
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 364 Session of
2005

INTRODUCED BY DALLY, CALTAGIRONE, CAPPELLI, CAWLEY, DENLINGER,
GRUCELA, HARRIS, HERMAN, SCAVELLO, SEMMEL, TIGUE, WALKO AND
YOUNGBLOOD, FEBRUARY 8, 2005

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 8, 2005

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, providing for
3 nontestimonial identification.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Title 42 of the Pennsylvania Consolidated
7 Statutes is amended by adding a chapter to read:

8 CHAPTER 88

9 NONTESTIMONIAL IDENTIFICATION

10 Sec.

11 8801. Definitions.

12 8802. Authority to issue order.

13 8803. Time of application.

14 8804. Order of authorization to obtain nontestimonial
15 identification.

16 8805. Application for order.

17 8806. Grounds for entry of order.

18 8807. Issuance of order and effect.

1 8808. Sealing of applications, orders and supporting papers.

2 8809. Execution and return.

3 8810. Evidence relating to other offenses.

4 8811. Nontestimonial identification order at request of
5 defendant.

6 8812. Expungement.

7 § 8801. Definitions.

8 As used in this chapter, the following words and phrases
9 shall have the meanings given to them in this section unless the
10 context clearly indicates otherwise.

11 "Court." Any judge of the court of common pleas in any
12 county having jurisdiction wherein reasonable grounds exist to
13 believe that a particular offense has occurred.

14 "Investigative or law enforcement officer." Any officer of
15 the United States, of another state or political subdivision
16 thereof or of the Commonwealth or political subdivision thereof,
17 who is empowered by law to conduct investigations of or to make
18 arrests for any offense or an equivalent crime in another
19 jurisdiction, and any attorney authorized by law to prosecute or
20 participate in the prosecution of such offense.

21 "Nontestimonial identification." Includes, but shall not be
22 limited to, identification by fingerprints, palm prints,
23 footprints, measurements, blood specimens, urine specimens,
24 saliva samples, hair samples, fingernail scrapings or other
25 reasonable physical or medical examination, handwriting
26 exemplars, voice samples, photographs, appearing in lineups and
27 trying on articles of clothing.

28 "Offense." Any crime designated under the laws of this
29 Commonwealth as punishable by imprisonment for more than one
30 year.

1 "Police officers." Defined as follows:

2 (1) A person who meets the requirements of 53 Pa.C.S. §
3 2167 (relating to police training).

4 (2) Police officers of first class cities who have
5 successfully completed training which is substantially
6 equivalent to the program under 53 Pa.C.S. § 2167.

7 (3) Pennsylvania State Police officers.

8 (4) Police officers employed by the Commonwealth who
9 have satisfactorily met the requirements of 53 Pa.C.S. §
10 2167.

11 § 8802. Authority to issue order.

12 A nontestimonial identification order authorized pursuant to
13 this chapter may be entered by any court and the method of
14 obtaining such nontestimonial identification shall, consistent
15 with the purpose of the request, be the least intrusive method
16 available.

17 § 8803. Time of application.

18 A request for a nontestimonial identification order may be
19 made prior to the arrest of a suspect, after arrest and prior to
20 trial or, when special circumstances of the case make it
21 appropriate, during trial.

22 § 8804. Order of authorization to obtain nontestimonial
23 identification.

24 The Attorney General, or during the absence or incapacity of
25 the Attorney General a deputy attorney general designated in
26 writing by the Attorney General, or the district attorney or
27 during the absence or incapacity of the district attorney an
28 assistant district attorney designated in writing by the
29 district attorney of the county wherein an offense has occurred,
30 may make written application to any court for an order

1 authorizing any investigative or law enforcement officer or
2 agency having responsibility for an investigation involving
3 criminal activity to detain the person named in the application
4 in order to obtain nontestimonial identification.

5 § 8805. Application for order.

6 Each application for an order of authorization to obtain
7 nontestimonial identification shall be made in writing upon the
8 personal oath or affirmation of the Attorney General or a
9 district attorney of the county wherein the offense has occurred
10 and shall contain all of the following:

11 (1) A statement of the authority of the applicant to
12 make such application.

