

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 580 Session of
2011

INTRODUCED BY FERLO, FONTANA, STACK, KITCHEN, WILLIAMS AND
WOZNIAK, FEBRUARY 18, 2011

REFERRED TO JUDICIARY, FEBRUARY 18, 2011

AN ACT

1 Providing for improvement of accuracy of eyewitness
2 identifications.

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

5 Section 1. Definitions.

6 The following words and phrases when used in this act shall
7 have the meanings given to them in this section unless the
8 context clearly indicates otherwise:

9 "Eyewitness." A person who observes another person at or
10 near the scene of an offense.

11 "Filler." Either a person or a photograph of a person who is
12 not suspected of an offense and is included in an identification
13 procedure.

14 "Identification procedure." Either a photo lineup or a live
15 lineup.

16 "Investigator." The person conducting the live or photo
17 lineup.

18 "Live lineup." A procedure in which a group of persons,

1 including the person suspected as the perpetrator of an offense
2 and other persons not suspected of the offense, is displayed to
3 an eyewitness for the purpose of determining whether the
4 eyewitness is able to identify the suspect as the perpetrator.

5 "Photo lineup." A procedure in which an array of
6 photographs, including a photograph of the person suspected as
7 the perpetrator of an offense and additional photographs of
8 other persons not suspected of the offense, is displayed to an
9 eyewitness for the purpose of determining whether the eyewitness
10 is able to identify the suspect as the perpetrator.

11 Section 2. Eyewitness identification procedures.

12 Each municipal police department and the Pennsylvania State
13 Police shall adopt procedures for the conducting of photo
14 lineups and live lineups that comply with the following
15 requirements:

16 (1) When practicable, the investigator shall be a person
17 who is not aware of which person in the photo lineup or live
18 lineup is suspected as the perpetrator of the offense.

19 (2) When it is not practicable for the investigator to
20 be a person who is not aware of which person in the photo or
21 live lineup is suspected as the perpetrator of the offense:

22 (i) The lineup will be presented simultaneously, not
23 sequentially.

24 (ii) The investigator will state in writing the
25 reason that presentation of the lineup was not made by a
26 person who was not aware of which person in the photo
27 lineup or live lineup was suspected as the perpetrator of
28 the offense.

29 (3) The eyewitness shall be instructed prior to the
30 identification procedure:

1 (i) That the perpetrator may not be among the
2 persons in the photo lineup or the live lineup.

3 (ii) That the eyewitness should not feel compelled
4 to make an identification.

5 (iii) That when administering a live lineup or photo
6 lineup in sequence rather than simultaneously:

7 (A) Each photograph or person will be viewed one
8 at a time.

9 (B) The photographs or persons will be displayed
10 in random order.

11 (C) The eyewitness should take as much time as
12 needed in making a decision about each photograph or
13 person before moving to the next one.

14 (D) All photographs or persons will be shown to
15 the eyewitness even if an identification is made
16 before all have been viewed.

17 (4) The photo lineup or live lineup shall be composed so
18 that the fillers generally fit the description of the person
19 suspected as the perpetrator and, in the case of a photo
20 lineup, so that the photograph of the person suspected as the
21 perpetrator resembles his or her appearance at the time of
22 the offense and does not unduly stand out.

23 (5) If the eyewitness has previously viewed a photo
24 lineup or live lineup in connection with the identification
25 of another person suspected of involvement in the offense,
26 the fillers in the lineup in which the person suspected as
27 the perpetrator participates shall be different from the
28 fillers used in any prior lineup.

29 (6) At least five fillers shall be included in the photo
30 lineup and at least four fillers shall be included in the

1 live lineup, in addition to the person suspected as the
2 perpetrator.

3 (7) In a photo lineup, no writings or information
4 concerning any previous arrest of the person suspected as the
5 perpetrator shall be visible to the eyewitness.

6 (8) In a live lineup, any identification actions, such
7 as speaking or making gestures or other movements, shall be
8 performed by all lineup participants.

9 (9) In a live lineup, all lineup participants shall be
10 out of the view of the eyewitness at the beginning of the
11 identification procedure.

12 (10) The person suspected as the perpetrator shall be
13 the only suspected perpetrator included in the identification
14 procedure.

15 (11) Nothing shall be said to the eyewitness regarding
16 the position in the photo lineup or the live lineup of the
17 person suspected as the perpetrator except as otherwise
18 provided in paragraph (4).

19 (12) Nothing shall be said to the eyewitness that might
20 influence the eyewitness's selection of the person suspected
21 as the perpetrator.

22 (13) The investigator shall seek, in the eyewitness's
23 own words, his or her confidence level that the person
24 identified in the lineup is the suspect.

25 (14) If the eyewitness identifies a person as the
26 perpetrator, the eyewitness shall not be provided any
27 information concerning the person prior to obtaining the
28 eyewitness's statement that he or she is certain of the
29 selection.

30 (15) A written record of the identification procedure

1 shall be made that includes the following information:

2 (i) All identification and nonidentification results
3 obtained during the identification procedure, signed by
4 the eyewitness, including the eyewitness's own words
5 regarding how certain he or she is of the selection.

6 (ii) The names of all persons present at the
7 identification procedure.

8 (iii) The date and time of the identification
9 procedure.

10 (iv) In a live or photo lineup where the subjects
11 were presented sequentially as opposed to simultaneously,
12 the order in which the photographs or persons were
13 displayed to the eyewitness.

14 (v) In a photo lineup, the photographs themselves.

15 (vi) In a photo lineup, identification information
16 and the sources of all photographs used.

17 (vii) In a live lineup, a photo or other visual
18 recording of the lineup that includes all persons who
19 participated in the lineup.

20 Section 3. Remedies for noncompliance.

21 (a) Suppression.--Evidence of a failure to comply with any
22 of the provisions of this act shall be considered by the trial
23 courts in adjudicating motions to suppress eyewitness
24 identification.

25 (b) Evidence.--Evidence of a failure to comply with any of
26 the provisions of this act shall be admissible in support of
27 claims of eyewitness misidentification as long as such evidence
28 is otherwise admissible.

29 (c) Jury instruction.--When evidence of a failure to comply
30 with any of the provisions of this act has been presented at

1 trial, the jury shall be instructed that it may consider
2 credible evidence of noncompliance in determining the
3 reliability of eyewitness identifications.

4 Section 4. Training of law enforcement officers.

5 The Attorney General shall create, administer and conduct
6 training programs for law enforcement officers and recruits on
7 the methods and technical aspects of the eyewitness
8 identification practices and procedures for the purposes of this
9 act.

10 Section 5. Effective date.

11 This act shall take effect in 60 days.