

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 1625

Short Title: Eyewitness ID Reform Act. (Public)

Sponsors: Representatives Glazier, Stam, Ross, Lucas (Primary Sponsors);
Alexander, Blust, Brown, Fisher, Harrison, Luebke, Rapp, Steen, and
Weiss.

Referred to: Judiciary I.

April 19, 2007

A BILL TO BE ENTITLED

AN ACT TO ENACT THE EYEWITNESS IDENTIFICATION REFORM ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 15A of the General Statutes is amended by adding a
new Article to read:

"Article 14A.

"Eyewitness Identification Reform Act.

§ 15A-284.50. Short title.

This Article shall be called the "Eyewitness Identification Reform Act."

§ 15A-284.51. Purpose.

The purpose of this Article is to help solve crime, convict the guilty, and exonerate
the innocent in criminal proceedings by improving procedures for eyewitness
identification of suspects.

§ 15A-284.52. Eyewitness identification reform.

(a) Definitions. – The following definitions apply in this Article:

(1) Blind administration. – The procedure of conducting a photo lineup or
live lineup by a line administrator who is not participating in the
investigation of the criminal offense and who is unaware of which
person in the lineup is the suspect and which persons are fillers.

(2) Eyewitness. – A person whose identification by sight of another person
may be relevant in a criminal proceeding.

(3) Filler. – A person or a photograph of a person who is not suspected of
an offense and is included in a lineup.

(4) Photo lineup. – A procedure in which an array of photographs is
displayed to an eyewitness for the purpose of determining if the
eyewitness is able to identify the perpetrator of a crime.

- 1 (5) Live lineup. – A procedure in which a group of people is displayed to
2 an eyewitness for the purpose of determining if the eyewitness is able
3 to identify the perpetrator of a crime.
- 4 (6) Lineup. – A photo lineup or live lineup.
- 5 (7) Lineup administrator. – The person who conducts a lineup.
- 6 (b) Eyewitness Identification Procedures. – Lineups conducted by State, county,
7 and other local law enforcement officers shall meet all of the following requirements:
- 8 (1) The lineup administrator shall be a person who does not know which
9 person in the lineup is the suspect. In the event an independent
10 administrator is not available, a double blind administration of the
11 lineup shall otherwise occur, and an alternative method may be used as
12 provided by subsection (c) of this section.
- 13 (2) Individuals or photos shall be presented to witnesses sequentially,
14 rather than simultaneously. Sequential presentation requires each
15 individual or photo to be presented to the witness separately, in a
16 previously determined order, removing each individual or photo after
17 it is viewed, whereas simultaneous presentation requires all individuals
18 or photos be presented at the same time.
- 19 (3) Before a lineup, the eyewitness shall be instructed that the perpetrator
20 might or might not be presented in the lineup, that the lineup
21 administrator does not know the suspect's identity, that the eyewitness
22 should not feel compelled to make an identification, that it is as
23 important to exclude innocent persons as it is to identify the
24 perpetrator, and that the investigation will continue whether or not an
25 identification is made.
- 26 (4) In a photo lineup, the photograph of the suspected perpetrator shall be
27 contemporary and, to the extent practicable, shall resemble his or her
28 appearance at the time of the offense.
- 29 (5) The lineup shall be composed so that the fillers generally resemble the
30 eyewitness's description of the suspected perpetrator, while ensuring
31 that the suspect does not unduly stand out from the fillers. In addition:
- 32 a. All fillers selected shall resemble, as much as practicable, the
33 eyewitness's description of the perpetrator in significant
34 features including any unique or unusual features.
- 35 b. At least five fillers shall be included in a photo lineup, in
36 addition to the suspected perpetrator.
- 37 c. At least five fillers shall be included in a live lineup, in addition
38 to the suspected perpetrator.
- 39 d. If the eyewitness has previously viewed a photo lineup or live
40 lineup in connection with the identification of another person
41 suspected of involvement in the offense, the fillers in the lineup
42 in which the suspected perpetrator participates shall be different
43 from the fillers used in any prior lineups.