13 (2) A statement of the identity and qualifications of
14 the investigative or law enforcement officers or agency for
15 whom the authority to obtain nontestimonial identification is
16 sought.

17 (3) A sworn statement by the investigative or law
18 enforcement officer who has knowledge of relevant information
19 justifying the application, which shall include:

20 (i) The identity or description of the particular
21 person against whom the order authorizing nontestimonial
22 identification is sought.

23 (ii) Details setting forth probable cause to believe
24 that a particular offense has been committed.

25 (iii) A showing that there are reasonable grounds,
26 not amounting to probable cause to arrest, to suspect
27 that the person named or described in the affidavit
28 committed the particular offense.

29 (iv) The particular type of nontestimonial
30 identification sought to be obtained and a statement that

1 the requested method of obtaining the particular type of
2 nontestimonial identification is the least intrusive
3 method available consistent with the purpose of the
4 request.

5 (4) A complete statement of the facts concerning all
6 previous applications, known to the applicant, made to any
7 court for authorization to obtain nontestimonial
8 identification involving the same offense, and the action
9 taken by the court on each such application.

10 (5) A proposed order of authorization for consideration
11 by the court.

12 (6) Such additional testimony or documentary evidence in
13 support of the application as the court may require.

14 § 8806. Grounds for entry of order.

15 (a) Grounds for entry of order.--Upon consideration of an
16 application, the court shall enter an ex parte order, as
17 requested or as modified, directing any police officer to detain
18 the person or persons named in the application for the purpose
19 of obtaining the court-ordered nontestimonial identification and
20 that the requested nontestimonial identification be obtained
21 anywhere within this Commonwealth from the persons identified or
22 described, only if the court determines on the basis of the
23 facts submitted by the applicant that all of the following
24 conditions exist:

25 (1) There is probable cause to believe that the
26 particular offense has been committed.

27 (2) There are reasonable grounds, not amounting to
28 probable cause to arrest, to suspect that the person named or
29 described in the application committed the particular
30 offense.

1 (3) The results of the requested nontestimonial
2 identification will be of material aid in determining whether
3 the person named in the application committed the offense.

4 (4) In the case of an application for an order to obtain
5 nontestimonial identification from a person who was the
6 subject of a previous application or order issued pursuant to
7 this chapter, that the current application is based upon new
8 evidence or information different from and in addition to the
9 evidence or information offered to support the prior order,
10 regardless of whether such evidence was derived from prior
11 orders or from other sources.

12 (b) Corroborative evidence.--As part of the consideration of
13 an application in which there is no corroborative evidence
14 offered, the court may inquire in camera as to the identity of
15 any informants or any other additional information concerning
16 the basis upon which the investigative or law enforcement
17 officer or agency has applied for the order of authorization
18 which the court finds relevant in order to determine whether to
19 issue an order. Any corroborative evidence relied upon by the
20 court in making its determination shall be documented and
21 attached as an addendum to the application.

22 § 8807. Issuance of order and effect.

23 (a) Authorizing orders.--Each order authorizing that
24 nontestimonial identification be obtained shall state the
25 following:

26 (1) The identity of the investigative or law enforcement
27 officers or agency to whom the authority to obtain
28 nontestimonial identification is given and the name and
29 official identity of the person who made the application.

30 (2) The identity or description of the particular person

1 whom the order authorizes to be taken into custody for the
2 purpose of obtaining nontestimonial identification.

3 (3) A particular description of the type of
4 nontestimonial identification and a statement of the
5 particular offense to which it relates.

6 (4) The period of time during which the order shall
7 remain in effect.

8 (5) A mandate to the officers or agency serving the
9 order to detain the person named or described in the order
10 for only such time as is necessary to obtain the
11 nontestimonial identification.

