

SENATE BILL 2745

By Kelsey

AN ACT to amend Tennessee Code Annotated, Title 38
and Title 40, relative to eyewitness identification.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 38, Chapter 1, Part 1, is amended by
adding the following as a new section:

38-1-107. As used in this section unless the context requires otherwise:

(a)

(1) "Eyewitness" means a person whose identification by sight of
another person may be relevant in a criminal proceeding;

(2) "Filler" means a person or a photograph of a person who is not
suspected of an offense and is included in a lineup;

(3) "Independent administrator" means a lineup administrator who
is not participating in the investigation of the criminal offense and is
unaware of which person in the lineup is the suspect;

(4) "Lineup" means a photo lineup or live lineup;

(5) "Lineup administrator" means the person who conducts a
lineup;

(6) "Live lineup" means a procedure in which a group of people is
displayed to an eyewitness for the purpose of determining if the
eyewitness is able to identify the perpetrator of a crime; and

(7) "Photo lineup" means a procedure in which an array of
photographs is displayed to an eyewitness for the purpose of determining
if the eyewitness is able to identify the perpetrator of a crime.

(b)(1) Lineups conducted by state, county, and other local law enforcement officers shall meet all of the following requirements:

(A) A lineup shall be conducted by an independent administrator or by an alternative method as provided by subsection (c) of this section.

(B) Individuals or photos shall be presented to witnesses sequentially, with each individual or photo presented to the witness separately, in a previously determined order, and removed after it is viewed before the next individual or photo is presented.

(C) Before a lineup, the eyewitness shall be instructed that:

(i) The perpetrator might or might not be presented in the lineup;

(ii) The lineup administrator does not know the suspect's identity;

(iii) The eyewitness should not feel compelled to make an identification;

(iv) It is as important to exclude innocent persons as it is to identify the perpetrator; and

(v) The investigation will continue whether or not an identification is made.

(2) The eyewitness shall acknowledge the receipt of the instructions in writing. If the eyewitness refuses to sign, the lineup administrator shall note the refusal of the eyewitness to sign the acknowledgement and shall also sign the acknowledgement.

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

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

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

(B) At least five (5) fillers shall be included in a photo lineup, in addition to the suspect;

(C) At least five (5) fillers shall be included in a live lineup, in addition to the suspect; and

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

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

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

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

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

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

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

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

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

(14) Unless it is not practical, a video record of live identification procedures shall be made. If a video record is not practical, the reasons

shall be documented, and an audio record shall be made. If neither a video nor audio record are practical, the reasons shall be documented, and the lineup administrator shall make a written record of the lineup.

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

(A) All identification and nonidentification results obtained during the identification procedure, signed by the eyewitness, including the eyewitness's confidence statement. If the eyewitness refuses to sign, the lineup administrator shall note the refusal of the eyewitness to sign the results and shall also sign the notation;

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

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

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

(E) Whether it was a photo lineup or live lineup and how many photos or individuals were presented in the lineup;

(F) The sources of all photographs or persons used;

(G) In a photo lineup, the photographs themselves; and

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

(c) In lieu of using an independent administrator, a photo lineup eyewitness identification procedure may be conducted using an alternative method specified and approved by the Tennessee peace officer standards and training commission. Any alternative method shall be carefully structured to

achieve neutral administration and to prevent the administrator from knowing which photograph is being presented to the eyewitness during the identification procedure. Alternative methods may include any of the following:

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

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

(3) Any other procedures that achieve neutral administration.

(d) All of the following shall be available as consequences of compliance or noncompliance with the requirements of this section:

(1) Failure to comply with any of the requirements of this section shall be considered by the court in adjudicating motions to suppress eyewitness identification;

(2) Failure to comply with any of the requirements of this section shall be admissible in support of claims of eyewitness misidentification, as long as such evidence is otherwise admissible; and

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

SECTION 2. This act shall take effect July 1, 2010, the public welfare requiring it.