

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 amended
5 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 to having the
12 lineup 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.)