12 (b) Time limits.--

13 (1) No order entered under this section shall be
14 construed to authorize the detention of any individual for a
15 period of time in excess of that necessary under the
16 circumstances. The authority granted by an order issued
17 pursuant to this section to detain a person shall cease as
18 soon as practicable after the nontestimonial identification
19 is obtained.

20 (2) An order entered pursuant to this section shall
21 remain in effect for a period of 30 days and shall be
22 returned prior to its expiration. Extensions or renewals of
23 such an order may be granted for additional periods of not
24 more than 30 days each. No extension or renewal shall be
25 granted unless an application for it is made in accordance
26 with this chapter and the court makes the findings required
27 by section 8806 (relating to grounds for entry of order).

28 (3) An order entered pursuant to this section shall be
29 executed in the daytime unless the issuing judge shall
30 endorse thereupon that it may be served at any time, because

1 it appears that the person ordered to submit to
2 nontestimonial identification may flee this Commonwealth if
3 the order is not served forthwith.

4 (c) Reasonable use of force.--A police officer may employ
5 reasonable force in cases where the person named refuses to
6 voluntarily comply with an order issued pursuant to this
7 chapter.

8 (d) Responsibility.--The order shall require the Attorney
9 General or the district attorney, or their designees, to be
10 responsible for the supervision of the nontestimonial
11 identification.

12 (e) Assistance.--Nontestimonial identification procedures
13 may be conducted by any investigative or law enforcement officer
14 or other person designated by the court. An order authorizing
15 that nontestimonial identification be obtained shall, upon
16 request of the applicant or in the discretion of the court,
17 direct that appropriate persons shall furnish any person
18 executing the order with all information and technical
19 assistance necessary to accomplish obtaining the nontestimonial
20 identification. The court shall order that blood tests be
21 conducted under medical supervision, and the court may require
22 medical supervision for any other test ordered pursuant to this
23 chapter when such supervision is deemed necessary by the court.
24 Any person ordered to assist or assisting any person in
25 obtaining nontestimonial identification pursuant to an order
26 issued under this chapter shall be immune from civil and
27 criminal liability for any assistance so rendered.

28 (f) Defense.--A good faith reliance on the provisions of
29 this chapter shall be a complete defense to any civil or
30 criminal action brought under any statute against any law

1 enforcement officer or agency obtaining nontestimonial
2 identification or conducting any procedure pursuant to this
3 chapter as well as any person who is required to provide
4 assistance in obtaining nontestimonial identification or
5 conducting any procedure pursuant to an order or upon request of
6 a supervising law enforcement officer.

7 § 8808. Sealing of applications, orders and supporting papers.

8 Except as otherwise provided in this chapter, applications
9 made, orders entered and returns made pursuant to this chapter
10 and supporting information and documents shall be sealed by the
11 court and shall be held in custody as the court shall direct and
12 shall not be destroyed except on order of the court and in any
13 event shall be kept for ten years. Except as otherwise provided
14 in this chapter, they may be disclosed only upon a showing of
15 good cause before a court of competent jurisdiction except that
16 any investigative or law enforcement officer may disclose such
17 applications, orders and supporting information and documents to
18 investigative or law enforcement officers of this or another
19 state, any of its political subdivisions, or of the United
20 States to the extent that such disclosure is appropriate to the
21 proper performance of the official duties of the officer making
22 or receiving the disclosure. In addition to any remedies and
23 penalties provided in this chapter, any violation of the
24 provisions of this section may be punished as contempt of the
25 court.

26 § 8809. Execution and return.

27 (a) Search not authorized.--Except for a protective search
28 for weapons or other dangerous instrumentality, no person who is
29 ordered to provide nontestimonial identification may be
30 searched, unless a separate search warrant has been issued.

1 (b) Copy.--The investigative or law enforcement officer
2 executing the order shall provide the person upon whom the order
3 is executed with a copy of the order unless otherwise directed
4 by the court.

5 (c) Return to the court.--A return to the court issuing the
6 order shall be made by the applicant within ten days of the
7 expiration of the order showing:

8 (1) Whether the person named in the nontestimonial
9 identification order was detained and, if detention occurred,
10 the dates and times of any detention and release.

