



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

SB1333

Introduced 2/5/2013, by Sen. Kwame Raoul

SYNOPSIS AS INTRODUCED:

See Index

Amends the Code of Criminal Procedure of 1963. Not later than 6 months after the effective date of this amendatory Act of the 98th General Assembly, requires the Illinois Law Enforcement Training Standards Board to develop and adopt uniform policies and guidelines for conducting identification procedures (lineups and photo spreads) that are based on best practices and to be followed by all local government and State law enforcement. Not later than 6 months after the Board has developed and adopted policies and guidelines for conducting identification procedures, requires each police and sheriff department to adopt procedures in accordance with the policies and guidelines adopted by the Board. The policies and guideline must require that, if practicable, the person conducting the identification procedure shall be a blind administrator, which means he or she is not 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 a blind 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. The policies and guidelines shall also require that whenever a specific person is suspected as the perpetrator of the offense under investigation, the persons participating in a lineup or the photographs included in a photo spread shall be presented sequentially so that the eyewitness views one person or one photograph at a time. 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. Repeals current lineup and photo spread procedures. Repeals an expired pilot study on sequential lineup procedures. Effective January 1, 2014, except repealers which are effective one year after this Act becomes law.

LRB098 02903 MRW 37422 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 "Board" means the Illinois Law Enforcement Training
10 Standards Board.

11 "Eyewitness" means a person who observes another
12 person at or near the scene of an offense.

13 "Filler" means either a person or a photograph of a
14 person who is not suspected as the perpetrator of an
15 offense and is included in an identification procedure.

16 "Identification procedure" means either a lineup or a
17 photo spread.

18 "Lineup" means a procedure in which a group of persons,
19 including the person suspected as the perpetrator of an
20 offense and other persons not suspected as the perpetrator
21 of the offense, is presented to an eyewitness for the
22 purpose of determining whether the eyewitness is able to
23 identify the suspect as the perpetrator.

1 "Local governmental agency" has the meaning as defined
2 in Section 2 of the Illinois Police Training Act.

3 "Photo spread" means a procedure in which an array of
4 photographs, including a photograph of the person
5 suspected as the perpetrator of an offense and additional
6 photographs of other persons not suspected as the
7 perpetrator of the offense, is presented to an eyewitness
8 for the purpose of determining whether the eyewitness is
9 able to identify the suspect as the perpetrator.

10 (725 ILCS 5/107A-2 new)

11 Sec. 107A-2. Lineup and photo spread procedure.

12 (a) Not later than 6 months after the effective date of
13 this amendatory Act of the 98th General Assembly, the Illinois
14 Law Enforcement Training Standards Board shall develop and
15 adopt uniform mandatory policies and appropriate guidelines
16 for conducting identification procedures that shall be based on
17 best practices and be followed by all local governmental agency
18 and State agency law enforcement. The Board shall also develop
19 and adopt a standardized form to be used by all local
20 governmental agency and State agency law enforcement when
21 conducting an identification procedure and making a written
22 record of the procedure.

23 (b) Not later than 6 months after the Board has developed
24 and adopted policies and guidelines for conducting
25 identification procedures, each police and sheriff department

1 shall adopt procedures for conducting identification
2 procedures that are in accordance with the policies and
3 guidelines developed and adopted under subsection (a) of this
4 Section, and that comply with the following requirements:

5 (1) When practicable, the person conducting the
6 identification procedure shall be a person who is not aware
7 of which person in the lineup or photo spread is suspected
8 as the perpetrator of the offense under investigation,
9 otherwise known as a blind administrator. If it is not
10 practicable to have a blind administrator conduct a lineup
11 procedure, the reason shall be explained in detail in an
12 official report prepared prior to conducting the lineup
13 identification procedure.

14 (2) Whenever a specific person is suspected as the
15 perpetrator of the offense under investigation, the
16 persons participating in a lineup or the photographs
17 included in a photo spread shall be presented sequentially
18 so that the eyewitness views one person or one photograph
19 at a time in accordance with the policies and guidelines
20 developed and adopted by the Board under subsection (a) of
21 this Section. The eyewitness' responses to each person or
22 photograph shall be recorded before the next person or
23 photograph is presented to the eyewitness.

24 (3) The identification procedure shall be conducted in
25 a manner that the person conducting the procedure does not
26 know which person in the lineup or photo spread is

1 suspected as the perpetrator of the offense, except that,
2 if it is not practicable to conduct a photo spread in that
3 manner, the photo spread shall be conducted by the use of a
4 folder shuffle method, computer program, or other
5 comparable method so that the person conducting the
6 procedure does not know which photograph the eyewitness is
7 viewing during the procedure.

8 (4) Unless it is not practicable, an audio video tape
9 recording shall be made of the entire identification
10 procedure, including the previewing instructions to the
11 eyewitness, the eyewitness' acknowledgement of receipt of
12 the instructions, the eyewitness' viewing of the persons in
13 the lineup or photo spread, and all of the statements
14 during the procedure made by the administrator, the
15 eyewitness, and in a lineup, by the persons in the array.
16 At the time the eyewitness views each member of the array,
17 the administrator shall document on audio video tape
18 recording a clear statement from the eyewitness of the
19 identification, in the eyewitness' own words, as to the
20 eyewitness' confidence level that each person in the
21 identification procedure is or is not the perpetrator.

