



House of Representatives

General Assembly

File No. 558

February Session, 2010

House Bill No. 5273

House of Representatives, April 15, 2010

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

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, 2010*) (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, 2011, 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 shall be conducted in sequence
30 so that the eyewitness is shown each photograph or each person one at
31 a time rather than viewing the photographs or the persons
32 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 photographs or persons
47 have been viewed;

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

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

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

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

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

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

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

71 (11) Nothing shall be said to the eyewitness regarding the position
72 in the photo lineup or the live lineup of the person suspected as the
73 perpetrator, except as otherwise provided in subparagraph (D) of
74 subdivision (3) of this subsection;

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

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

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

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

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

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

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

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

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

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

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2010</i>	New section
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JUD *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

This bill would have no fiscal impact to the Department of Public Safety and municipal Police Departments from adopting eyewitness procedures for the following reasons:

1. There is no anticipated cost to the requirement that the person conducting the identification procedure be unaware of the suspect because this provision would only be applied when practical to do so;
2. There is no anticipated cost to the requirement that the lineups be conducted sequentially as this is a procedural change to current practice;
3. There is no anticipated cost to the number of fillers required in photo or live lineups as the majority of lineups are photo, not live, and in the case of a live lineup investigators traditionally seek volunteers to act as fillers;
4. There is no cost to the required reporting of the results as this codifies current practice;
5. All other required procedures are technical in nature.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**HB 5273*****AN ACT CONCERNING EYEWITNESS IDENTIFICATION.*****SUMMARY:**

This bill requires the Department of Public Safety and municipal police departments to adopt procedures to conduct photo and live lineups by January 1, 2011. The procedures must comply with the following requirements.

1. When practicable, the person conducting the identification procedure must be someone who is not aware which person in the lineup is the suspect.
2. The lineup must be conducted in sequence so the eyewitness is shown each photograph or person one at a time instead of simultaneously.
3. The eyewitness must be instructed before the procedure that (a) the perpetrator may not be in the lineup, (b) the eyewitness should not feel compelled to make an identification, (c) each photo or person will be viewed one at a time in random order, (d) the eyewitness should take as much time as needed to make a decision about each photo or person before moving on, and (e) all photos and people will be shown even if an identification is made before all are viewed.
4. The fillers (non-suspects) in the lineup must generally fit the suspect's description and, in a photo lineup, the photo of the suspect must resemble his or her appearance at the time of the offense and not unduly stand out.
5. If the eyewitness has already viewed a lineup to identify

- another suspect, the fillers in the lineup in which the suspect participates must be different from the fillers in prior lineups.
6. In addition to the suspect, there must be at least five fillers in a photo lineup and four in a live lineup.
 7. In a photo lineup, there cannot be any writings or information about a suspect's previous arrests visible to the eyewitness.
 8. In a live lineup, any actions such as speaking, gestures, or movements must be performed by all participants.
 9. In a live lineup, all participants must be out of the eyewitness' view at the start of the procedure.
 10. The suspect must be the only suspect in the procedure.
 11. Nothing can be said about the suspect's position in the lineup except that the order is random.
 12. Nothing can be said that might influence the eyewitness' selection of the suspect.
 13. If the eyewitness identifies someone, he or she must not be given any information about that person before the eyewitness states that he or she is certain of the selection.
 14. There must be a written record of the procedure, including (a) all results from the procedure signed by the eyewitness with his or her own words about how certain he or she is of the selection; (b) the names of everyone present at the procedure; (c) the date and time of the procedure; (d) the order that photos or people were displayed; (e) the photos in a photo lineup, identifying information, and the sources of the photos used; and (f) in a live lineup, identification information on everyone who participated in the lineup.

EFFECTIVE DATE: October 1, 2010

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 23 Nay 19 (03/29/2010)