11 (2) The results of any completed nontestimonial
12 identification procedure.

13 (3) The status of any ongoing nontestimonial
14 identification procedures undertaken as a result of the
15 execution of the order and the date on which the applicant
16 anticipates receipt of the results of the procedures.

17 (4) Whether the person named in the nontestimonial
18 identification order has been charged or arrested for the
19 offense identified in the order or for any other offense as a
20 result of any procedure conducted pursuant to the order.

21 (5) Whether the person named in the nontestimonial
22 identification order has been excluded as a possible
23 perpetrator of the offense.

24 (d) Final return to the court.--If the return required under
25 subsection (c) indicates that the results of any nontestimonial
26 identification procedure undertaken as a result of the execution
27 of the order have not yet been received, a final return to the
28 court issuing the order shall be made by the applicant within
29 ten days of the receipt of the results of all nontestimonial
30 identification procedures undertaken as a result of the

1 execution of the order showing:

2 (1) The results of all nontestimonial identification
3 procedures undertaken as a result of the execution of the
4 order.

5 (2) Whether the person named in the nontestimonial
6 identification order has been charged or arrested for the
7 offense identified in the order or for any other offense as a
8 result of any procedure conducted pursuant to the order.

9 (3) Whether the person named in the nontestimonial
10 identification order has been excluded as a possible
11 perpetrator of the offense.

12 (e) Copies to person named.--The person named in the
13 nontestimonial identification order shall be given a copy of any
14 return made pursuant to this section.

15 (f) Notice to person charged.--Any person, other than the
16 person named in the nontestimonial identification order, who is
17 charged with an offense listed in the application shall be given
18 notice that a nontestimonial identification order was requested
19 under this chapter which shall contain the following:

20 (1) The judicial district in which the order was
21 requested.

22 (2) The type of nontestimonial identification requested.

23 (3) Whether the request was granted or denied.

24 (4) The name of the judge assigned to review the
25 application.

26 (5) If applicable, whether the products of the
27 nontestimonial identification procedures, and all copies
28 thereof, have been expunged.

29 (6) Notice that the person or his attorney may request
30 that the issuing court permit an in-camera review of all

1 records pertaining to the request which are in the custody of
2 the court.

3 § 8810. Evidence relating to other offenses.

4 When an investigative or law enforcement officer lawfully
5 obtains information pursuant to an order issued under this
6 chapter that relates to offenses other than those specified in
7 the application, the information and any evidence derived
8 therefrom, may be disclosed or used in any manner appropriate to
9 the proper performance of the official duties of the officer
10 lawfully obtaining the information.

11 § 8811. Nontestimonial identification order at request of
12 defendant.

13 A person arrested for or charged with an offense may request
14 a court to order a nontestimonial identification procedure. If
15 it appears that the results of specific nontestimonial
16 identification procedures will be of material aid in determining
17 whether the defendant committed the offense, the court shall
18 order the Commonwealth to conduct such identification procedure
19 under such terms and conditions as the court shall prescribe.

20 § 8812. Expungement.

21 (a) General rule.--If at the time the final return is made
22 pursuant to section 8809 (relating to execution and return)
23 probable cause does not exist to believe that the person named
24 in the order has committed the offense named in the affidavit or
25 any other offense, absent good cause shown, the issuing court
26 shall direct, as appropriate, that the products of the
27 nontestimonial identification procedures, and all copies
28 thereof, be expunged.

29 (b) Other expungement.--If, upon the showing of good cause,
30 the issuing court does not order that the products of the

1 nontestimonial identification procedures, and all copies
2 thereof, be expunged, the person named in the affidavit may, at
3 any time, request that a rule be issued upon the applicant to
4 show cause, if any exists, why the issuing court should not
5 direct that the products of the nontestimonial identification
6 procedures and all copies thereof, be expunged. Any person
7 charged with an offense listed in the application shall be
8 provided with a copy of any rule issued under this subsection
9 and shall be afforded an opportunity to be heard.

10 Section 2. This act shall take effect in 60 days.