
OLR Bill Analysis

sHB 5501

AN ACT CONCERNING EYEWITNESS IDENTIFICATION PROCEDURES.

SUMMARY:

This bill refines police techniques for conducting eyewitness identifications of both photographic and live lineups. It includes provisions on:

1. development, promulgation, and training functions performed jointly by the Police Officer Standards Council (POST) and the Division of State Police (DSP) in the Department of Emergency Services and Public Protection (DESPP);
2. the POST and DSP guidance and the statutory mandate that DESPP and each municipal police department develop its own lineup procedures that create a potential conflict;
3. police instructions and communications with eyewitnesses; and
4. new functions for the Eyewitness Identification Task Force.

The bill also makes minor changes.

EFFECTIVE DATE: Upon passage for the task force; July 1, 2012, for changes in the eyewitness procedures; and October 1, 2012, for the POST and DSP training.

POST AND DSP POLICIES

The bill requires, by October 1, 2012, that POST and DSP jointly develop and promulgate uniform, mandatory policies and appropriate guidelines for conducting eyewitness identification procedures. They must be based on best practices and followed by all municipal and state law enforcement agencies. POST and DSP must also develop and promulgate a form for the agencies to use when conducting, and

making a written record of, an identification procedure.

The bill also requires basic and review POST, DSP, and municipal police training programs to include a segment on administering the eyewitness administration identification procedures POST and DSP develop.

Potential Conflict with DESPP and Local Police Department Policies

In addition to the mandatory, uniform POST and DSP policies due by October 1, 2012, the law requires each municipal police department and DESPP to adopt procedures for conducting lineups. Current law required these procedures to be adopted by January 1, 2012, but the bill extends the deadline to January 1, 2013. It is unclear what will happen if an individual police department, not regulated or trained by POST, promulgates conflicting policies.

IDENTITY OF SUSPECT

Currently, municipal and DESPP photo and live lineup procedures require that, when possible, the person conducting the lineup not be aware of which person in the lineup is the suspect. The bill states that where this is not possible in a photo lineup, the person administering it use a “shuffle” method (similar to shuffling a deck of cards), computer program, or comparable method so that the person conducting the procedure does not know which photo the eyewitness is viewing.

Sequential Viewing

The bill also requires that whenever a suspect is among those participating in a photo or live lineup, each participant be presented sequentially so that the eyewitness views only one photograph or one person at a time. The POST and SPD must include this requirement in their policies and guidance.

INSTRUCTIONS TO EYEWITNESSES

The bill expands the instructions police officers must give to eyewitnesses before the lineup.

Currently, eyewitnesses must be told that (1) the perpetrator may be

among the persons in the photo or live lineup, (2) the eyewitness should not feel compelled to make an identification, and (3) he or she should take as much time as needed in making a decision.

The bill adds to the information eyewitnesses must be told before the lineup that:

1. he or she will be asked to view an array of photographs or a group of people, and that each photograph or person will be presented one at a time;
2. it is as important to exclude innocent persons as it is to identify the perpetrator;
3. the person in a lineup may not look exactly as he or she did on the date of the offense because features like facial and head hair can change;
4. the perpetrator may or may not (current law says only “may”) be among the people in the lineup; and
5. the police will continue to investigate the offense regardless of whether the eyewitness makes an identification.

The bill also instructs police personnel to give any other eyewitness instructions developed by POST and DPS.

Information About the Perpetrator

Current law prohibits police officers from telling an eyewitness who has identified the perpetrator any information about him or her before obtaining a statement indicating that he or she is certain about the identification. The bill permits information to be released after the eyewitness provides a statement indicating how certain he or she is of the selection.

Written Report

The law requires a written record for each identification procedure. Among other things, it must include the results, the date and time, those present, and information about people used in a photo lineup.

The bill requires the record to also include (1) the photographs (or copies) that were shown to the eyewitness and (2) the order in which they or the people used in a live lineup were presented.

EYEWITNESS IDENTIFICATION TASKFORCE

The bill assigns new functions to the 19-member Eyewitness Identification Task Force, created by PA 11-252. The task force originally studied issues relating to eyewitness identification and the effect of showing eyewitnesses photo arrays or live lineups one-by-one rather than all at once. The task force has to submit its findings and recommendations to the Judiciary Committee by April 1, 2012.

New Functions

The bill continues the task force and requires it to:

1. assist POST and DPS develop their eyewitness identification policies and guidelines;
2. research and evaluate best practices and make
3. recommendations to POST and DPS when such practices are revised;
4. collect statistics concerning the conduct of eyewitness procedures by law enforcement agencies; and
5. monitor the implementation of CGS § 54-1p (PA 11-252) that established eyewitness identification procedures).

The task force must report to the Judiciary Committee on the results of its monitoring, including any recommendations for proposed legislation, by February 5, 2014.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 42 Nay 1 (03/21/2012)