

**HB2763**



**101ST GENERAL ASSEMBLY**

**State of Illinois**

**2019 and 2020**

**HB2763**

by Rep. Frances Ann Hurley

**SYNOPSIS AS INTRODUCED:**

725 ILCS 5/107A-2

Amends the Code of Criminal Procedure of 1963. Provides that the lineup may be video recorded if the eyewitness consents.

LRB101 08912 SLF 54002 b

**A BILL FOR**

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Code of Criminal Procedure of 1963 is  
5 amended by changing Section 107A-2 as follows:

6 (725 ILCS 5/107A-2)

7 Sec. 107A-2. Lineup procedure.

8 (a) All lineups shall be conducted using one of the  
9 following methods:

10 (1) An independent administrator, unless it is not  
11 practical or, if the eyewitness consents, the lineup may be  
12 video recorded.

13 (2) An automated computer program or other device that  
14 can automatically display a photo lineup to an eyewitness  
15 in a manner that prevents the lineup administrator from  
16 seeing which photograph or photographs the eyewitness is  
17 viewing until after the lineup is completed. The automated  
18 computer program may present the photographs to the  
19 eyewitness simultaneously or sequentially, consistent with  
20 the law enforcement agency guidelines required under  
21 subsection (b) of this Section.

22 (3) A procedure in which photographs are placed in  
23 folders, randomly numbered, and shuffled and then

1 presented to an eyewitness such that the lineup  
2 administrator cannot see or know which photograph or  
3 photographs are being presented to the eyewitness until  
4 after the procedure is completed. The photographs may be  
5 presented to the eyewitness simultaneously or  
6 sequentially, consistent with the law enforcement agency  
7 guidelines required under subsection (b) of this Section.

8 (4) Any other procedure that prevents the lineup  
9 administrator from knowing the identity of the suspected  
10 perpetrator or seeing or knowing the persons or photographs  
11 being presented to the eyewitness until after the procedure  
12 is completed.

13 (b) Each law enforcement agency shall adopt written  
14 guidelines setting forth when, if at all, simultaneous lineups  
15 shall be conducted and when, if at all, sequential lineups  
16 shall be conducted. This subsection does not establish a  
17 preference for whether a law enforcement agency should conduct  
18 simultaneous lineups or sequential lineups. Whether and when to  
19 conduct simultaneous lineups or sequential lineups is at the  
20 discretion of each law enforcement agency. If, after the  
21 effective date of this amendatory Act of the 98th General  
22 Assembly, a method of conducting a lineup different from a  
23 simultaneous or sequential lineup is determined by the Illinois  
24 Supreme Court to be sufficiently established to have gained  
25 general acceptance as a reliable method for eyewitness  
26 identifications and provides more accurate results than

1 simultaneous or sequential lineups, a law enforcement agency  
2 may adopt written guidelines setting forth when, if at all,  
3 this different method of conducting lineups shall be used and,  
4 when feasible, the provisions of subsection (d) of this Section  
5 shall apply to the use of these methods.

6 (c) On and after the effective date of this amendatory Act  
7 of the 98th General Assembly, there is no preference as to  
8 whether a law enforcement agency conducts a live lineup or a  
9 photo lineup and to the extent that the common law directs  
10 otherwise, this direction is abrogated.

11 (d) If a lineup administrator conducts a sequential lineup,  
12 the following shall apply:

13 (1) Solely at the eyewitness's request, the lineup  
14 administrator may present a person or photograph to the  
15 eyewitness an additional time but only after the eyewitness  
16 has first viewed each person or photograph one time.

17 (2) If the eyewitness identifies a person as a  
18 perpetrator, the lineup administrator shall continue to  
19 sequentially present the remaining persons or photographs  
20 to the eyewitness until the eyewitness has viewed each  
21 person or photograph.

