

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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SENATE DRS75231-LH-35A\* (12/29)

Short Title: Eyewitness ID Reform Act. (Public)

Sponsors: Senator Clodfelter.

Referred to:

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. Findings and purpose.**

(a) Findings. – The General Assembly finds that:

(1) Throughout the nation and in North Carolina innocent people have been accused or convicted of serious crimes because of mistaken eyewitness identification.

(2) Mistaken lineup identifications distract law enforcement agencies from apprehending perpetrators.

(3) Reports of the United States Department of Justice, the American Bar Association, 25 years of peer-reviewed scientific research, and the experiences of practitioners across the country indicate that the accuracy of eyewitness identification can be greatly enhanced by the use of "blind" administrators, instructions to the witness, confidence statements, and the proper composition of lineups.

(b) 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           (1)   Eyewitness. – A person whose identification of another person may be  
2           relevant in a criminal proceeding.
- 3           (2)   Filler. – A person or a photograph of a person who is not suspected of  
4           an offense and is included in a lineup.
- 5           (3)   Photo lineup. – A procedure in which an array of photographs is  
6           displayed to an eyewitness for the purpose of determining if the  
7           eyewitness is able to identify the perpetrator of a crime.
- 8           (4)   Live lineup. – A procedure in which a group of people is displayed to  
9           an eyewitness for the purpose of determining if the eyewitness is able  
10          to identify the perpetrator of a crime.
- 11          (5)   Lineup. – A photo lineup or live lineup.
- 12          (6)   Lineup administrator. – The person who conducts a lineup.
- 13        (b)   Eyewitness Identification Procedures. – Lineups conducted by State, county,  
14        and other local law enforcement officers shall meet all of the following requirements:
- 15           (1)   The lineup administrator shall be a person who does not know which  
16           person in the lineup is the suspect.
- 17           (2)   Before a lineup, the eyewitness shall be instructed that the perpetrator  
18           might or might not be presented in the lineup, that the lineup  
19           administrator does not know the suspect's identity, that the eyewitness  
20           should not feel compelled to make an identification, that it is as  
21           important to exclude innocent persons as it is to identify the  
22           perpetrator, and that the investigation will continue whether or not an  
23           identification is made.
- 24           (3)   In a photo lineup, the photograph of the suspected perpetrator shall be  
25           contemporary and shall resemble his or her appearance at the time of  
26           the offense.
- 27           (4)   The lineup shall be composed so that the fillers generally resemble the  
28           eyewitness's description of the suspected perpetrator, while ensuring  
29           that the suspect 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  
32           features including any unique or unusual features.
- 33           b.   At least five fillers shall be included in a photo lineup, in  
34           addition to the suspected perpetrator.
- 35           c.   At least four fillers shall be included in a live lineup, in addition  
36           to the suspected perpetrator.
- 37           d.   If the eyewitness has previously viewed a photo lineup or live  
38           lineup in connection with the identification of another person  
39           suspected of involvement in the offense, the fillers in the lineup  
40           in which the suspected perpetrator participates shall be different  
41           from the fillers used in any prior lineups.
- 42           (5)   If there are multiple eyewitnesses, the suspect shall be placed in a  
43           different position in the lineup or photo array for each eyewitness.

- 1           (6)   In a lineup, no writings or information concerning any previous arrest,  
2           indictment, or conviction of the suspected perpetrator shall be visible  
3           or made known to the eyewitness.
- 4           (7)   In a live lineup, any identifying actions, such as speech, gestures, or  
5           other movements, shall be performed by all lineup participants.
- 6           (8)   In a live lineup, all lineup participants must be out of view of the  
7           eyewitness prior to the lineup.
- 8           (9)   The suspected perpetrator shall be the only suspected perpetrator  
9           included in the lineup.
- 10          (10) Nothing shall be said to the eyewitness regarding the suspected  
11          perpetrator's position in the lineup or regarding anything that might  
12          influence the eyewitness's identification.
- 13          (11) The lineup administrator shall seek and document a clear statement  
14          from the eyewitness, at the time of the identification and in the  
15          eyewitness's own words, as to the eyewitness's confidence level that  
16          the person identified in a given lineup is the perpetrator.
- 17          (12) If the eyewitness identifies a person as the perpetrator, the eyewitness  
18          shall not be provided any information concerning the person before the  
19          lineup administrator obtains the eyewitness's confidence statement  
20          about the selection.
- 21          (13) Unless it is not practical, a video record of the identification procedure  
22          shall be made. If a video record is not practical, the reasons shall be  
23          documented, and an audio record shall be made. If neither a video nor  
24          audio record are practical, the reasons shall be documented, and the  
25          lineup administrator shall make a written record of the lineup. Whether  
26          video, audio, or in writing, the record shall include all of the following  
27          information:
- 28               a.   All identification and non-identification results obtained during  
29               the identification procedure, signed by the eyewitness,  
30               including the eyewitness's confidence statement.
- 31               b.   The names of all persons present at the lineup.
- 32               c.   The date, time, and location of the lineup.
- 33               d.   The words used by the eyewitness in any identification,  
34               including words that describe the eyewitness's certainty of  
35               identification.
- 36               e.   Whether it was a photo lineup or live lineup and how many  
37               photos or individuals were presented in the lineup.
- 38               f.   The sources of all photographs or persons used.
- 39               g.   In a photo lineup, the photographs themselves.
- 40               h.   In a live lineup, a photo or other visual recording of the lineup  
41               that includes all persons who participated in the lineup.
- 42          (c)   Remedies for Noncompliance. – All of the following remedies shall be  
43          granted as relief for noncompliance with the requirements of this section:

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

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

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

11 **"§ 15A-284.53. Training of law enforcement officers. – The Department of Justice**  
12          shall create educational materials and conduct training programs to instruct  
13          law enforcement officers and recruits how to conduct lineups in compliance  
14          with this Article."

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