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Short Title: Amend Eyewitness ID/Show-Up.

(Public)

Sponsors:

Referred to:

April 6, 2015

A BILL TO BE ENTITLED

AN ACT TO AMEND THE EYEWITNESS IDENTIFICATION REFORM ACT TO CLARIFY THAT THE PROVISIONS OF THE ACT APPLY TO LAW ENFORCEMENT OFFICERS WHO ARE EYEWITNESSES, TO CLARIFY THAT A PHOTO LINEUP IS DIFFERENT FROM A SHOW-UP, AND TO ESTABLISH A PROCEDURE FOR CONDUCTING A SHOW-UP.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-284.52 reads as rewritten:

"§ 15A-284.52. Eyewitness identification reform.

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

- (1) Eyewitness. – A ~~person~~ person, including a law enforcement officer, 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) Lineup. – A photo lineup or live lineup.
- (5) Lineup administrator. – The person who conducts a lineup.
- (6) 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.
- (7) 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.
- (8) Show-up. – A procedure in which an eyewitness is presented with a single live suspect for the purpose of determining whether the eyewitness is able to identify the perpetrator of a crime.

(b) Eyewitness Identification Procedures. – Lineups conducted by State, county, and other local law enforcement officers shall meet all of the following requirements:

- (1) A lineup shall be conducted by an independent administrator or by an alternative method as provided by subsection (c) of this section.
- (2) Individuals or photos shall be presented to witnesses sequentially, with each individual or photo presented to the witness separately, in a previously



- 1 determined order, and removed after it is viewed before the next individual
2 or photo is presented.
- 3 (3) Before a lineup, the eyewitness shall be instructed that:
4 a. The perpetrator might or might not be presented in the lineup,
5 b. The lineup administrator does not know the suspect's identity,
6 c. The eyewitness should not feel compelled to make an identification,
7 d. It is as important to exclude innocent persons as it is to identify the
8 perpetrator, and
9 e. The investigation will continue whether or not an identification is
10 made.
- 11 The eyewitness shall acknowledge the receipt of the instructions in writing.
12 If the eyewitness refuses to sign, the lineup administrator shall note the
13 refusal of the eyewitness to sign the acknowledgement and shall also sign
14 the acknowledgement.
- 15 (4) In a photo lineup, the photograph of the suspect shall be contemporary and,
16 to the extent practicable, shall resemble the suspect's appearance at the time
17 of the offense.
- 18 (5) The lineup shall be composed so that the fillers generally resemble the
19 eyewitness's description of the perpetrator, while ensuring that the suspect
20 does not unduly stand out from the fillers. In addition:
21 a. All fillers selected shall resemble, as much as practicable, the
22 eyewitness's description of the perpetrator in significant features,
23 including any unique or unusual features.
24 b. At least five fillers shall be included in a photo lineup, in addition to
25 the suspect.
26 c. At least five fillers shall be included in a live lineup, in addition to
27 the suspect.
28 d. If the eyewitness has previously viewed a photo lineup or live lineup
29 in connection with the identification of another person suspected of
30 involvement in the offense, the fillers in the lineup in which the
31 current suspect participates shall be different from the fillers used in
32 any prior lineups.
- 33 (6) If there are multiple eyewitnesses, the suspect shall be placed in a different
34 position in the lineup or photo array for each eyewitness.
- 35 (7) In a lineup, no writings or information concerning any previous arrest,
36 indictment, or conviction of the suspect shall be visible or made known to
37 the eyewitness.
- 38 (8) In a live lineup, any identifying actions, such as speech, gestures, or other
39 movements, shall be performed by all lineup participants.
- 40 (9) In a live lineup, all lineup participants must be out of view of the eyewitness
41 prior to the lineup.
- 42 (10) Only one suspect shall be included in a lineup.
- 43 (11) Nothing shall be said to the eyewitness regarding the suspect's position in the
44 lineup or regarding anything that might influence the eyewitness's
45 identification.
- 46 (12) The lineup administrator shall seek and document a clear statement from the
47 eyewitness, at the time of the identification and in the eyewitness's own
48 words, as to the eyewitness's confidence level that the person identified in a
49 given lineup is the perpetrator. The lineup administrator shall separate all
50 witnesses in order to discourage witnesses from conferring with one another

1 before or during the procedure. Each witness shall be given instructions
2 regarding the identification procedures without other witnesses present.