22 (e) Before a lineup is conducted:

23 (1) The eyewitness shall be instructed that:

24 (A) if recording the lineup is practical, an audio  
25 and video recording of the lineup will be made for the  
26 purpose of accurately documenting all statements made

1 by the eyewitness, unless the eyewitness refuses to the  
2 recording of the lineup, and that if a recording is  
3 made it will be of the persons in the lineup and the  
4 eyewitness;

5 (B) the perpetrator may or may not be presented in  
6 the lineup;

7 (C) if an independent administrator is conducting  
8 the lineup, the independent administrator does not  
9 know the suspected perpetrator's identity or if the  
10 administrator conducting the lineup is not an  
11 independent administrator, the eyewitness should not  
12 assume that the lineup administrator knows which  
13 person in the lineup is the suspect;

14 (D) the eyewitness should not feel compelled to  
15 make an identification;

16 (E) it is as important to exclude innocent persons  
17 as it is to identify a perpetrator; and

18 (F) the investigation will continue whether or not  
19 an identification is made.

20 (2) The eyewitness shall acknowledge in writing the  
21 receipt of the instructions required under this subsection  
22 and, if applicable, the refusal to be recorded. If the  
23 eyewitness refuses to sign the acknowledgement, the lineup  
24 administrator shall note the refusal of the eyewitness to  
25 sign the acknowledgement and shall also sign the  
26 acknowledgement.

1 (f) In conducting a lineup:

2 (1) When practicable, the lineup administrator shall  
3 separate all eyewitnesses in order to prevent the  
4 eyewitnesses from conferring with one another before and  
5 during the lineup procedure. If separating the  
6 eyewitnesses is not practicable, the lineup administrator  
7 shall ensure that all eyewitnesses are monitored and that  
8 they do not confer with one another while waiting to view  
9 the lineup and during the lineup.

10 (2) Each eyewitness shall perform the identification  
11 procedures without any other eyewitness present. Each  
12 eyewitness shall be given instructions regarding the  
13 identification procedures without other eyewitnesses  
14 present.

15 (3) The lineup shall be composed to ensure that the  
16 suspected perpetrator does not unduly stand out from the  
17 fillers. In addition:

18 (A) Only one suspected perpetrator shall be  
19 included in a lineup.

20 (B) The suspected perpetrator shall not be  
21 substantially different in appearance from the fillers  
22 based on the eyewitness's previous description of the  
23 perpetrator or based on other factors that would draw  
24 attention to the suspected perpetrator.

25 (C) At least 5 fillers shall be included in a photo  
26 lineup, in addition to the suspected perpetrator.

1 (D) When practicable, at least 5 fillers shall be  
2 included in a live lineup, in addition to the suspected  
3 perpetrator, but in no event shall there be less than 3  
4 fillers in addition to the suspected perpetrator.

5 (E) If the eyewitness has previously viewed a photo  
6 lineup or live lineup in connection with the  
7 identification of another person suspected of  
8 involvement in the offense, the fillers in the lineup  
9 in which the current suspected perpetrator  
10 participates shall be different from the fillers used  
11 in the prior lineups.

12 (4) If there are multiple eyewitnesses, subject to the  
13 requirements in subsection (a) of this Section and to the  
14 extent possible, the suspected perpetrator shall be placed  
15 in a different position in the lineup or photo array for  
16 each eyewitness.

17 (5) Nothing shall be communicated to the eyewitness  
18 regarding the suspected perpetrator's position in the  
19 lineup or regarding anything that may influence the  
20 eyewitness's identification.

21 (6) No writings or information concerning any previous  
22 arrest, indictment, or conviction of the suspected  
23 perpetrator shall be visible or made known to the  
24 eyewitness.

25 (7) If a photo lineup, the photograph of the suspected  
26 perpetrator shall be contemporary in relation to the

1 photographs of the fillers and, to the extent practicable,  
2 shall resemble the suspected perpetrator's appearance at  
3 the time of the offense.

4 (8) If a live lineup, any identifying actions, such as  
5 speech, gestures, or other movements, shall be performed by  
6 all lineup participants.

7 (9) If a live lineup, all lineup participants must be  
8 out of view of the eyewitness prior to the lineup.

9 (10) The lineup administrator shall obtain and  
10 document any and all statements made by the eyewitness  
11 during the lineup as to the perpetrator's identity. When  
12 practicable, an audio or video recording of the statements  
13 shall be made.

