
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 712 Session of
2007

INTRODUCED BY FERLO, GREENLEAF, COSTA, STOUT, KITCHEN, STACK AND
FONTANA, APRIL 9, 2007

REFERRED TO JUDICIARY, APRIL 9, 2007

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.

1 "Live lineup." A procedure in which a group of persons,
2 including the person suspected as the perpetrator of an offense
3 and other persons not suspected of the offense, is displayed to
4 an eyewitness for the purpose of determining whether the
5 eyewitness is able to identify the suspect as the perpetrator.

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

12 Section 2. Eyewitness identification procedures.

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

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

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

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

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

30 (3) The eyewitness shall be instructed prior to the

1 identification procedure:

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

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

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

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

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

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

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

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

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

30 (6) At least five fillers shall be included in the photo

1 lineup and at least four fillers shall be included in the
2 live lineup, in addition to the person suspected as the
3 perpetrator.

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

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

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

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

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

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

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

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

1 (15) A written record of the identification procedure
2 shall be made that includes the following information:

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

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

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

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

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

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

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

21 Section 3. Remedies for noncompliance.

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

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

30 (c) Jury instruction.--When evidence of a failure to comply

1 with any of the provisions of this act has been presented at
2 trial, the jury shall be instructed that it may consider
3 credible evidence of noncompliance in determining the
4 reliability of eyewitness identifications.

5 Section 4. Training of law enforcement officers.

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

11 Section 5. Effective date.

12 This act shall take effect in 60 days.