3 (13) If the eyewitness identifies a person as the perpetrator, the eyewitness shall
4 not be provided any information concerning the person before the lineup
5 administrator obtains the eyewitness's confidence statement about the
6 selection. There shall not be anyone present during the live lineup or
7 photographic identification procedures who knows the suspect's identity,
8 except the eyewitness and counsel as required by law.

9 (14) Unless it is not practical, a video record of live identification procedures
10 shall be made. If a video record is not practical, the reasons shall be
11 documented, and an audio record shall be made. If neither a video nor audio
12 record are practical, the reasons shall be documented, and the lineup
13 administrator shall make a written record of the lineup.

14 (15) Whether video, audio, or in writing, the record shall include all of the
15 following information:

16 a. All identification and nonidentification results obtained during the
17 identification procedure, signed by the eyewitness, including the
18 eyewitness's confidence statement. If the eyewitness refuses to sign,
19 the lineup administrator shall note the refusal of the eyewitness to
20 sign the results and shall also sign the notation.

21 b. The names of all persons present at the lineup.

22 c. The date, time, and location of the lineup.

23 d. The words used by the eyewitness in any identification, including
24 words that describe the eyewitness's certainty of identification.

25 e. Whether it was a photo lineup or live lineup and how many photos or
26 individuals were presented in the lineup.

27 f. The sources of all photographs or persons used.

28 g. In a photo lineup, the photographs themselves.

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

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

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

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

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

46 (c1) Show-Up Procedures. – A show-up conducted by State, county, and other local law
47 enforcement officers shall meet all of the following requirements:

48 (1) A show-up may only be conducted when a suspect matching the description
49 of the perpetrator is located in close proximity in time and place to the
50 crime, or there is reasonable belief that the perpetrator has changed his or her

1 appearance in close time to the crime, and only if there are circumstances
2 that require the immediate display of a suspect to an eyewitness.

3 (2) A show-up shall only be performed using a live suspect and shall not be
4 conducted with a photograph.

5 (3) Investigators shall photograph a suspect at the time and place of the show-up
6 to preserve a record of the appearance of the suspect at the time of the
7 show-up procedure.

8 (c2) The North Carolina Criminal Justice Education and Training Standards Commission
9 shall develop a policy regarding standard procedures for the conduct of show-ups in accordance
10 with this section. The policy shall apply to all law enforcement agencies and shall address all of
11 the following, in addition to the provisions of this section:

12 (1) Standard instructions for eyewitnesses.

13 (2) Confidence statements by the eyewitness, including information related to
14 the eyewitness' vision, the circumstances of the events witnessed, and
15 communications with other eyewitnesses, if any.

16 (3) Training of law enforcement officers specific to conducting show-ups.

17 (4) Any other matters deemed appropriate by the Commission.

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

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

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

26 (3) When evidence of compliance or noncompliance with the requirements of
27 this section has been presented at trial, the jury shall be instructed that it may
28 consider credible evidence of compliance or noncompliance to determine the
29 reliability of eyewitness identifications.

30 (e) Nothing in this section shall be construed to require a law enforcement officer while
31 acting in his or her official capacity to be required to participate in a lineup or show-up as an
32 eyewitness."

33 **SECTION 2.** G.S. 15A-284.53 reads as rewritten:

34 "**§ 15A-284.53. Training of law enforcement officers.**

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

40 **SECTION 3.** The standards to be adopted by the North Carolina Criminal Justice
41 and Training Standards Commissions, as enacted in G.S. 15A-284.52(c2) in Section 1 of this
42 act, shall be adopted on or before August 1, 2016, and shall be applicable to all law
43 enforcement on August 1, 2016. The remainder of this act becomes effective December 1,
44 2015, and applies to eyewitness identifications and show-ups conducted on or after that date.