

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 1625
Committee Substitute Favorable 4/25/07

Short Title: Eyewitness ID Reform Act. (Public)

Sponsors:

Referred to:

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) Eyewitness. – A person whose identification by sight of another person may be relevant in a criminal proceeding.
- (2) Filler. – A person or a photograph of a person who is not suspected of an offense and is included in a lineup.
- (3) Independent administrator. – A lineup administrator who is not participating in the investigation of the criminal offense and is unaware of which person in the lineup is the suspect.
- (4) Live lineup. – A procedure in which a group of people is displayed to an eyewitness for the purpose of determining if the eyewitness is able to identify the perpetrator of a crime.
- (5) Lineup. – A photo lineup or live lineup.
- (6) Lineup administrator. – The person who conducts a lineup.

- 1 (7) Photo lineup. – A procedure in which an array of photographs is
2 displayed to an eyewitness for the purpose of determining if the
3 eyewitness is able to identify the perpetrator of a crime.
- 4 (b) Eyewitness Identification Procedures. – Lineups conducted by State, county,
5 and other local law enforcement officers shall meet all of the following requirements:
- 6 (1) An independent administrator shall conduct the lineup. In the event an
7 independent administrator is not available, an alternative method may
8 be used as provided by subsection (c) of this section.
- 9 (2) Individuals or photos shall be presented to witnesses sequentially, with
10 each individual or photo presented to the witness separately, in a
11 previously determined order, and removed after it is viewed before the
12 next individual or photo is presented.
- 13 (3) Before a lineup, the eyewitness shall be instructed that the perpetrator
14 might or might not be presented in the lineup, that the lineup
15 administrator does not know the suspect's identity, that the eyewitness
16 should not feel compelled to make an identification, that it is as
17 important to exclude innocent persons as it is to identify the
18 perpetrator, and that the investigation will continue whether or not an
19 identification is made.
- 20 (4) In a photo lineup, the photograph of the suspect shall be contemporary
21 and, to the extent practicable, shall resemble the suspect's appearance
22 at the time of the offense.
- 23 (5) The lineup shall be composed so that the fillers generally resemble the
24 eyewitness's description of the perpetrator, while ensuring that the
25 suspect does not unduly stand out from the fillers. In addition:
- 26 a. All fillers selected shall resemble, as much as practicable, the
27 eyewitness's description of the perpetrator in significant
28 features including any unique or unusual features.
- 29 b. At least five fillers shall be included in a photo lineup, in
30 addition to the suspect.
- 31 c. At least five fillers shall be included in a live lineup, in addition
32 to the suspect.
- 33 d. If the eyewitness has previously viewed a photo lineup or live
34 lineup in connection with the identification of another person
35 suspected of involvement in the offense, the fillers in the lineup
36 in which the current suspect participates shall be different from
37 the fillers used in any prior lineups.
- 38 (6) If there are multiple eyewitnesses, the suspect shall be placed in a
39 different position in the lineup or photo array for each eyewitness.
- 40 (7) In a lineup, no writings or information concerning any previous arrest,
41 indictment, or conviction of the suspect shall be visible or made
42 known to the eyewitness.
- 43 (8) In a live lineup, any identifying actions, such as speech, gestures, or
44 other movements, shall be performed by all lineup participants.

- 1 (9) In a live lineup, all lineup participants must be out of view of the
2 eyewitness prior to the lineup.
- 3 (10) Only one suspect shall be included in a lineup.
- 4 (11) Nothing shall be said to the eyewitness regarding the suspect's position
5 in the lineup or regarding anything that might influence the
6 eyewitness's identification.
- 7 (12) The lineup administrator shall seek and document a clear statement
8 from the eyewitness, at the time of the identification and in the
9 eyewitness's own words, as to the eyewitness's confidence level that
10 the person identified in a given lineup is the perpetrator. The lineup
11 administrator shall separate all witnesses in order to discourage
12 witnesses from conferring with one another before or during the
13 procedure. Each witness shall be given instructions regarding the
14 identification procedures without other witnesses present.
- 15 (13) If the eyewitness identifies a person as the perpetrator, the eyewitness
16 shall not be provided any information concerning the person before the
17 lineup administrator obtains the eyewitness's confidence statement
18 about the selection. There shall not be anyone present during the live
19 lineup or photographic identification procedures who knows the
20 suspect's identity, except the eyewitness and counsel as required by
21 law.
- 22 (14) Unless it is not practical, a video record of live identification
23 procedures shall be made. If a video record is not practical, the reasons
24 shall be documented, and an audio record shall be made. If neither a
25 video nor audio record are practical, the reasons shall be documented,
26 and the lineup administrator shall make a written record of the lineup.
- 27 (15) Whether video, audio, or in writing, the record shall include all of the
28 following information:
- 29 a. All identification and non-identification results obtained during
30 the identification procedure, signed by the eyewitness,
31 including the eyewitness's confidence statement. If the
32 eyewitness refuses to sign, the lineup administrator shall note
33 the refusal of the eyewitness to sign the results and shall also
34 sign the notation.
- 35 b. The names of all persons present at the lineup.
- 36 c. The date, time, and location of the lineup.
- 37 d. The words used by the eyewitness in any identification,
38 including words that describe the eyewitness's certainty of
39 identification.
- 40 e. Whether it was a photo lineup or live lineup and how many
41 photos or individuals were presented in the lineup.
- 42 f. The sources of all photographs or persons used.
- 43 g. In a photo lineup, the photographs themselves.

1 h. In a live lineup, a photo or other visual recording of the lineup
2 that includes all persons who participated in the lineup.

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

12 (1) Automated computer programs that can automatically administer the
13 photo lineup directly to an eyewitness and prevent the administrator
14 from seeing which photo the witness is viewing until after the
15 procedure is completed.

16 (2) A procedure in which photographs are placed in folders, randomly
17 numbered, and shuffled and then presented to an eyewitness such that
18 the administrator cannot see or track which photograph is being
19 presented to the witness until after the procedure is completed.

20 (3) Any other procedures that achieve neutral administration.

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

26 (e) Remedies. – All of the following shall be available as consequences of
27 compliance or noncompliance with the requirements of this section:

28 (1) Failure to comply with any of the requirements of this section shall be
29 considered by the court in adjudicating motions to suppress eyewitness
30 identification.

31 (2) Failure to comply with any of the requirements of this section shall be
32 admissible in support of claims of eyewitness misidentification, as
33 long as such evidence is otherwise admissible.

34 (3) When evidence of compliance or noncompliance with the
35 requirements of this section has been presented at trial, the jury shall
36 be instructed that it may consider credible evidence of compliance or
37 noncompliance to determine the reliability of eyewitness
38 identifications.

39 **§ 15A-284.53. Training of law enforcement officers.**

40 The Department of Justice, in consultation with the Education Training Committee
41 of the North Carolina Criminal Justice Education and Training Standards Commission,
42 shall create educational materials and conduct training programs to instruct law
43 enforcement officers and recruits how to conduct lineups in compliance with this
44 Article."

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