

**[CAPTION]**

**DEFENDANT'S MOTION TO HAVE DEFENDANT APPEAR IN A LINEUP**

The Defendant, by counsel, respectfully requests the Court for an Order requiring that:

1. The Defendant appear in a lineup conducted by [insert law enforcement agency] at [insert location].

2. The following persons be present to view the lineup and determine whether they can identify any of the persons in the lineup as the person who committed the criminal offense for which the Defendant is charged.

a. \_\_\_\_\_;

b. \_\_\_\_\_;

c. \_\_\_\_\_.

3. The lineup be arranged and conducted according to the following procedures:

a. No photographs or sketches of the Defendant be shown to the witness before viewing the lineup.

b. Defense counsel be present when the [telephone call/request] is made to eyewitnesses inviting them to view the lineup;

c. Defense counsel be present at all times thereafter during any conversations between the witnesses and police officers;

d. Defense counsel be permitted to see before the lineup the first description of the perpetrator which each witness has given;

e. If photographs or sketches have already been shown to the witnesses, Defendant's counsel be permitted to examine same before lineup along with the grouping with which they were displayed;

f. All photographs and groupings, after being shown to counsel, be marked and preserved for pretrial and trial proceedings;

g. There be two (2) lineups; one (1) without the Defendant, and that defense counsel

elect:

- (a) the one in which client is to appear, and
  - (b) the order in which he is to appear;
- h. All persons in the lineup closely conform as to height, weight, age, ethnic background, racial characteristics and general appearance to the Defendant;
- i. If there be any unusual physical characteristics of the Defendant, the appearance of the others so conform or if not possible, that the unusual characteristic of the Defendant be concealed in an inconspicuous manner, (i.e., limp, no walk; bald spot, no back views; etc.);
- j. All persons in the lineup be dressed in such a similar manner as to call no attention to anyone in the lineup.
- k. If there should be a voice identification, the following techniques be used:
  - (a) all persons in the lineup state exactly the same thing;
  - (b) the statements not contain factual data about the subjects (e.g., "This is Goshen, Indiana, and I am in the County Jail," would be acceptable; however, "My height is \_\_\_\_\_, my weight is \_\_\_\_\_, my age is \_\_\_\_\_, I was born in \_\_\_\_\_," would not be acceptable);
  - (c) all the other subjects not have accents or different manners of speaking that distinguish them from the Defendant;
  - (d) the voice identification be heard separate and apart from the visual identification, and that the witness not see the subjects at the time of the statements; and
  - (e) the subjects give their voice identification in a different order than the visual identification;
- l. The Defendant and the subjects in the lineup be brought to the lineup by a route whereby no witness will see any of them before the lineup begins.
- m. The officers conducting the lineup be ones who have not handled other phases of this case investigation;
- n. Identically worded instructions and requests be given to each lineup subject during the lineup;




- o. If there be co-suspects none appear in the lineup with the Defendant;
- p. Each eyewitness view the lineup separately from one another;
- q. Each make their identification statement out of the presence of the others;
- r. No previous identification be communicated to any witness;
- s. No information regarding the Defendant be given to witnesses prior to the identification;
- t. Defense counsel be permitted to be present when witnesses are asked if anyone was recognized in the lineup;
- u. The witnesses not be ordered or requested or in any way encouraged not to talk to defense counsel regarding the lineup;
- v. Defense counsel be given a list of the names, addresses, height, weight, age and race of each person appearing in the lineup with the Defendant; and
- w. A color photograph of the lineup be taken, developed, printed and preserved for pretrial and trial proceedings.




WHEREFORE, the Defendant, by counsel, respectfully requests this Court for an Order for a line-up meeting the above-mentioned requirements to avoid suggestibility, and for all other relief just and proper in the premises.



(Signature)


## CASE LAW


## CASEBANK R.6.b

Hopkins v. State, [163 Ind.App. 276](#) , [323 N.E.2d 232](#)  (1975), *overruled on other grounds by* Watts v. State, [885 N.E.2d 1228](#)  (Ind. 2008) (lineup at which Defendant was denied counsel and at which police indicated to witness that there was a suspect in the exhibited group violated the Defendant's rights).


Kirby v. Illinois, [406 U.S. 682](#) , [92 S.Ct. 1877](#) , [32 L.Ed.2d 411](#)  (1972) (accused is entitled to have counsel present at lineup conducted subsequent to filing of information or indictment).

Morris v. State, [471 N.E.2d 288](#)  (Ind. 1984) (order for pretrial lineup requested by the Defendant is in nature of discovery order, which is discretionary with trial judge; in weighing equities, considerations are proximity in time of petition to offense, changed appearance of Defendant, likelihood of misidentification and cost of conducting lineup). See also Howell v. State, [493 N.E.2d 473](#)  (Ind.Ct.App. 1986).

Fry v. State, [521 N.E.2d 1302](#)  (Ind. 1988) (trial court was not required to grant the Defendant's motion for lineup; witness was able to observe the Defendant for several minutes, talked to him as they stood a foot apart, and immediately identified the Defendant to police as man who broke into victim's home).

Glover v. State, [441 N.E.2d 1360](#)  (Ind. 1982) (although the Defendant's request for lineup was initially granted, the State moved for reconsideration because the Defendant shaved off facial hair and all hair on his head in apparent attempt to disguise his appearance; the State showed paramount interest, and thus, the trial court did not err in eventually denying request for lineup).

## NOTE

If the court will not grant the Motion for a Line-up, the Defendant has a right to present the fact of the Defendant's request and the State's opposition to his request into evidence as part of his right to present his defense. Bowlds v. State, [834 N.E.2d 669](#)  (Ind.Ct.App. 2005) (issues concerning the manner, quality, and thoroughness of the police investigation are of utmost importance to the defense, and can be sued by the Defendant to show shortcomings in investigation and to cast suspicion on another suspect).