



Substitute House Bill No. 5501

Public Act No. 12-111

AN ACT CONCERNING EYEWITNESS IDENTIFICATION PROCEDURES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 54-1p of the 2012 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective July 1, 2012*):

(a) For the purposes of this section:

(1) "Eyewitness" means a person who observes another person at or near the scene of an offense;

(2) "Photo lineup" means a procedure in which an array of photographs, including a photograph of the person suspected as the perpetrator of an offense and additional photographs of other persons not suspected of the offense, is [displayed] presented to an eyewitness for the purpose of determining whether the eyewitness is able to identify the suspect as the perpetrator;

(3) "Live lineup" means a procedure in which a group of persons, including the person suspected as the perpetrator of an offense and other persons not suspected of the offense, is [displayed] presented to an eyewitness for the purpose of determining whether the eyewitness

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is able to identify the suspect as the perpetrator;

(4) "Identification procedure" means either a photo lineup or a live lineup; and

(5) "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.

(b) Not later than February 1, 2013, the Police Officer Standards and Training Council and the Division of State Police within the Department of Emergency Services and Public Protection shall jointly develop and promulgate uniform mandatory policies and appropriate guidelines for the conducting of eyewitness identification procedures that shall be based on best practices and be followed by all municipal and state law enforcement agencies. Said council and division shall also develop and promulgate a standardized form to be used by municipal and state law enforcement agencies when conducting an identification procedure and making a written record thereof.

[(b)] (c) Not later than [January 1, 2012] May 1, 2013, each municipal police department and the Department of Emergency Services and Public Protection shall adopt procedures for the conducting of photo lineups and live lineups that are in accordance with the policies and guidelines developed and promulgated by the Police Officer Standards and Training Council and the Division of State Police within the Department of Emergency Services and Public Protection pursuant to subsection (b) of this section and that comply with the following requirements:

[(1) When practicable, the person conducting the identification procedure shall be a person who is not aware of which person in the photo lineup or live lineup is suspected as the perpetrator of the offense;]

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(1) Whenever a specific person is suspected as the perpetrator of an offense, the photographs included in a photo lineup or the persons participating in a live lineup shall be presented sequentially so that the eyewitness views one photograph or one person at a time in accordance with the policies and guidelines developed and promulgated by the Police Officer Standards and Training Council and the Division of State Police within the Department of Emergency Services and Public Protection pursuant to subsection (b) of this section;

(2) The identification procedure shall be conducted in such a manner that the person conducting the procedure does not know which person in the photo lineup or live lineup is suspected as the perpetrator of the offense, except that, if it is not practicable to conduct a photo lineup in such a manner, the photo lineup 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;

~~[(2)]~~ (3) The eyewitness shall be instructed prior to the identification procedure:

(A) That the eyewitness will be asked to view an array of photographs or a group of persons, and that each photograph or person will be presented one at a time;

(B) That it is as important to exclude innocent persons as it is to identify the perpetrator;

(C) That the persons in a photo lineup or live lineup may not look exactly as they did on the date of the offense because features like facial or head hair can change;

~~[(A)]~~ (D) That the perpetrator may or may not be among the persons

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in the photo lineup or [the] live lineup;

[(B)] (E) That the eyewitness should not feel compelled to make an identification; [and]

[(C)] (F) That the eyewitness should take as much time as needed in making a decision; and

(G) That the police will continue to investigate the offense regardless of whether the eyewitness makes an identification;

(4) In addition to the instructions required by subdivision (3) of this subsection, the eyewitness shall be given such instructions as may be developed and promulgated by the Police Officer Standards and Training Council and the Division of State Police within the Department of Emergency Services and Public Protection pursuant to subsection (b) of this section;

[(3)] (5) The photo lineup or live lineup shall be composed so that the fillers generally fit the description of the person suspected as the perpetrator and, in the case of a photo lineup, so that the photograph of the person suspected as the perpetrator resembles his or her appearance at the time of the offense and does not unduly stand out;

[(4)] (6) 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 person suspected as the perpetrator participates or in which the photograph of the person suspected as the perpetrator is included shall be different from the fillers used in any prior lineups;

[(5)] (7) At least five fillers shall be included in the photo lineup and at least four fillers shall be included in the live lineup, in addition to the person suspected as the perpetrator;

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[(6)] (8) In a photo lineup, no writings or information concerning any previous arrest of the person suspected as the perpetrator shall be visible to the eyewitness;

