- Show live or photo lineup persons one-by-one instead of all at once.

Laird said he does not believe West Virginia law enforcement agencies have a perceived problem in wrongful convictions caused by faulty lineups, and hopes that the new legislation will serve as a precautionary measure for investigations.



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"I think I have always recognized and understood the weight and value of that evidence in the courtroom, and I've understood the value of doing it right," he said. "It's not an area that has been abused in West Virginia, but it's something that is extremely important.

Laird said that the bill has passed through the Senate Judiciary Committee, and may be placed on the senate floor for a first reading as early as this week.

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