



General Assembly

February Session, 2008

Raised Bill No. 5832

LCO No. 2765

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Referred to Committee on Judiciary

Introduced by:
(JUD)

AN ACT CONCERNING EYEWITNESS IDENTIFICATION.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2008*) (a) For the purposes of
2 this section:

3 (1) "Eyewitness" means a person who observes another person at or
4 near the scene of an offense;

5 (2) "Photo lineup" means a procedure in which an array of
6 photographs, including a photograph of the person suspected as the
7 perpetrator of an offense and additional photographs of other persons
8 not suspected of the offense, is displayed to an eyewitness for the
9 purpose of determining whether the eyewitness is able to identify the
10 suspect as the perpetrator;

11 (3) "Live lineup" means a procedure in which a group of persons,
12 including the person suspected as the perpetrator of an offense and
13 other persons not suspected of the offense, is displayed to an
14 eyewitness for the purpose of determining whether the eyewitness is
15 able to identify the suspect as the perpetrator;

16 (4) "Identification procedure" means either a photo lineup or a live
17 lineup; and

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

21 (b) Not later than January 1, 2009, each municipal police department
22 and the Department of Public Safety shall adopt procedures for the
23 conducting of photo lineups and live lineups that comply with the
24 following requirements:

25 (1) When practicable, the person conducting the identification
26 procedure shall be a person who is not aware of which person in the
27 photo lineup or live lineup is suspected as the perpetrator of the
28 offense;

29 (2) The photo lineup and live lineup identification procedures shall
30 be conducted in sequence so that the eyewitness is shown each
31 photograph or each person one at a time rather than viewing the
32 photographs or the persons simultaneously;

33 (3) The eyewitness shall be instructed prior to the identification
34 procedure:

35 (A) That the perpetrator may not be among the persons in the photo
36 lineup or the live lineup;

37 (B) That the eyewitness should not feel compelled to make an
38 identification;

39 (C) That each photograph or person will be viewed one at a time;

40 (D) That the photographs or persons will be displayed in random
41 order;

42 (E) That the eyewitness should take as much time as needed in
43 making a decision about each photograph or person before moving to

44 the next one; and

45 (F) That all photographs or persons will be shown to the eyewitness,
46 even if an identification is made before all have been viewed;

47 (4) The photo lineup or live lineup shall be composed so that the
48 fillers generally fit the description of the person suspected as the
49 perpetrator and, in the case of a photo lineup, so that the photograph
50 of the person suspected as the perpetrator resembles his or her
51 appearance at the time of the offense and does not unduly stand out;

52 (5) If the eyewitness has previously viewed a photo lineup or live
53 lineup in connection with the identification of another person
54 suspected of involvement in the offense, the fillers in the lineup in
55 which the person suspected as the perpetrator participates shall be
56 different from the fillers used in any prior lineups;

57 (6) At least five fillers shall be included in the photo lineup and at
58 least four fillers shall be included in the live lineup, in addition to the
59 person suspected as the perpetrator;

60 (7) In a photo lineup, no writings or information concerning any
61 previous arrest of the person suspected as the perpetrator shall be
62 visible to the eyewitness;

63 (8) In a live lineup, any identification actions, such as speaking or
64 making gestures or other movements, shall be performed by all lineup
65 participants;

66 (9) In a live lineup, all lineup participants shall be out of the view of
67 the eyewitness at the beginning of the identification procedure;

68 (10) The person suspected as the perpetrator shall be the only
69 suspected perpetrator included in the identification procedure;

70 (11) Nothing shall be said to the eyewitness regarding the position
71 in the photo lineup or the live lineup of the person suspected as the

72 perpetrator, except as otherwise provided in subparagraph (D) of
73 subdivision (3) of this subsection;

74 (12) Nothing shall be said to the eyewitness that might influence the
75 eyewitness's selection of the person suspected as the perpetrator;

76 (13) If the eyewitness identifies a person as the perpetrator, the
77 eyewitness shall not be provided any information concerning such
78 person prior to obtaining the eyewitness's statement that he or she is
79 certain of the selection; and

80 (14) A written record of the identification procedure shall be made
81 that includes the following information:

82 (A) All identification and nonidentification results obtained during
83 the identification procedure, signed by the eyewitness, including the
84 eyewitness's own words regarding how certain he or she is of the
85 selection;

86 (B) The names of all persons present at the identification procedure;

87 (C) The date and time of the identification procedure;

88 (D) The order in which the photographs or persons were displayed
89 to the eyewitness;

90 (E) In a photo lineup, the photographs themselves;

91 (F) In a photo lineup, identification information and the sources of
92 all photographs used; and

93 (G) In a live lineup, identification information on all persons who
94 participated in the lineup.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2008</i>	New section

Statement of Purpose:

To improve the reliability of eyewitness identification by establishing procedures for conducting a police photographic or live lineup including having a lineup administrator who does not know which person is suspected as the perpetrator, informing the eyewitness that the perpetrator might not be in the lineup and presenting the persons or photographs in a lineup sequentially rather than simultaneously.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]