



## 98TH GENERAL ASSEMBLY

### State of Illinois

### 2013 and 2014

### HB2960

by Rep. Scott Drury

#### SYNOPSIS AS INTRODUCED:

725 ILCS 5/107A-0.1 new  
725 ILCS 5/107A-2 new  
725 ILCS 5/107A-5 rep.  
725 ILCS 5/107A-10 rep.

Amends the Code of Criminal Procedure of 1963. Requires State, county, and local law enforcement to use identification lineup procedures, if practicable, that the administrator conducting the lineup shall not be aware of which person in the lineup or photo spread is suspected as the perpetrator of the offense under investigation. If it is not practicable to have an unaware administrator, the reason shall be explained in a report prepared prior to the lineup, or if a photo spread the spread shall be conducted by the use of a folder shuffle method, computer program, or other comparable method so that the person conducting the procedure does not know which photograph the eyewitness is viewing during the procedure. A lineup of persons or a photo spread lineup shall be presented to witnesses sequentially, with each person or photo presented separately and then removed before the next person or photo is viewed. If practicable an audio video or audio recording shall be made of the entire identification procedure and if not practicable a detailed written report stating the reason the recording could not be made. Provides instructions to the eyewitness to whom the identification procedure is presented. Sets forth procedures for conducting identification procedures. Provides remedies for failure to comply with identification procedures. Repeals current lineup and photo spread procedures. Repeals an expired pilot study on sequential lineup procedures.

LRB098 09208 MRW 41410 b

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 adding Sections 107A-0.1 and 107A-2 as follows:

6 (725 ILCS 5/107A-0.1 new)

7 Sec. 107A-0.1. Definitions.

8 For the purposes of this Article:

9 "Eyewitness" means a person whose identification by  
10 sight of another person may be relevant in a criminal  
11 proceeding.

12 "Filler" means a person or a photograph of a person who  
13 is not suspected of an offense and is included in a lineup.

14 "Independent administrator" means a lineup  
15 administrator who is not participating in the  
16 investigation of the criminal offense and is unaware of  
17 which person in the lineup is the suspect.

18 "Lineup" includes a photo lineup or live lineup.

19 "Lineup administrator" means the person who conducts a  
20 lineup.

21 "Live lineup" means a procedure in which a group of  
22 persons are displayed to an eyewitness for the purpose of  
23 determining if the eyewitness is able to identify the

1 perpetrator of a crime.

2 "Photo lineup" means a procedure in which an array of  
3 photographs is displayed to an eyewitness for the purpose  
4 of determining if the eyewitness is able to identify the  
5 perpetrator of a crime.

6 (725 ILCS 5/107A-2 new)

7 Sec. 107A-2. Eyewitness identification procedure.

8 (a) Lineups conducted by State, county, and other local law  
9 enforcement officers shall meet all of the following  
10 requirements:

11 (1) A lineup shall be conducted by an independent  
12 administrator, unless it is not practical. In those  
13 instances where the use of an independent administrator is  
14 not practical, one of the alternative procedures described  
15 in subsection (c) of this Section shall be used.

16 (2) Persons or photos shall be presented to witnesses  
17 sequentially, with each person or photo presented to the  
18 witness separately, in a previously determined order, and  
19 removed after it is viewed before the next individual or  
20 photo is presented.

21 (3) Before a lineup, the eyewitness shall be instructed  
22 that:

23 (A) the perpetrator may or may not be presented in  
24 the lineup;

25 (B) the lineup administrator does not know the

1 suspect's identity;

2 (C) the eyewitness should not feel compelled to  
3 make an identification;

4 (D) it is as important to exclude innocent persons  
5 as it is to identify the perpetrator; and

6 (E) the investigation will continue whether or not  
7 an identification is made.

8 (4) The eyewitness shall acknowledge the receipt of the  
9 instructions in writing. If the eyewitness refuses to sign,  
10 the lineup administrator shall note the refusal of the  
11 eyewitness to sign the acknowledgement and shall also sign  
12 the acknowledgement.

13 (5) In a photo lineup, the photograph of the suspect  
14 shall be contemporary and, to the extent practicable, shall  
15 resemble the suspect's appearance at the time of the  
16 offense.

17 (6) The lineup shall be composed so that the fillers  
18 generally resemble the eyewitness's description of the  
19 perpetrator, while ensuring that the suspect does not  
20 unduly stand out from the fillers. In addition:

21 (A) All fillers selected shall resemble, as much as  
22 practicable, the eyewitness's description of the  
23 perpetrator in significant features, including any  
24 unique or unusual features.

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

1           (C) At least 5 fillers shall be included in a live  
2           lineup, in addition to the suspect.

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

9           (7) If there are multiple eyewitnesses, the suspect  
10          shall be placed in a different position in the lineup or  
11          photo array for each eyewitness.

12          (8) In a lineup, no writings or information concerning  
13          any previous arrest, indictment, or conviction of the  
14          suspect shall be visible or made known to the eyewitness.

15          (9) In a live lineup, any identifying actions, such as  
16          speech, gestures, or other movements, shall be performed by  
17          all lineup participants.

18          (10) In a live lineup, all lineup participants must be  
19          out of view of the eyewitness prior to the lineup.

20          (11) Only one suspect shall be included in a lineup.

21          (12) Nothing shall be said to the eyewitness regarding  
22          the suspect's position in the lineup or regarding anything  
23          that might influence the eyewitness's identification.