- 1 (6) If there are multiple eyewitnesses, the suspect shall be placed in a
2 different position in the lineup or photo array for each eyewitness.
- 3 (7) In a lineup, no writings or information concerning any previous arrest,
4 indictment, or conviction of the suspected perpetrator shall be visible
5 or made known to the eyewitness.
- 6 (8) In a live lineup, any identifying actions, such as speech, gestures, or
7 other movements, shall be performed by all lineup participants.
- 8 (9) In a live lineup, all lineup participants must be out of view of the
9 eyewitness prior to the lineup.
- 10 (10) The suspected perpetrator shall be the only suspected perpetrator
11 included in the lineup.
- 12 (11) Nothing shall be said to the eyewitness regarding the suspected
13 perpetrator's position in the lineup or regarding anything that might
14 influence the eyewitness's identification.
- 15 (12) The lineup administrator shall seek and document a clear statement
16 from the eyewitness, at the time of the identification and in the
17 eyewitness's own words, as to the eyewitness's confidence level that
18 the person identified in a given lineup is the perpetrator. The lineup
19 administrator shall separate all witnesses. Each witness shall be given
20 instructions regarding the identification procedures without other
21 witnesses present. Witnesses shall not be allowed to confer with one
22 another either before, during, or after the procedure.
- 23 (13) If the eyewitness identifies a person as the perpetrator, the eyewitness
24 shall not be provided any information concerning the person before the
25 lineup administrator obtains the eyewitness's confidence statement
26 about the selection. There shall not be anyone present during the live
27 lineup or photographic identification procedures who knows the
28 suspect's identity, except the eyewitness and counsel as required by
29 law.
- 30 (14) Unless it is not practical, a video record of live identification
31 procedures shall be made. If a video record is not practical, the reasons
32 shall be documented, and an audio record shall be made. If neither a
33 video nor audio record are practical, the reasons shall be documented,
34 and the lineup administrator shall make a written record of the lineup.
- 35 (15) Whether video, audio, or in writing, the record shall include all of the
36 following information:
- 37 a. All identification and non-identification results obtained during
38 the identification procedure, signed by the eyewitness,
39 including the eyewitness's confidence statement. If the
40 eyewitness refuses to sign, the lineup administrator shall note
41 the refusal of the eyewitness to sign the results and shall also
42 sign the notation.
- 43 b. The names of all persons present at the lineup.
- 44 c. The date, time, and location of the lineup.

- d. The words used by the eyewitness in any identification, including words that describe the eyewitness's certainty of identification.
- e. Whether it was a photo lineup or live lineup and how many photos or individuals were presented in the lineup.
- f. The sources of all photographs or persons used.
- g. In a photo lineup, the photographs themselves.
- h. In a live lineup, a photo or other visual recording of the lineup that includes all persons who participated in the lineup.

(c) Alternative Methods for Identification if Independent Administrator Is Not Available. – In the event an independent administrator is not available, a photo lineup eyewitness identification procedure may be conducted using an alternative method specified and approved by the Education Training Committee of the North Carolina Criminal Justice Education and Training Standards Commission. Any alternative method shall be carefully structured to achieve neutral blind administration and prevent the administrator from knowing which photograph is being presented to the eyewitness during the identification procedure. Alternative methods may include any of the following:

- (1) Automated computer programs that can automatically administer the photo lineup directly to an eyewitness and prevent the administrator from seeing which photo the witness is viewing until after the procedure is completed.
- (2) A procedure in which photographs are placed in folders, randomly numbered, and shuffled and then presented to an eyewitness such that the administrator cannot see or track which photograph is being presented to the witness until after the procedure is completed.
- (3) Any other procedures that achieve neutral blind administration.

(d) Standardized Witness Instructions Required. – Every law enforcement agency shall adopt standardized witness instructions to be read and signed by the witness at the time of the identification procedure consistent with the instructions adopted by the Education Training Committee of the North Carolina Criminal Justice Education and Training Standards Commission.

(e) Remedies for Noncompliance. – All of the following remedies shall be granted as relief for noncompliance with the requirements of this section:

- (1) Failure to comply with any of the requirements of this section shall be considered by the court in adjudicating motions to suppress eyewitness identification.
- (2) Failure to comply with any of the requirements of this section shall be admissible in support of claims of eyewitness misidentification, as long as such evidence is otherwise admissible.
- (3) When evidence of compliance or noncompliance with the requirements of this section has been presented at trial, the jury shall be instructed that it may consider credible evidence of compliance or

1 noncompliance to determine the reliability of eyewitness
2 identifications.

3 **"§ 15A-284.53. Training of law enforcement officers.**

4 The Department of Justice shall create educational materials and conduct training
5 programs to instruct law enforcement officers and recruits how to conduct lineups in
6 compliance with this Article."

7 **SECTION 2.** This act becomes effective December 1, 2007, and applies to
8 offenses committed on or after that date.