

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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HOUSE BILL 1625  
Committee Substitute Favorable 4/25/07  
Senate Judiciary I (Civil) Committee Substitute Adopted 7/17/07

Short Title: Eyewitness ID Reform Act. (Public)

Sponsors:

Referred to:

April 19, 2007

1 A BILL TO BE ENTITLED  
2 AN ACT TO ENACT THE EYEWITNESS IDENTIFICATION REFORM ACT.

3 The General Assembly of North Carolina enacts:

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

6 "Article 14A.

7 "Eyewitness Identification Reform Act.

8 **"§ 15A-284.50. Short title.**

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

10 **"§ 15A-284.51. Purpose.**

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

14 **"§ 15A-284.52. Eyewitness identification reform.**

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

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

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

20 (3) Independent administrator. – A lineup administrator who is not  
21 participating in the investigation of the criminal offense and is  
22 unaware of which person in the lineup is the suspect.

23 (4) Live lineup. – A procedure in which a group of people is displayed to  
24 an eyewitness for the purpose of determining if the eyewitness is able  
25 to identify the perpetrator of a crime.

26 (5) Lineup. – A photo lineup or live lineup.

27 (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) A lineup shall be conducted by an independent administrator or by an  
7           alternative method as provided by subsection (c) of this section.

8           (2) Individuals or photos shall be presented to witnesses sequentially, with  
9           each individual or photo presented to the witness separately, in a  
10           previously determined order, and removed after it is viewed before the  
11           next individual or photo is presented.

12           (3) Before a lineup, the eyewitness shall be instructed that:

13           a. The perpetrator might or might not be presented in the lineup,

14           b. The lineup administrator does not know the suspect's identity,

15           c. The eyewitness should not feel compelled to make an  
16           identification,

17           d. It is as important to exclude innocent persons as it is to identify  
18           the perpetrator, and

19           e. The investigation will continue whether or not an identification  
20           is made.

21           The eyewitness shall acknowledge the receipt of the instructions in  
22           writing. If the eyewitness refuses to sign, the lineup administrator shall  
23           note the refusal of the eyewitness to sign the acknowledgement and  
24           shall also sign the acknowledgement.

25           (4) In a photo lineup, the photograph of the suspect shall be contemporary  
26           and, to the extent practicable, shall resemble the suspect's appearance  
27           at the time of the offense.

28           (5) The lineup shall be composed so that the fillers generally resemble the  
29           eyewitness's description of the perpetrator, while ensuring that the  
30           suspect does not unduly stand out from the fillers. In addition:

31           a. All fillers selected shall resemble, as much as practicable, the  
32           eyewitness's description of the perpetrator in significant  
33           features, including any unique or unusual features.

34           b. At least five fillers shall be included in a photo lineup, in  
35           addition to the suspect.

36           c. At least five fillers shall be included in a live lineup, in addition  
37           to the suspect.

38           d. If the eyewitness has previously viewed a photo lineup or live  
39           lineup in connection with the identification of another person  
40           suspected of involvement in the offense, the fillers in the lineup  
41           in which the current suspect participates shall be different from  
42           the fillers used in any prior lineups.

43           (6) If there are multiple eyewitnesses, the suspect shall be placed in a  
44           different position in the lineup or photo array for each eyewitness.

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

- 1 e. Whether it was a photo lineup or live lineup and how many  
2 photos or individuals were presented in the lineup.  
3 f. The sources of all photographs or persons used.  
4 g. In a photo lineup, the photographs themselves.  
5 h. In a live lineup, a photo or other visual recording of the lineup  
6 that includes all persons who participated in the lineup.

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

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

24 (d) Remedies. – All of the following shall be available as consequences of  
25 compliance or noncompliance with the requirements of this section:

- 26 (1) Failure to comply with any of the requirements of this section shall be  
27 considered by the court in adjudicating motions to suppress eyewitness  
28 identification.  
29 (2) Failure to comply with any of the requirements of this section shall be  
30 admissible in support of claims of eyewitness misidentification, as  
31 long as such evidence is otherwise admissible.  
32 (3) When evidence of compliance or noncompliance with the  
33 requirements of this section has been presented at trial, the jury shall  
34 be instructed that it may consider credible evidence of compliance or  
35 noncompliance to determine the reliability of eyewitness  
36 identifications.

37 **§ 15A-284.53. Training of law enforcement officers.**

38 Pursuant to its authority under G.S. 17C-6 and G.S. 17E-4, the North Carolina  
39 Criminal Justice Education and Training Standards Commission and the North Carolina  
40 Sheriffs' Education and Training Standards Commission, in consultation with the  
41 Department of Justice, shall create educational materials and conduct training programs  
42 on how to conduct lineups in compliance with this Article."

43 **SECTION 2.** This act becomes effective March 1, 2008, and applies to  
44 offenses committed on or after that date.