

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2015

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HOUSE BILL 566

Short Title: Amend Eyewitness ID/Show-Up. (Public)

Sponsors: Representatives Glazier, Reives, Baskerville, and Michaux (Primary Sponsors).
For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Judiciary I, if favorable, Rules, Calendar, and Operations of the House.

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 PROVIDE THE 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.
- (9) Show-up administrator. - The person who conducts a show-up.

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

- (1) Prior to the lineup, and as soon as possible after the crime, law enforcement shall obtain a complete description of the perpetrator from the eyewitness, in the eyewitness's own words. This statement shall also include information



1 regarding the conditions under which the eyewitness observed the
2 perpetrator, including location, time, distance, obstructions, lighting, and
3 weather conditions. The eyewitness shall also be asked if the eyewitness
4 wears or has had glasses or contact lenses prescribed and whether the
5 eyewitness was wearing them at the time of the witnessed event.

6 ~~(1)~~(1a) 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 each
9 individual or photo presented to the witness separately, in a previously
10 determined order, and removed after it is viewed before the next individual
11 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 identification,
- 16 d. It is as important to exclude innocent persons as it is to identify the
17 perpetrator, and
- 18 e. The investigation will continue whether or not an identification is
19 made.

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

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

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

- 30 a. All fillers selected shall resemble, as much as practicable, the
31 eyewitness's description of the perpetrator in significant features,
32 including any unique or unusual features.
- 33 b. At least five fillers shall be included in a photo lineup, in addition to
34 the suspect.
- 35 c. At least five fillers shall be included in a live lineup, in addition to
36 the suspect.
- 37 d. If the eyewitness has previously viewed a photo lineup or live lineup
38 in connection with the identification of another person suspected of
39 involvement in the offense, the fillers in the lineup in which the
40 current suspect participates shall be different from the fillers used in
41 any prior lineups.

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

44 (7) In a lineup, no writings or information concerning any previous arrest,
45 indictment, or conviction of the suspect shall be visible or made known to
46 the eyewitness.

47 (8) In a live lineup, any identifying actions, such as speech, gestures, or other
48 movements, shall be performed by all lineup participants.

49 (9) In a live lineup, all lineup participants must be out of view of the eyewitness
50 prior to the lineup.

51 (10) Only one suspect shall be included in a lineup.

- 1 (11) Nothing shall be said to the eyewitness regarding the suspect's position in the
2 lineup or regarding anything that might influence the eyewitness's
3 identification.
- 4 (12) The lineup administrator shall seek and document a clear statement from the
5 eyewitness, at the time of the identification and in the eyewitness's own
6 words, as to the eyewitness's confidence level that the person identified in a
7 given lineup is the perpetrator. The lineup administrator shall separate all
8 witnesses in order to discourage witnesses from conferring with one another
9 before or during the procedure. Each witness shall be given instructions
10 regarding the identification procedures without other witnesses present.
- 11 (13) If the eyewitness identifies a person as the perpetrator, the eyewitness shall
12 not be provided any information concerning the person before the lineup
13 administrator obtains the eyewitness's confidence statement about the
14 selection. There shall not be anyone present during the live lineup or
15 photographic identification procedures who knows the suspect's identity,
16 except the eyewitness and counsel as required by law.
- 17 (14) Unless it is not practical, a video record of live identification procedures
18 shall be made. If a video record is not practical, the reasons shall be
19 documented, and an audio record shall be made. If neither a video nor audio
20 record are practical, the reasons shall be documented, and the lineup
21 administrator shall make a written record of the lineup.
- 22 (15) Whether video, audio, or in writing, the record shall include all of the
23 following information:
- 24 a. All identification and nonidentification results obtained during the
25 identification procedure, signed by the eyewitness, including the
26 eyewitness's confidence statement. If the eyewitness refuses to sign,
27 the lineup administrator shall note the refusal of the eyewitness to
28 sign the results and shall also sign the notation.
- 29 b. The names of all persons present at the lineup.
- 30 c. The date, time, and location of the lineup.
- 31 d. The words used by the eyewitness in any identification, including
32 words that describe the eyewitness's certainty of identification.
- 33 e. Whether it was a photo lineup or live lineup and how many photos or
34 individuals were presented in the lineup.
- 35 f. The sources of all photographs or persons used.
- 36 g. In a photo lineup, the photographs themselves.
- 37 h. In a live lineup, a photo or other visual recording of the lineup that
38 includes all persons who participated in the lineup.
- 39 (c) Alternative Methods for Identification if Independent Administrator Is Not Used. –
40 In lieu of using an independent administrator, a photo lineup eyewitness identification
41 procedure may be conducted using an alternative method specified and approved by the North
42 Carolina Criminal Justice Education and Training Standards Commission. Any alternative
43 method shall be carefully structured to achieve neutral administration and to prevent the
44 administrator from knowing which photograph is being presented to the eyewitness during the
45 identification procedure. Alternative methods may include any of the following:
- 46 (1) Automated computer programs that can automatically administer the photo
47 lineup directly to an eyewitness and prevent the administrator from seeing
48 which photo the witness is viewing until after the procedure is completed.
- 49 (2) A procedure in which photographs are placed in folders, randomly
50 numbered, and shuffled and then presented to an eyewitness such that the

