



Rep. Frances Ann Hurley

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LRB101 08912 SLF 56546 a

1 AMENDMENT TO HOUSE BILL 2763

2 AMENDMENT NO. _____. Amend House Bill 2763 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Code of Criminal Procedure of 1963 is
5 amended by changing Section 107A-2 as follows:

6 (725 ILCS 5/107A-2)

7 Sec. 107A-2. Lineup procedure.

8 (a) All lineups shall be conducted using one of the
9 following methods:

10 (1) An independent administrator, unless it is not
11 practical or if the eyewitness consents to having the
12 lineup video recorded.

13 (2) An automated computer program or other device that
14 can automatically display a photo lineup to an eyewitness
15 in a manner that prevents the lineup administrator from
16 seeing which photograph or photographs the eyewitness is

1 viewing until after the lineup is completed. The automated
2 computer program may present the photographs to the
3 eyewitness simultaneously or sequentially, consistent with
4 the law enforcement agency guidelines required under
5 subsection (b) of this Section.

6 (3) A procedure in which photographs are placed in
7 folders, randomly numbered, and shuffled and then
8 presented to an eyewitness such that the lineup
9 administrator cannot see or know which photograph or
10 photographs are being presented to the eyewitness until
11 after the procedure is completed. The photographs may be
12 presented to the eyewitness simultaneously or
13 sequentially, consistent with the law enforcement agency
14 guidelines required under subsection (b) of this Section.

15 (4) Any other procedure that prevents the lineup
16 administrator from knowing the identity of the suspected
17 perpetrator or seeing or knowing the persons or photographs
18 being presented to the eyewitness until after the procedure
19 is completed.

20 (b) Each law enforcement agency shall adopt written
21 guidelines setting forth when, if at all, simultaneous lineups
22 shall be conducted and when, if at all, sequential lineups
23 shall be conducted. This subsection does not establish a
24 preference for whether a law enforcement agency should conduct
25 simultaneous lineups or sequential lineups. Whether and when to
26 conduct simultaneous lineups or sequential lineups is at the

1 discretion of each law enforcement agency. If, after the
2 effective date of this amendatory Act of the 98th General
3 Assembly, a method of conducting a lineup different from a
4 simultaneous or sequential lineup is determined by the Illinois
5 Supreme Court to be sufficiently established to have gained
6 general acceptance as a reliable method for eyewitness
7 identifications and provides more accurate results than
8 simultaneous or sequential lineups, a law enforcement agency
9 may adopt written guidelines setting forth when, if at all,
10 this different method of conducting lineups shall be used and,
11 when feasible, the provisions of subsection (d) of this Section
12 shall apply to the use of these methods.

13 (c) On and after the effective date of this amendatory Act
14 of the 98th General Assembly, there is no preference as to
15 whether a law enforcement agency conducts a live lineup or a
16 photo lineup and to the extent that the common law directs
17 otherwise, this direction is abrogated.

18 (d) If a lineup administrator conducts a sequential lineup,
19 the following shall apply:

20 (1) Solely at the eyewitness's request, the lineup
21 administrator may present a person or photograph to the
22 eyewitness an additional time but only after the eyewitness
23 has first viewed each person or photograph one time.

24 (2) If the eyewitness identifies a person as a
25 perpetrator, the lineup administrator shall continue to
26 sequentially present the remaining persons or photographs

1 to the eyewitness until the eyewitness has viewed each
2 person or photograph.

3 (e) Before a lineup is conducted:

4 (1) The eyewitness shall be instructed that:

5 (A) if recording the lineup is practical, an audio
6 and video recording of the lineup will be made for the
7 purpose of accurately documenting all statements made
8 by the eyewitness, unless the eyewitness refuses to the
9 recording of the lineup, and that if a recording is
10 made it will be of the persons in the lineup and the
11 eyewitness;

12 (B) the perpetrator may or may not be presented in
13 the lineup;

14 (C) if an independent administrator is conducting
15 the lineup, the independent administrator does not
16 know the suspected perpetrator's identity or if the
17 administrator conducting the lineup is not an
18 independent administrator, the eyewitness should not
19 assume that the lineup administrator knows which
20 person in the lineup is the suspect;

21 (D) the eyewitness should not feel compelled to
22 make an identification;

23 (E) it is as important to exclude innocent persons
24 as it is to identify a perpetrator; and

25 (F) the investigation will continue whether or not
26 an identification is made.

1 (2) The eyewitness shall acknowledge in writing the
2 receipt of the instructions required under this subsection
3 and, if applicable, the refusal to be recorded. If the
4 eyewitness refuses to sign the acknowledgement, the lineup
5 administrator shall note the refusal of the eyewitness to
6 sign the acknowledgement and shall also sign the
7 acknowledgement.

8 (f) In conducting a lineup:

9 (1) When practicable, the lineup administrator shall
10 separate all eyewitnesses in order to prevent the
11 eyewitnesses from conferring with one another before and
12 during the lineup procedure. If separating the
13 eyewitnesses is not practicable, the lineup administrator
14 shall ensure that all eyewitnesses are monitored and that
15 they do not confer with one another while waiting to view
16 the lineup and during the lineup.

17 (2) Each eyewitness shall perform the identification
18 procedures without any other eyewitness present. Each
19 eyewitness shall be given instructions regarding the
20 identification procedures without other eyewitnesses
21 present.

22 (3) The lineup shall be composed to ensure that the
23 suspected perpetrator does not unduly stand out from the
24 fillers. In addition:

25 (A) Only one suspected perpetrator shall be
26 included in a lineup.

1 (B) The suspected perpetrator shall not be
2 substantially different in appearance from the fillers
3 based on the eyewitness's previous description of the
4 perpetrator or based on other factors that would draw
5 attention to the suspected perpetrator.

