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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 39 Session of  
2013

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INTRODUCED BY FERLO, WILLIAMS, FARNESE, STACK AND HUGHES,  
JANUARY 4, 2013

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REFERRED TO JUDICIARY, JANUARY 4, 2013

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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 conducting photo lineups and  
14 live lineups that comply with the following requirements:

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

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

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

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

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

30 (i) That the perpetrator may not be among the

1 persons in the photo lineup or the live lineup.

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

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

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

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

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

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

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

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

28 (6) At least five fillers shall be included in the photo  
29 lineup and at least four fillers shall be included in the  
30 live lineup, in addition to the person suspected as the

1 perpetrator.

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

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

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

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

14 (11) Nothing may be said to the eyewitness regarding the  
15 position in the photo lineup or the live lineup of the person  
16 suspected as the perpetrator except as otherwise provided in  
17 paragraph (3).

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

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

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

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

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

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

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

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

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

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

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

19 Section 3. Remedies for noncompliance.

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

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

28 (c) Jury instruction.--When evidence of a failure to comply  
29 with any of the provisions of this act has been presented at  
30 trial, the jury shall be instructed that it may consider

1 credible evidence of noncompliance in determining the  
2 reliability of eyewitness identifications.

3 Section 4. Training of law enforcement officers.

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

9 Section 5. Effective date.

10 This act shall take effect in 60 days.