



General Assembly

January Session, 2011

Raised Bill No. 6344

LCO No. 3064

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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, 2011*) (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, 2012, 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.

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| <p>This act shall take effect as follows and shall amend the following sections:</p> |
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| Section 1 | October 1, 2011 | New section |
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Statement of Purpose:

To improve the reliability of eyewitness identification in criminal investigations by establishing procedures for conducting a police photographic or live lineup.

[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.]