6 (C) At least 5 fillers shall be included in a photo
7 lineup, in addition to the suspected perpetrator.

8 (D) When practicable, at least 5 fillers shall be
9 included in a live lineup, in addition to the suspected
10 perpetrator, but in no event shall there be less than 3
11 fillers in addition to the suspected perpetrator.

12 (E) If the eyewitness has previously viewed a photo
13 lineup or live lineup in connection with the
14 identification of another person suspected of
15 involvement in the offense, the fillers in the lineup
16 in which the current suspected perpetrator
17 participates shall be different from the fillers used
18 in the prior lineups.

19 (4) If there are multiple eyewitnesses, subject to the
20 requirements in subsection (a) of this Section and to the
21 extent possible, the suspected perpetrator shall be placed
22 in a different position in the lineup or photo array for
23 each eyewitness.

24 (5) Nothing shall be communicated to the eyewitness
25 regarding the suspected perpetrator's position in the
26 lineup or regarding anything that may influence the

1 eyewitness's identification.

2 (6) No writings or information concerning any previous
3 arrest, indictment, or conviction of the suspected
4 perpetrator shall be visible or made known to the
5 eyewitness.

6 (7) If a photo lineup, the photograph of the suspected
7 perpetrator shall be contemporary in relation to the
8 photographs of the fillers and, to the extent practicable,
9 shall resemble the suspected perpetrator's appearance at
10 the time of the offense.

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

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

16 (10) The lineup administrator shall obtain and
17 document any and all statements made by the eyewitness
18 during the lineup as to the perpetrator's identity. When
19 practicable, an audio or video recording of the statements
20 shall be made.

21 (11) If the eyewitness identifies a person as the
22 perpetrator, the eyewitness shall not be provided any
23 information concerning the person until after the lineup is
24 completed.

25 (12) Unless otherwise allowed under subsection (a) of
26 this Section, there shall not be anyone present during a

1 lineup who knows the suspected perpetrator's identity,
2 except the eyewitness and suspected perpetrator's counsel
3 if required by law.

4 (g) The lineup administrator shall make an official report
5 of all lineups, which shall include all of the following
6 information:

7 (1) All identification and non-identification results
8 obtained during the lineup, signed by the eyewitness,
9 including any and all statements made by the eyewitness
10 during the lineup as to the perpetrator's identity as
11 required under paragraph (10) of subsection (f) of this
12 Section. If the eyewitness refuses to sign, the lineup
13 administrator shall note the refusal of the eyewitness to
14 sign the results and shall also sign the notation.

15 (2) The names of all persons who viewed the lineup.

16 (3) The names of all law enforcement officers and
17 counsel present during the lineup.

18 (4) The date, time, and location of the lineup.

19 (5) Whether it was a photo lineup or live lineup and
20 how many persons or photographs were presented in the
21 lineup.

22 (6) The sources of all persons or photographs used as
23 fillers in the lineup.

24 (7) In a photo lineup, the actual photographs shown to
25 the eyewitness.

26 (8) In a live lineup, a photograph or other visual

1 recording of the lineup that includes all persons who
2 participated in the lineup.

3 (9) If applicable, the eyewitness's refusal to be
4 recorded.

5 (10) If applicable, the reason for any
6 impracticability in strict compliance with this Section.

7 (h) Unless it is not practical or the eyewitness refuses, a
8 video record of all lineup procedures shall be made.

9 (1) If a video record is not practical or the
10 eyewitness refuses to allow a video record to be made:

11 (A) the reasons or the refusal shall be documented
12 in the official report required under subsection (g) of
13 this Section;

14 (B) an audio record shall be made, if practical;
15 and

16 (C) if a live lineup, the lineup shall be
17 photographed.

18 (2) If an audio record is not practical, the reasons
19 shall be documented in the official report required under
20 subsection (g) of this Section.

21 (i) The photographs, recordings, and the official report of
22 the lineup required by this Section shall be disclosed to
23 counsel for the accused as provided by the Illinois Supreme
24 Court Rules regarding discovery. All photographs of suspected
25 perpetrators shown to an eyewitness during a lineup shall be
26 disclosed to counsel for the accused as provided by the

1 Illinois Supreme Court Rules regarding discovery. To protect
2 the identity of the eyewitness and the identities of law
3 enforcement officers used as fillers in the lineup from being
4 disclosed to third parties, the State's Attorney shall petition
5 the court for a protective order under Supreme Court Rule 415
6 upon disclosure of the photographs or recordings to the counsel
7 of the accused.

8 (j) All of the following shall be available as consequences
9 of compliance or noncompliance with the requirements of this
10 Section:

11 (1) Failure to comply with any of the requirements of
12 this Section shall be a factor to be considered by the
13 court in adjudicating a motion to suppress an eyewitness
14 identification or any other motion to bar an eyewitness
15 identification. These motions shall be in writing and state
16 facts showing how the identification procedure was
17 improper. This paragraph (1) makes no change to existing
18 applicable common law or statutory standards or burdens of
19 proof.

20 (2) When warranted by the evidence presented at trial,
21 the jury shall be instructed that it may consider all the
22 facts and circumstances including compliance or
23 noncompliance with this Section to assist in its weighing
24 of the identification testimony of an eyewitness.

25 (k) Any electronic recording made during a lineup that is
26 compiled by any law enforcement agency as required by this

1 Section for the purposes of fulfilling the requirements of this
2 Section shall be confidential and exempt from public inspection
3 and copying, as provided under Section 7 of the Freedom of
4 Information Act, and the recording shall not be transmitted to
5 any person except as necessary to comply with this Section.
6 (Source: P.A. 98-1014, eff. 1-1-15.)".