24          (13) Solely at the witness' request, a lineup  
25          administrator may present an person or photo to the witness  
26          an additional time but only after the witness has first

1 viewed each person or photo one time.

2 (14) The lineup administrator shall obtain and  
3 document a clear statement from the eyewitness, at the time  
4 of the identification and in the eyewitness's own words, as  
5 to the eyewitness's confidence level that the person  
6 identified in a given lineup is the perpetrator. The lineup  
7 administrator shall separate all witnesses in order to  
8 discourage witnesses from conferring with one another  
9 before or during the procedure. Each witness shall be given  
10 instructions regarding the identification procedures  
11 without other witnesses present.

12 (15) If the eyewitness identifies a person as the  
13 perpetrator, the lineup administrator shall continue to  
14 sequentially present the remaining persons or photos to the  
15 witness until the witness has viewed each person or photo.

16 (16) If the eyewitness identifies a person as the  
17 perpetrator, the eyewitness shall not be provided any  
18 information concerning the person before the lineup  
19 administrator obtains the eyewitness's confidence level  
20 statement about the selection. There shall not be anyone  
21 present during the live lineup or photographic  
22 identification procedures who knows the suspect's  
23 identity, except the eyewitness and counsel as required by  
24 law.

25 (17) Unless it is not practical, a video record of live  
26 identification procedures shall be made. If a video record

1       is not practical:

2               (A) the reasons shall be documented in an official  
3       report prepared prior to conducting the eyewitness  
4       identification procedure and verified under oath as  
5       provided in Section 2-605 of the Code of Civil  
6       Procedure attesting to the veracity of the report; and

7               (B) an audio record shall be made.

8       (18) If neither a video nor audio record are practical:

9               (A) the reasons shall be documented in an official  
10       report prepared prior to conducting the eyewitness  
11       identification procedure and verified under oath as  
12       provided in Section 2-605 of the Code of Civil  
13       Procedure attesting to the veracity of the report; and

14               (B) the lineup administrator shall make a written  
15       record of the lineup.

16       (19) Whether video, audio, or in writing, the record  
17       shall include the all of the following information:

18               (A) All identification and non-identification  
19       results obtained during the identification procedure,  
20       signed by the eyewitness, including the eyewitness's  
21       confidence level statement. If the eyewitness refuses  
22       to sign, the lineup administrator shall note the  
23       refusal of the eyewitness to sign the results and shall  
24       also sign the notation.

25               (B) The names of all persons present at the lineup.

26               (C) The date, time, and location of the lineup.

1           (D) The words used by the eyewitness in any  
2           identification, including words that describe the  
3           eyewitness's certainty of identification.

4           (E) Whether it was a photo lineup or live lineup  
5           and how many persons or photos were presented in the  
6           lineup.

7           (F) The sources of all photographs or persons used.

8           (G) In a photo lineup, the photographs themselves.

9           (H) In a live lineup, a photo or other visual  
10          recording of the lineup that includes all persons who  
11          participated in the lineup.

12          (b) In addition to the recordings otherwise provided for in  
13          this Section, all lineups shall be photographed. These  
14          photographs, recordings, and if recordings were not  
15          practicable the detailed written explanation shall be  
16          disclosed to the accused and his or her defense counsel during  
17          discovery proceedings as provided in Illinois Supreme Court  
18          Rules. All photographs of suspects shown to an eyewitness  
19          during the photo spread shall be disclosed to the accused and  
20          his or her defense counsel during discovery proceedings as  
21          provided in Illinois Supreme Court Rules.

22          (c) If it is not practical for an independent administrator  
23          to conduct a lineup, the reasons for not using an independent  
24          administrator shall be made in an official report prepared  
25          prior to conducting the eyewitness identification procedure  
26          and verified under oath as provided in Section 2-605 of the



1 Code of Civil Procedure attesting to the veracity of the  
2 report. In those instances where an independent administrator  
3 cannot be used, one of the following alternative methods shall  
4 be used:

5 (1) Automated computer programs that can automatically  
6 administer the photo lineup directly to an eyewitness and  
7 prevent the administrator from seeing which photo the  
8 witness is viewing until after the procedure is completed.

9 (2) A procedure in which photographs are placed in  
10 folders, randomly numbered, and shuffled and then  
11 presented to an eyewitness such that the administrator  
12 cannot see or track which photograph is being presented to  
13 the witness until after the procedure is completed.

14 (3) Any other procedures that achieve neutral  
15 administration.

16 (d) All of the following shall be available as consequences  
17 of compliance or noncompliance with the requirements of this  
18 Section:

19 (1) Failure to comply with any of the requirements of  
20 this Section shall be considered by the court in  
21 adjudicating motions to suppress eyewitness  
22 identification.

23 (2) Failure to comply with any of the requirements of  
24 this Section shall be admissible in support of claims of  
25 eyewitness misidentification, as long as this evidence is  
26 otherwise admissible.

1           (3) When evidence of compliance or noncompliance with  
2           the requirements of this Section has been presented at  
3           trial, the jury shall be instructed that it may consider  
4           credible evidence of compliance or noncompliance to  
5           determine the reliability of eyewitness identifications.

6           (725 ILCS 5/107A-5 rep.)

7           (725 ILCS 5/107A-10 rep.)

8           Section 10. The Code of Criminal Procedure of 1963 is  
9           amended by repealing Sections 107A-5 and 107A-10.