22 (A) If it is not practicable to make an audio video
23 tape recording, a detailed written explanation shall
24 be prepared prior to the beginning of the
25 identification procedure explaining in detail the
26 reasons an audio video tape recording could not be

1 made.

2 (B) If is not practicable to make either an audio
3 video tape recording or an audio tape recording of the
4 identification procedure, a detailed written
5 explanation shall be prepared prior to the beginning of
6 the procedure, explaining in detail the reasons an
7 audio video tape recording or an audio tape recording
8 could not be made.

9 (5) The eyewitness shall be instructed prior to the
10 identification procedure:

11 (A) that the eyewitness will be asked to view a
12 group of persons or a group of photographs, and that
13 each person or photograph will be presented one at a
14 time;

15 (B) that it is as important to exclude innocent
16 persons as it is to identify the perpetrator;

17 (C) that the persons in a lineup or photo spread
18 may not look exactly as they did on the date of the
19 offense because features like facial or head hair can
20 change;

21 (D) that the perpetrator may or may not be among
22 the persons in the lineup or photo spread;

23 (E) that the eyewitness should not feel compelled
24 to make an identification;

25 (F) that the eyewitness should take as much time as
26 needed in making a decision; and

1 (G) that the police will continue to investigate
2 the offense regardless of whether the eyewitness makes
3 an identification.

4 (6) In addition to the instructions required by
5 paragraph (5) of this subsection (b), the eyewitness shall
6 be given the instructions as may be developed and adopted
7 by the Board under subsection (a) of this Section.

8 (7) The lineup or photo spread shall be composed so
9 that the fillers generally fit the description of the
10 person suspected as the perpetrator of the offense and, in
11 the case of a photo spread, so that the photograph of the
12 person suspected as the perpetrator of the offense
13 resembles his or her appearance at the time of the offense
14 and does not unduly stand out.

15 (8) If the eyewitness has previously viewed a lineup or
16 photo spread in connection with the identification of
17 another person suspected of involvement in the offense, the
18 fillers in the lineup or photo spread in which the person
19 suspected as the perpetrator of the offense participates or
20 in which the photograph of the person suspected as the
21 perpetrator of the offense is included shall be different
22 from the fillers used in any prior lineups.

23 (9) At least 4 fillers shall be included in the lineup
24 and five fillers shall be included in the photo spread, in
25 addition to the person suspected as the perpetrator of the
26 offense.

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

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

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

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

14 (14) Nothing shall be said to the eyewitness regarding
15 the position in the lineup or photo spread of the person
16 suspected as the perpetrator of the offense.

17 (15) Nothing shall be said to the eyewitness that might
18 influence the eyewitness' selection of the person
19 suspected as the perpetrator of the offense.

20 (16) If the eyewitness identifies a person as the
21 perpetrator of the offense, the eyewitness shall not be
22 provided any information concerning that person prior to
23 obtaining the eyewitness' statement regarding how certain
24 he or she is of the selection.

25 (17) A written record of the identification procedure
26 shall be made that includes the following information:

1 (A) all identification and non-identification
2 results obtained during the identification procedure,
3 signed by the eyewitness, including the eyewitness'
4 own words regarding how certain he or she is of the
5 selection;

6 (B) the names of all persons present at the
7 identification procedure;

8 (C) the date and time of the identification
9 procedure;

10 (D) in a photo spread, the photographs presented to
11 the eyewitness or copies of the photographs;

12 (E) in a photo spread, identification information
13 on each person whose photograph was included in the
14 spread and the sources of all photographs used; and

15 (F) in a lineup, identification information on all
16 persons who participated in the lineup.

17 (18) If there are multiple eyewitnesses to the offense,
18 they should be segregated before, during, and after any
19 identification procedures.

20 (c) In addition to the recordings otherwise provided for in
21 this Section, all lineups shall be photographed. These
22 photographs, recordings, and if recordings were not
23 practicable the detailed written explanation shall be
24 disclosed to the accused and his or her defense counsel during
25 discovery proceedings as provided in Illinois Supreme Court
26 Rules. All photographs of suspects shown to an eyewitness

1 during the photo spread shall be disclosed to the accused and
2 his or her defense counsel during discovery proceedings as
3 provided in Illinois Supreme Court Rules.

4 (d) Commencing one year after the Board has developed and
5 adopted policies and guidelines for conducting identification
6 procedures, each police basic or review training program
7 conducted or administered by the Board, a municipal police
8 department, and the Department of State Police shall provide
9 training to police officers in the administration of eyewitness
10 identification procedures in accordance with the policies and
11 guidelines developed and adopted by the Board.

12 (725 ILCS 5/107A-5 rep.)

13 (725 ILCS 5/107A-10 rep.)

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

16 Section 99. Effective date. This Act takes effect January
17 1, 2014.

1 INDEX

2 Statutes amended in order of appearance

3 725 ILCS 5/107A-0.1 new

4 725 ILCS 5/107A-2 new

5 725 ILCS 5/107A-5 rep.

6 725 ILCS 5/107A-10 rep.