[(7)] (9) In a live lineup, any identification actions, such as speaking or making gestures or other movements, shall be performed by all lineup participants;

[(8)] (10) In a live lineup, all lineup participants shall be out of the view of the eyewitness at the beginning of the identification procedure;

[(9)] (11) The person suspected as the perpetrator shall be the only suspected perpetrator included in the identification procedure;

[(10)] (12) Nothing shall be said to the eyewitness regarding the position in the photo lineup or the live lineup of the person suspected as the perpetrator;

[(11)] (13) Nothing shall be said to the eyewitness that might influence the eyewitness's selection of the person suspected as the perpetrator;

[(12)] (14) If the eyewitness identifies a person as the perpetrator, the eyewitness shall not be provided any information concerning such person prior to obtaining the eyewitness's statement [that he or she is certain] regarding how certain he or she is of the selection; and

[(13)] (15) A written record of the identification procedure shall be made that includes the following information:

(A) All identification and nonidentification results obtained during the identification procedure, signed by the eyewitness, including the eyewitness's own words regarding how certain he or she is of the selection;

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

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(C) The date and time of the identification procedure;

(D) In a photo lineup, the photographs [themselves] presented to the eyewitness or copies thereof;

(E) In a photo lineup, identification information on all persons whose photograph was included in the lineup and the sources of all photographs used; and

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

Sec. 2. (NEW) (*Effective October 1, 2012*) Each police basic or review training program conducted or administered by the Police Officer Standards and Training Council, the Division of State Police within the Department of Emergency Services and Public Protection or a municipal police department shall provide training to police officers in the administration of eyewitness identification procedures in accordance with the policies and guidelines developed and promulgated by the Police Officer Standards and Training Council and the Division of State Police within the Department of Emergency Services and Public Protection pursuant to subsection (b) of section 54-1p of the general statutes, as amended by this act.

Sec. 3. Section 2 of public act 11-252 is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) There is established an Eyewitness Identification Task Force to study issues concerning eyewitness identification in criminal investigations and the use of sequential live and photo lineups. The task force shall examine: (1) The science of sequential methods of conducting a live lineup and a photo lineup, (2) the use of sequential lineups in other states, (3) the practical implications of a state law mandating sequential lineups, and (4) such other topics as the task force deems appropriate relating to eyewitness identification and the

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provision of sequential lineups.

(b) The task force shall consist of the following members or their designees: The chairpersons and ranking members of the joint standing committee of the General Assembly on the judiciary; the Chief State's Attorney; the Chief Public Defender; the Victim Advocate; an active or retired judge appointed by the Chief Justice of the Supreme Court; a municipal police chief appointed by the president of the Connecticut Police Chiefs Association; a representative of the Police Officer Standards and Training Council; a representative of the State Police Training School appointed by the Commissioner of [Public Safety] Emergency Services and Public Protection; a representative of the criminal defense bar appointed by the president of the Connecticut Criminal Defense Lawyers Association; a representative from the Connecticut Innocence Project; and six public members, including the dean of a law school located in this state and a social scientist, appointed one each by the president pro tempore of the Senate, the speaker of the House of Representatives, the majority leader of the Senate, the majority leader of the House of Representatives, the minority leader of the Senate, and the minority leader of the House of Representatives.

(c) The task force may solicit and accept gifts, donations, grants or funds from any public or private source to assist the task force in carrying out its duties.

(d) The task force shall report its findings and recommendations to the joint standing committee of the General Assembly on the judiciary in accordance with section 11-4a of the general statutes not later than April 1, 2012.

(e) After submitting the report required under subsection (d) of this section, the task force shall continue in existence for the purpose of (1) assisting the Police Officer Standards and Training Council and the

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Division of State Police within the Department of Emergency Services and Public Protection in the development of policies and guidelines for the conducting of eyewitness identification procedures by law enforcement agencies as required by subsection (b) of section 54-1p of the general statutes, as amended by this act, (2) researching and evaluating best practices in the conducting of eyewitness identification procedures as such practices may change from time to time, and recommending such revised best practices to the Police Officer Standards and Training Council and the Division of State Police within the Department of Emergency Services and Public Protection, (3) collecting statistics concerning the conducting of eyewitness identification procedures by law enforcement agencies, and (4) monitoring the implementation of section 54-1p of the general statutes, as amended by this act. The task force shall report the results of such monitoring, including any recommendations for proposed legislation, to the joint standing committee of the General Assembly on the judiciary in accordance with section 11-4a of the general statutes not later than February 5, 2014.