



MODEL LEGISLATION, 2008 STATE LEGISLATIVE SESSIONS

AN ACT TO CREATE A TASK FORCE TO RECOMMEND PROCEDURES AND PRACTICES TO IMPROVE THE ACCURACY OF EYEWITNESS IDENTIFICATIONS

SECTION 1. LEGISLATIVE INTENT

The legislature finds that:

1. The goal of a police investigation is to apprehend the person or persons responsible for the commission of a crime;
2. Mistaken eyewitness identification has been shown to have contributed to the wrongful conviction in more than 75% of the nation's 208 exonerations;
3. Over the past 30 years, a large body of peer-reviewed, scientific research and practice has emerged showing that simple systemic changes in administering eyewitness identification procedures can greatly improve the accuracy of those identifications;
4. Policies and procedures to improve the accuracy of eyewitness identifications such as those recommended by the U.S. National Institute of Justice, the American Bar Association, the New Jersey Office of the Attorney General, the Wisconsin Office of the Attorney General, the California Commission on the Fair Administration of Justice, and the North Carolina Actual Innocence Commission are readily available;
5. More accurate eyewitness identifications increase the ability of police and prosecutors to convict the guilty and protect the innocent;
6. The integrity of [State's] criminal justice process is enhanced by adherence to best practices in evidence gathering; and
7. [State] will benefit from the creation of an expert task force to identify and recommend policies and procedures to improve the accuracy of eyewitness identifications.

SECTION 2. DEFINITIONS

For the purposes of this Act:

- A. “Administrator” means the person conducting the photo or live lineup;
- B. “Suspect” means the person believed by law enforcement to be the possible perpetrator of the crime;
- C. “Blind” means the administrator does not know the identity of the suspect;
- D. “Blinded” means the administrator may know who the suspect is, but does not know which lineup member is being viewed by the eyewitness;
- E. “Eyewitness” means a person who observes another person at or near the scene of an offense;
- F. “Filler” means either a person or a photograph of a person who is not suspected of an offense and is included in an identification procedure;
- G. “Live lineup” means an identification procedure in which a group of persons, including the suspected perpetrator of an offense and other persons not suspected of the offense, is displayed to an eyewitness for the purpose of determining whether the eyewitness identifies the suspect as the perpetrator;
- H. “Photo lineup” means an identification procedure in which an array of photographs, including a photograph of the suspected perpetrator of an offense and additional photographs of other persons not suspected of the offense, is displayed to an eyewitness for the purpose of determining whether the eyewitness identifies the suspect as the perpetrator; and
- I. “Showup” means an identification procedure in which an eyewitness is presented with a single suspect for the purpose of determining whether the eyewitness identifies this individual as the perpetrator.

SECTION 3. TASK FORCE

A. The task force is convened by the Director of the Department of Public Safety [or other analogous entity] and is composed of nine members:

1. The Governor shall appoint two members:
 - a. One of whom must be a dean of a law school or his designee; and
 - b. One of whom must be a law enforcement officer;
2. The Attorney General shall appoint one member who must be an attorney who represents the state in the prosecution of felonies;
3. The Chair of the criminal justice committee of the Senate shall appoint one member who may be a member of the legislature;
4. The Chair of the criminal justice committee of the House of Representatives shall appoint one member who may be a member of the legislature;
5. The Chief Justice of the Supreme Court shall appoint one member who must be a member of the judiciary;
6. The chancellor of The University of [State] System shall appoint two members:
 - a. One who must be a law professor; and
 - b. One who must be a professor of psychology; and
7. The [State] Public Defender (or in the alternative, the Criminal Defense Lawyers Association) shall appoint one member who must be a criminal defense lawyer.

B. The task force or their assigned designees, in consultation with eyewitness identification practitioners and experts, shall develop recommended guidelines for policies, procedures and training with respect to the collection and handling of eyewitness evidence in criminal investigations by law enforcement agencies in [State] that are shown by reliable evidence to enhance the accuracy of eyewitness identification.

C. Such guidelines shall include procedures for the administration of live and photo lineups, and showups, demonstrated to increase the accuracy of eyewitness identifications. Specifically, the task force should address whether the following recommendations should be implemented:

1. Employing a blind or blinded administrator in the administration of live and photo lineups;
2. Issuing specific instructions to the eyewitness before and during the live or photo lineup or showup, which may include:
 - a. That the perpetrator may or may not be among the persons in the identification procedure or, in the case of a showup, may or may not be the person that is presented to the eyewitness;
 - b. That the administrator does not know who the perpetrator is;
 - c. That the eyewitness should not feel compelled to make an identification;
 - d. That the investigation will continue whether or not an identification is made;
 - e. That the procedure requires the administrator to ask the eyewitness to state, in his own words, how certain he is of any identification; and
 - f. Directing the eyewitness not to discuss the identification procedure or its results with other eyewitnesses involved in the case and discouraging contact with the media;
3. In a photo lineup, ensuring that the photograph of the suspect is contemporary and resembles his appearance at the time of the offense;
4. Using four or more fillers in live lineups and five or more fillers in photo lineups and ensuring that those fillers generally resemble the eyewitness's description of the perpetrator;
5. Using only one suspect in any live or photo lineup and ensuring that that the suspect

- does not unduly stand out from the fillers;
6. Using different fillers in successive lineups administered for the same eyewitness when new suspects are introduced;
 7. Presenting separate photo and live lineups when there are multiple eyewitnesses, while ensuring the same suspect is placed in a different position for each identification procedure;
 8. Taking measures to avoid communication about the identity of the suspect to the eyewitness and ensuring communication among multiple eyewitnesses is prevented;
 9. Presenting photo and live lineup members one at a time;
 10. Assessing the circumstances under which a showup is warranted;
 11. If there are multiple eyewitnesses, ensuring that only one eyewitness at a time shall participate in the showup procedure and that:
 - a. Only one of the eyewitnesses shall be present at the location of the showup procedure; and
 - b. If a positive identification is made, and an arrest is justified, additional eyewitnesses shall be shown live or photo lineups;
 12. If there are multiple suspects and a showup procedure is warranted, separating these suspects and subjecting them to separate showup procedures;
 13. Bringing the eyewitness to a neutral, non-law enforcement location where the suspect is being detained for a showup procedure;
 14. Avoiding the restraint of the suspect during the course of a showup procedure;
 15. Removing the suspect from a law enforcement squad car during the course of a showup procedure;
 16. Assessing the amount of acceptable time between the commission of a crime and the

administration of a showup procedure;

17. Determining when the administrator should record the eyewitness's statement of confidence in his selection in the live or photo lineup or showup procedure;

18. Refraining from providing any confirmatory information to the eyewitness;

19. Producing a video or audio recording of the photo or live lineup, or showup, procedure; and

20. Determining what training, if any, should be made available to law enforcement personnel in the use of the live or photo lineup, and showup, procedures.

SECTION 4. ADOPTION OF GUIDELINES

The Task Force shall establish guidelines for eyewitness identification procedures as specified under Section 3 of this Act by October 1, 2009.

SECTION 5. REPORTING

Not later than October 1, 2009, the task force shall submit a report on the guidelines developed and recommendations concerning their use. Minority reports may also be issued. These reports shall be posted on [State website] and presented to the Governor, the Chief Justice, and the standing committees of the Legislature having cognizance of matters relating to criminal law and procedure, in accordance with [the appropriate provisions] of the general statutes. The task force shall terminate on the date that it submits such report or October 1, 2009, whichever is earlier.