

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 725*

Short Title: Eyewitness ID Reform Act. (Public)

Sponsors: Senators Clodfelter; and Hartsell.

Referred to: Judiciary I (Civil).

March 14, 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. Findings and purpose.

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

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

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

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

23 (b) Purpose. – The purpose of this Article is to help solve crime, convict the
24 guilty, and exonerate the innocent in criminal proceedings by improving procedures for
25 eyewitness identification of suspects.

26 "§ 15A-284.52. Eyewitness identification reform.

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

28 (1) Eyewitness. – A person whose identification of another person may be
29 relevant in a criminal proceeding.

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

- 1 (7) In a live lineup, any identifying actions, such as speech, gestures, or
2 other movements, shall be performed by all lineup participants.
- 3 (8) In a live lineup, all lineup participants must be out of view of the
4 eyewitness prior to the lineup.
- 5 (9) The suspected perpetrator shall be the only suspected perpetrator
6 included in the lineup.
- 7 (10) Nothing shall be said to the eyewitness regarding the suspected
8 perpetrator's position in the lineup or regarding anything that might
9 influence the eyewitness's identification.
- 10 (11) The lineup administrator shall seek and document a clear statement
11 from the eyewitness, at the time of the identification and in the
12 eyewitness's own words, as to the eyewitness's confidence level that
13 the person identified in a given lineup is the perpetrator.
- 14 (12) If the eyewitness identifies a person as the perpetrator, the eyewitness
15 shall not be provided any information concerning the person before the
16 lineup administrator obtains the eyewitness's confidence statement
17 about the selection.
- 18 (13) Unless it is not practical, a video record of the identification procedure
19 shall be made. If a video record is not practical, the reasons shall be
20 documented, and an audio record shall be made. If neither a video nor
21 audio record are practical, the reasons shall be documented, and the
22 lineup administrator shall make a written record of the lineup. Whether
23 video, audio, or in writing, the record shall include all of the following
24 information:
- 25 a. All identification and non-identification results obtained during
26 the identification procedure, signed by the eyewitness,
27 including the eyewitness's confidence statement.
- 28 b. The names of all persons present at the lineup.
- 29 c. The date, time, and location of the lineup.
- 30 d. The words used by the eyewitness in any identification,
31 including words that describe the eyewitness's certainty of
32 identification.
- 33 e. Whether it was a photo lineup or live lineup and how many
34 photos or 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
38 that includes all persons who participated in the lineup.
- 39 (c) Remedies for Noncompliance. – All of the following remedies shall be
40 granted as relief for noncompliance with the requirements of this section:
- 41 (1) Failure to comply with any of the requirements of this section shall be
42 considered by the court in adjudicating motions to suppress eyewitness
43 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
3 long as such evidence is otherwise admissible.
- 4 (3) When evidence of noncompliance with the requirements of this section
5 has been presented at trial, the jury shall be instructed that it may
6 consider credible evidence of compliance or noncompliance to
7 determine the reliability of eyewitness identifications.
- 8 "**§ 15A-284.53. Training of law enforcement officers.** – The Department of Justice
9 shall create educational materials and conduct training programs to instruct
10 law enforcement officers and recruits how to conduct lineups in compliance
11 with this Article."
- 12 **SECTION 2.** This act becomes effective December 1, 2007, and applies to
13 offenses committed on or after that date.