- 1 administrator cannot see or track which photograph is being presented to the
2 witness until after the procedure is completed.
- 3 (3) Any other procedures that achieve neutral administration.
- 4 (c1) Show-Up Procedures.— A show-up conducted by State, county, and other local law
5 enforcement officers shall meet all of the following requirements:
- 6 (1) A show-up shall only be conducted when a suspect matching the description
7 of the perpetrator is located in close proximity in time and place to the
8 crime, and only if there are exigent circumstances that require the immediate
9 display of a suspect to an eyewitness.
- 10 (2) A show-up shall only be performed using a live suspect, and shall not be
11 conducted with a photograph.
- 12 (3) Prior to the show-up, and as soon as possible after the crime, law
13 enforcement shall obtain a complete description of the perpetrator from the
14 eyewitness, in the eyewitness's own words. This statement shall also include
15 information regarding the conditions under which the eyewitness observed
16 the perpetrator, including location, time, distance, obstructions, lighting, and
17 weather conditions. The eyewitness shall also be asked whether the
18 eyewitness wears or has had glasses or contact lenses prescribed and
19 whether the eyewitness was wearing them at the time of the witnessed event.
- 20 (4) Eyewitnesses shall be separated and shall not be allowed to communicate
21 with each other before or during the show-up procedure. Each eyewitness
22 shall be given instructions regarding the identification procedures without
23 other witnesses present.
- 24 (5) Whenever practical, the eyewitness shall be transported to the location of the
25 suspect, rather than bringing the suspect to the eyewitness.
- 26 (6) Before a show-up, the eyewitness shall be given the instructions set out
27 below in this subdivision. The eyewitness shall acknowledge the receipt of
28 the instructions in writing. If the eyewitness refuses to sign, the lineup
29 administrator shall note the refusal of the eyewitness to sign the
30 acknowledgement and shall also sign the acknowledgement. The instructions
31 to be given to the eyewitness are all of the following:
- 32 a. The perpetrator may or may not be the person being presented.
33 b. The eyewitness shall not feel compelled to make identification.
34 c. It is as important to exclude innocent persons as it is to identify the
35 perpetrator.
36 d. The investigation will continue whether or not an identification is
37 made.
- 38 (7) The show-up administrator shall seek and document a clear statement from
39 the eyewitness, at the time of the identification and in the eyewitness's own
40 words, as to the eyewitness's confidence level that the person identified in a
41 given show-up is the perpetrator.
- 42 (8) Investigators shall photograph a suspect at the time and place of the show-up
43 to preserve a record of the appearance of the suspect at the time of the
44 show-up procedure.
- 45 (d) Remedies. – All of the following shall be available as consequences of compliance
46 or noncompliance with the requirements of this section:
- 47 (1) Failure to comply with any of the requirements of this section shall be
48 considered by the court in adjudicating motions to suppress eyewitness
49 identification.

- 1 (2) Failure to comply with any of the requirements of this section shall be
2 admissible in support of claims of eyewitness misidentification, as long as
3 such evidence is otherwise admissible.
4 (3) When evidence of compliance or noncompliance with the requirements of
5 this section has been presented at trial, the jury shall be instructed that it may
6 consider credible evidence of compliance or noncompliance to determine the
7 reliability of eyewitness identifications."

8 **SECTION 2.** This act becomes effective August 1, 2015, and applies to eyewitness
9 identifications and show-ups conducted on or after that date.