



General Assembly

**Substitute Bill No. 5501**

February Session, 2012

\* \_\_\_\_\_HB05501JUD\_\_032212\_\_\_\_\_\*

**AN ACT CONCERNING EYEWITNESS IDENTIFICATION PROCEDURES.**

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

1 Section 1. Section 54-1p of the 2012 supplement to the general  
2 statutes is repealed and the following is substituted in lieu thereof  
3 (*Effective July 1, 2012*):

4 (a) For the purposes of this section:

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

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

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

18 (4) "Identification procedure" means either a photo lineup or a live  
19 lineup; and

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

23 (b) Not later than February 1, 2013, the Police Officer Standards and  
24 Training Council and the Division of State Police within the  
25 Department of Emergency Services and Public Protection shall jointly  
26 develop and promulgate uniform mandatory policies and appropriate  
27 guidelines for the conducting of eyewitness identification procedures  
28 that shall be based on best practices and be followed by all municipal  
29 and state law enforcement agencies. Said council and division shall  
30 also develop and promulgate a standardized form to be used by  
31 municipal and state law enforcement agencies when conducting an  
32 identification procedure and making a written record thereof.

33 [(b)] (c) Not later than [January 1, 2012] May 1, 2013, each municipal  
34 police department and the Department of Emergency Services and  
35 Public Protection shall adopt procedures for the conducting of photo  
36 lineups and live lineups that comply with the following requirements:

37 [(1) When practicable, the person conducting the identification  
38 procedure shall be a person who is not aware of which person in the  
39 photo lineup or live lineup is suspected as the perpetrator of the  
40 offense;]

41 (1) Whenever a specific person is suspected as the perpetrator of an  
42 offense, the photographs included in a photo lineup or the persons  
43 participating in a live lineup shall be presented sequentially so that the  
44 eyewitness views one photograph or one person at a time in  
45 accordance with the policies and guidelines developed and  
46 promulgated by the Police Officer Standards and Training Council and  
47 the Division of State Police within the Department of Emergency  
48 Services and Public Protection pursuant to subsection (b) of this  
49 section;

50     (2) The identification procedure shall be conducted in such a  
51 manner that the person conducting the procedure does not know  
52 which person in the photo lineup or live lineup is suspected as the  
53 perpetrator of the offense, except that, if it is not practicable to conduct  
54 a photo lineup in such a manner, the photo lineup shall be conducted  
55 by the use of a folder shuffle method, computer program or other  
56 comparable method so that the person conducting the procedure does  
57 not know which photograph the eyewitness is viewing during the  
58 procedure;

59     ~~[(2)]~~ (3) The eyewitness shall be instructed prior to the identification  
60 procedure:

61     (A) That the eyewitness will be asked to view an array of  
62 photographs or a group of persons, and that each photograph or  
63 person will be presented one at a time;

64     (B) That it is as important to exclude innocent persons as it is to  
65 identify the perpetrator;

66     (C) That the persons in a photo lineup or live lineup may not look  
67 exactly as they did on the date of the offense because features like  
68 facial or head hair can change;

69     ~~[(A)]~~ (D) That the perpetrator may or may not be among the persons  
70 in the photo lineup or ~~[the]~~ live lineup;

71     ~~[(B)]~~ (E) That the eyewitness should not feel compelled to make an  
72 identification; ~~[and]~~

73     ~~[(C)]~~ (F) That the eyewitness should take as much time as needed in  
74 making a decision; and

75     (G) That the police will continue to investigate the offense  
76 regardless of whether the eyewitness makes an identification;

77     (4) In addition to the instructions required by subdivision (3) of this  
78 subsection, the eyewitness shall be given such instructions as may be

79 developed and promulgated by the Police Officer Standards and  
80 Training Council and the Division of State Police within the  
81 Department of Emergency Services and Public Protection pursuant to  
82 subsection (b) of this section;

83 [(3)] (5) The photo lineup or live lineup shall be composed so that  
84 the fillers generally fit the description of the person suspected as the  
85 perpetrator and, in the case of a photo lineup, so that the photograph  
86 of the person suspected as the perpetrator resembles his or her  
87 appearance at the time of the offense and does not unduly stand out;

88 [(4)] (6) If the eyewitness has previously viewed a photo lineup or  
89 live lineup in connection with the identification of another person  
90 suspected of involvement in the offense, the fillers in the lineup in  
91 which the person suspected as the perpetrator participates or in which  
92 the photograph of the person suspected as the perpetrator is included  
93 shall be different from the fillers used in any prior lineups;

94 [(5)] (7) At least five fillers shall be included in the photo lineup and  
95 at least four fillers shall be included in the live lineup, in addition to  
96 the person suspected as the perpetrator;

97 [(6)] (8) In a photo lineup, no writings or information concerning  
98 any previous arrest of the person suspected as the perpetrator shall be  
99 visible to the eyewitness;

100 [(7)] (9) In a live lineup, any identification actions, such as speaking  
101 or making gestures or other movements, shall be performed by all  
102 lineup participants;

103 [(8)] (10) In a live lineup, all lineup participants shall be out of the  
104 view of the eyewitness at the beginning of the identification procedure;

105 [(9)] (11) The person suspected as the perpetrator shall be the only  
106 suspected perpetrator included in the identification procedure;