14 (11) If the eyewitness identifies a person as the  
15 perpetrator, the eyewitness shall not be provided any  
16 information concerning the person until after the lineup is  
17 completed.

18 (12) Unless otherwise allowed under subsection (a) of  
19 this Section, there shall not be anyone present during a  
20 lineup who knows the suspected perpetrator's identity,  
21 except the eyewitness and suspected perpetrator's counsel  
22 if required by law.

23 (g) The lineup administrator shall make an official report  
24 of all lineups, which shall include all of the following  
25 information:

26 (1) All identification and non-identification results



1           obtained during the lineup, signed by the eyewitness,  
2           including any and all statements made by the eyewitness  
3           during the lineup as to the perpetrator's identity as  
4           required under paragraph (10) of subsection (f) of this  
5           Section. If the eyewitness refuses to sign, the lineup  
6           administrator shall note the refusal of the eyewitness to  
7           sign the results and shall also sign the notation.

8           (2) The names of all persons who viewed the lineup.

9           (3) The names of all law enforcement officers and  
10          counsel present during the lineup.

11          (4) The date, time, and location of the lineup.

12          (5) Whether it was a photo lineup or live lineup and  
13          how many persons or photographs were presented in the  
14          lineup.

15          (6) The sources of all persons or photographs used as  
16          fillers in the lineup.

17          (7) In a photo lineup, the actual photographs shown to  
18          the eyewitness.

19          (8) In a live lineup, a photograph or other visual  
20          recording of the lineup that includes all persons who  
21          participated in the lineup.

22          (9) If applicable, the eyewitness's refusal to be  
23          recorded.

24          (10) If applicable, the reason for any  
25          impracticability in strict compliance with this Section.

26          (h) Unless it is not practical or the eyewitness refuses, a

1 video record of all lineup procedures shall be made.

2 (1) If a video record is not practical or the  
3 eyewitness refuses to allow a video record to be made:

4 (A) the reasons or the refusal shall be documented  
5 in the official report required under subsection (g) of  
6 this Section;

7 (B) an audio record shall be made, if practical;  
8 and

9 (C) if a live lineup, the lineup shall be  
10 photographed.

11 (2) If an audio record is not practical, the reasons  
12 shall be documented in the official report required under  
13 subsection (g) of this Section.

14 (i) The photographs, recordings, and the official report of  
15 the lineup required by this Section shall be disclosed to  
16 counsel for the accused as provided by the Illinois Supreme  
17 Court Rules regarding discovery. All photographs of suspected  
18 perpetrators shown to an eyewitness during a lineup shall be  
19 disclosed to counsel for the accused as provided by the  
20 Illinois Supreme Court Rules regarding discovery. To protect  
21 the identity of the eyewitness and the identities of law  
22 enforcement officers used as fillers in the lineup from being  
23 disclosed to third parties, the State's Attorney shall petition  
24 the court for a protective order under Supreme Court Rule 415  
25 upon disclosure of the photographs or recordings to the counsel  
26 of the accused.

1 (j) All of the following shall be available as consequences  
2 of compliance or noncompliance with the requirements of this  
3 Section:

4 (1) Failure to comply with any of the requirements of  
5 this Section shall be a factor to be considered by the  
6 court in adjudicating a motion to suppress an eyewitness  
7 identification or any other motion to bar an eyewitness  
8 identification. These motions shall be in writing and state  
9 facts showing how the identification procedure was  
10 improper. This paragraph (1) makes no change to existing  
11 applicable common law or statutory standards or burdens of  
12 proof.

13 (2) When warranted by the evidence presented at trial,  
14 the jury shall be instructed that it may consider all the  
15 facts and circumstances including compliance or  
16 noncompliance with this Section to assist in its weighing  
17 of the identification testimony of an eyewitness.

18 (k) Any electronic recording made during a lineup that is  
19 compiled by any law enforcement agency as required by this  
20 Section for the purposes of fulfilling the requirements of this  
21 Section shall be confidential and exempt from public inspection  
22 and copying, as provided under Section 7 of the Freedom of  
23 Information Act, and the recording shall not be transmitted to  
24 any person except as necessary to comply with this Section.

25 (Source: P.A. 98-1014, eff. 1-1-15.)