



HOUSE BILL 566: Amend Eyewitness Identification/Show-Up

2015-2016 General Assembly

Committee:

Introduced by:

Analysis of: S.L. 2015-212

Date:

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SUMMARY: *S.L. 2015-212 amends the Eyewitness Identification Reform Act to clarify that law enforcement officers may be eyewitnesses; to set minimum standards for show-ups; and to require the North Carolina Criminal Justice Education and Training Standards Commission to develop additional policies on the conduct of show-ups. The policies required to be adopted by the North Carolina Criminal Justice Education and Training Standards Commission must be adopted by August 1, 2016, and become applicable to all law enforcement on August 1, 2016.*

Except as otherwise provided, this act became effective December 1, 2015, and applies to eyewitness identifications and show-ups conducted on or after that date.

CURRENT LAW: Currently, G.S. 15A-284.52 defines an "eyewitness" as a "person whose identification by sight of another person may be relevant in a criminal proceeding." That statute also sets for the criteria under which a photo lineup, or a live lineup, is to be conducted. Those criteria include the following requirements:

- Lineups must be conducted by an administrator who is unaware of which person is the suspect.
- Photos must be displayed separately and sequentially.
- The eyewitness is to be given specific instructions, and asked to sign acknowledgment of those instructions.
- With photo lineups, the photograph of the suspect will be contemporaneous and to the extent practicable, will resemble the suspect at the time of the offense.
- At least five individuals of similar appearance will be used as fillers and the fillers should not be repeated in subsequent lineups with the same eyewitness.
- For multiple eyewitnesses, the suspect is to be displayed in a different position for each eyewitness.
- With live lineups,
 - Identifying actions such as speech should be performed by all lineup participants.
 - Participants must be out of the view of the eyewitness prior to the lineup.
- Only one suspect should be in each lineup.
- Nothing should be said that might influence the eyewitness's identification.
- The lineup administrator is to document the eyewitness's own words and confidence level concerning the identification. Eyewitnesses are to be separated before and during identification procedures. Each eyewitness is also to be individually instructed on the procedures.
- In the event that an eyewitness makes identification, information should be withheld from the eyewitness until a statement of their confidence in the identification is obtained by the administrator.

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- Aside from the eyewitness and counsel as required by law, no other person at the line-up should know the identity of the suspect.
- A video recordation of the live identification procedure is to be made, unless impractical. If impractical, an audio recording should be made with the reasons why a video was not practical. If video and audio recordings are not practical, the reasons should be documented and the lineup administrator should make a written record of the lineup.
- Requirements for the video, audio, or written record are specified.

Additionally, alternative methods for identification approved by the North Carolina Criminal Justice Education and Training Standards Commission which achieve neutral administration are allowed for photo lineups.

Failure to comply with the requirements above may result in a court suppressing eyewitness identification, a claim of eyewitness misidentification, or an instruction to the jury regarding the reliability of eyewitness identification.

BILL ANALYSIS: S.L. 2015-212 does all of the following:

1. Clarifies that law enforcement officers may be eyewitnesses by adding "law enforcement officer" to the definition of eyewitness.
2. Defines "show-up" to be a procedure in which an eyewitness is presented with a single live suspect for the purpose of determining whether the eyewitness is able to identify the perpetrator of a crime.
3. Establishes minimum standards for show-ups as:
 - i. A show-up must only be done when a suspect matching the description of the perpetrator is located in close proximity in time and place to the crime, and only if there are exigent circumstances that require the immediate display of a suspect to an eyewitness.
 - ii. A show-up must only be done using a live suspect, and must not be conducted with a photograph.
 - iii. Investigators are to photograph the suspect to preserve a record of the suspect's appearance at the time of the show-up.
4. Requires the North Carolina Criminal Justice Education and Training Standards Commission to develop additional policies on the conduct of show-ups that address all of the following:
 - i. Standard instructions for eyewitnesses.
 - ii. Confidence statements by the eyewitness, including information related to the eyewitnesses vision, the circumstances of the events witnessed, and communications with other eyewitnesses, if any.
 - iii. Training of law enforcement officers specific to conducting show-ups.
 - iv. Any other matters deemed appropriate by the Commission.

EFFECTIVE DATE: The policies to be adopted by the North Carolina Criminal Justice Education and Training Standards Commission must be adopted by August 1, 2016. The remainder of the act becomes effective December 1, 2015, and applies to eyewitness identifications and show-ups conducted on or after that date.

BACKGROUND: In 1972 the U.S. Supreme Court determined in *Neil v. Biggers* that an out-of-court identification violates due process if the procedure used was so impermissibly suggestive as to raise a very substantial likelihood of misidentification. As recently as 2010, the North Carolina Court of Appeals held in *State v. Rawls* that G.S. 15A-284.52 sets out procedures for conducting live and photo lineups and does not apply to show-ups.