107 [(10)] (12) Nothing shall be said to the eyewitness regarding the  
108 position in the photo lineup or the live lineup of the person suspected

109 as the perpetrator;

110 [(11)] (13) Nothing shall be said to the eyewitness that might  
111 influence the eyewitness's selection of the person suspected as the  
112 perpetrator;

113 [(12)] (14) If the eyewitness identifies a person as the perpetrator,  
114 the eyewitness shall not be provided any information concerning such  
115 person prior to obtaining the eyewitness's statement [that he or she is  
116 certain] regarding how certain he or she is of the selection; and

117 [(13)] (15) A written record of the identification procedure shall be  
118 made that includes the following information:

119 (A) All identification and nonidentification results obtained during  
120 the identification procedure, signed by the eyewitness, including the  
121 eyewitness's own words regarding how certain he or she is of the  
122 selection;

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

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

125 (D) In a photo lineup, the photographs [themselves] presented to  
126 the eyewitness or copies thereof;

127 (E) In a photo lineup, identification information on all persons  
128 whose photograph was included in the lineup and the sources of all  
129 photographs used; and

130 (F) In a live lineup, identification information on all persons who  
131 participated in the lineup.

132 Sec. 2. (NEW) (*Effective October 1, 2012*) Each police basic or review  
133 training program conducted or administered by the Police Officer  
134 Standards and Training Council, the Division of State Police within the  
135 Department of Emergency Services and Public Protection or a  
136 municipal police department shall provide training to police officers in

137 the administration of eyewitness identification procedures in  
138 accordance with the policies and guidelines developed and  
139 promulgated by the Police Officer Standards and Training Council and  
140 the Division of State Police within the Department of Emergency  
141 Services and Public Protection pursuant to subsection (b) of section 54-  
142 1p of the general statutes, as amended by this act.

143 Sec. 3. Section 2 of public act 11-252 is repealed and the following is  
144 substituted in lieu thereof (*Effective from passage*):

145 (a) There is established an Eyewitness Identification Task Force to  
146 study issues concerning eyewitness identification in criminal  
147 investigations and the use of sequential live and photo lineups. The  
148 task force shall examine: (1) The science of sequential methods of  
149 conducting a live lineup and a photo lineup, (2) the use of sequential  
150 lineups in other states, (3) the practical implications of a state law  
151 mandating sequential lineups, and (4) such other topics as the task  
152 force deems appropriate relating to eyewitness identification and the  
153 provision of sequential lineups.

154 (b) The task force shall consist of the following members or their  
155 designees: The chairpersons and ranking members of the joint  
156 standing committee of the General Assembly on the judiciary; the  
157 Chief State's Attorney; the Chief Public Defender; the Victim Advocate;  
158 an active or retired judge appointed by the Chief Justice of the  
159 Supreme Court; a municipal police chief appointed by the president of  
160 the Connecticut Police Chiefs Association; a representative of the  
161 Police Officer Standards and Training Council; a representative of the  
162 State Police Training School appointed by the Commissioner of [Public  
163 Safety] Emergency Services and Public Protection; a representative of  
164 the criminal defense bar appointed by the president of the Connecticut  
165 Criminal Defense Lawyers Association; a representative from the  
166 Connecticut Innocence Project; and six public members, including the  
167 dean of a law school located in this state and a social scientist,  
168 appointed one each by the president pro tempore of the Senate, the  
169 speaker of the House of Representatives, the majority leader of the

170 Senate, the majority leader of the House of Representatives, the  
171 minority leader of the Senate, and the minority leader of the House of  
172 Representatives.

173 (c) The task force may solicit and accept gifts, donations, grants or  
174 funds from any public or private source to assist the task force in  
175 carrying out its duties.

176 (d) The task force shall report its findings and recommendations to  
177 the joint standing committee of the General Assembly on the judiciary  
178 in accordance with section 11-4a of the general statutes not later than  
179 April 1, 2012.

180 (e) After submitting the report required under subsection (d) of this  
181 section, the task force shall continue in existence for the purpose of (1)  
182 assisting the Police Officer Standards and Training Council and the  
183 Division of State Police within the Department of Emergency Services  
184 and Public Protection in the development of policies and guidelines for  
185 the conducting of eyewitness identification procedures by law  
186 enforcement agencies as required by subsection (b) of section 54-1p of  
187 the general statutes, as amended by this act, (2) researching and  
188 evaluating best practices in the conducting of eyewitness identification  
189 procedures as such practices may change from time to time, and  
190 recommending such revised best practices to the Police Officer  
191 Standards and Training Council and the Division of State Police within  
192 the Department of Emergency Services and Public Protection, (3)  
193 collecting statistics concerning the conducting of eyewitness  
194 identification procedures by law enforcement agencies, and (4)  
195 monitoring the implementation of section 54-1p of the general statutes,  
196 as amended by this act. The task force shall report the results of such  
197 monitoring, including any recommendations for proposed legislation,  
198 to the joint standing committee of the General Assembly on the  
199 judiciary in accordance with section 11-4a of the general statutes not  
200 later than February 5, 2014.

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

Section 1	<i>July 1, 2012</i>	54-1p
Sec. 2	<i>October 1, 2012</i>	New section
Sec. 3	<i>from passage</i>	PA 11-252, Sec. 2

**JUD**      *Joint Favorable Subst.*