



Rep. Scott Drury

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LRB098 09208 MRW 44366 a

1 AMENDMENT TO HOUSE BILL 2960

2 AMENDMENT NO. _____. Amend House Bill 2960 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 adding Sections 107A-0.1 and 107A-2 as follows:

6 (725 ILCS 5/107A-0.1 new)

7 Sec. 107A-0.1. Definitions.

8 For the purposes of this Article:

9 "Eyewitness" means a person whose identification by
10 sight of another person may be relevant in a criminal
11 proceeding.

12 "Filler" means a person or a photograph of a person who
13 is not suspected of an offense and is included in a lineup.

14 "Independent administrator" means a lineup
15 administrator who is not participating in the
16 investigation of the criminal offense and is unaware of

1 which person in the lineup is the suspected perpetrator.

2 "Lineup" includes a photo lineup or live lineup.

3 "Lineup administrator" means the person who conducts a
4 lineup.

5 "Live lineup" means a procedure in which a group of
6 persons are displayed to an eyewitness for the purpose of
7 determining if the eyewitness is able to identify the
8 perpetrator of a crime.

9 "Photo lineup" means a procedure in which an array of
10 photographs is displayed to an eyewitness for the purpose
11 of determining if the eyewitness is able to identify the
12 perpetrator of a crime.

13 "Sequential lineup" means a live or photo lineup in
14 which persons or photographs are presented to an eyewitness
15 separately, in a previously determined order, and removed
16 after they are viewed before the next person or photograph
17 is presented, in order to determine if the eyewitness is
18 able to identify the perpetrator of a crime.

19 "Simultaneous lineup" means a live or photo lineup in
20 which a group of persons or array of photographs are
21 simultaneously presented to an eyewitness for the purpose
22 of determining if the eyewitness is able to identify the
23 perpetrator of a crime.

24 (725 ILCS 5/107A-2 new)

25 Sec. 107A-2. Lineup procedure.

1 (a) All lineups shall be conducted by an independent
2 administrator, unless it is not practical. If it is not
3 practical for an independent administrator to conduct a lineup,
4 the reasons for not using an independent administrator shall be
5 made in an official report prepared prior to conducting the
6 lineup and verified under oath as provided in Section 2-605 of
7 the Code of Civil Procedure attesting to the veracity of the
8 report, and for photo lineups conducted without an independent
9 administrator one of the following alternative methods shall be
10 used:

11 (1) An automated computer program that can
12 automatically administer the photo lineup directly to an
13 eyewitness and prevent the administrator from seeing which
14 photograph or photographs the witness is viewing until
15 after the procedure is completed. The automated computer
16 program may present the photographs to the eyewitness
17 simultaneously or sequentially, consistent with the law
18 enforcement agency guidelines required under subsection
19 (b) of this Section.

20 (2) A procedure in which photographs are placed in
21 folders, randomly numbered, and shuffled and then
22 presented to an eyewitness such that the administrator
23 cannot see or track which photograph or photographs being
24 presented to the eyewitness until after the procedure is
25 completed. The photographs may be presented to the
26 eyewitness simultaneously or sequentially, consistent with

1 the law enforcement agency guidelines required under
2 subsection (b) of this Section.

3 (3) Any other procedure that prevents the
4 administrator from seeing or tracking the photographs
5 being presented to the eyewitness until after the procedure
6 is completed.

7 (b) Each law enforcement agency shall adopt written
8 guidelines setting forth when, if at all, simultaneous lineups
9 shall be conducted and when, if at all, sequential lineups
10 shall be conducted. This subsection does not establish a
11 preference for whether a law enforcement agency should conduct
12 simultaneous lineups or sequential lineups. Whether and when to
13 conduct simultaneous lineups or sequential lineups is at the
14 discretion of each law enforcement agency.

15 (c) If a lineup administrator conducts a sequential lineup,
16 the following shall apply:

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

22 (2) If the eyewitness identifies a person as the
23 perpetrator, the lineup administrator shall continue to
24 sequentially present the remaining persons or photographs
25 to the eyewitness until the eyewitness has viewed each
26 person or photograph.

1 (d) Before a lineup is conducted:

2 (1) The eyewitness shall be instructed that:

3 (A) the perpetrator may or may not be presented in
4 the lineup;

5 (B) if an independent lineup administrator is
6 being used, the eyewitness shall be given the
7 instruction that the lineup administrator does not
8 know the suspected perpetrator's identity;

9 (C) the eyewitness should not feel compelled to
10 make an identification;

11 (D) it is as important to exclude innocent persons
12 as it is to identify the perpetrator; and

13 (E) the investigation will continue whether or not
14 an identification is made.

15 (2) The eyewitness shall acknowledge in writing the
16 receipt of the instructions required under this
17 subsection. If the eyewitness refuses to sign the
18 acknowledgement, the lineup administrator shall note the
19 refusal of the eyewitness to sign the acknowledgement and
20 shall also sign the acknowledgement.

21 (e) In conducting a lineup:

22 (1) The lineup administrator shall separate all
23 eyewitnesses in order to discourage eyewitnesses from
24 conferring with one another before and during the lineup
25 procedure. Each eyewitness shall be given instructions
26 regarding the identification procedures without other

1 eyewitnesses present.

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

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

10 (B) At least 5 fillers shall be included in a photo
11 lineup, in addition to the suspected perpetrator.

12 (C) At least 5 fillers shall be included in a live
13 lineup, in addition to the suspected perpetrator.

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

21 (3) Only one suspected perpetrator shall be included in
22 a lineup.

23 (4) If there are multiple eyewitnesses, to the extent
24 possible, the suspected perpetrator shall be placed in a
25 different position in the lineup or photo array for each
26 eyewitness.

1 (5) Nothing shall be communicated to the eyewitness
2 regarding the suspected perpetrator's position in the
3 lineup or regarding anything that may influence the
4 eyewitness's identification.

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

9 (7) If a photo lineup, the photograph of the suspected
10 perpetrator shall be contemporary and, to the extent
11 practicable, shall resemble the suspected perpetrator's
12 appearance at the time of the offense.

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

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

18 (10) The lineup administrator shall obtain and
19 document a clear statement from the eyewitness, at the time
20 of the identification and in the eyewitness's own words, as
21 to the eyewitness's confidence level that the person
22 identified in a lineup is the perpetrator.

23 (11) If the eyewitness identifies a person as the
24 perpetrator, the eyewitness shall not be provided any
25 information concerning the person before the lineup
26 administrator obtains the eyewitness's confidence level

1 statement about the selection.

2 (12) Unless otherwise allowed under subsection (a) of
3 this Section, there shall not be anyone present during a
4 lineup who knows the suspected perpetrator's identity,
5 except the eyewitness and suspected perpetrator's counsel
6 as required by law.

7 (f) The lineup administrator shall make a written record of
8 all lineups, which shall include all of the following
9 information:

10 (1) All identification and non-identification results
11 obtained during the lineup, signed by the eyewitness,
12 including the eyewitness's confidence level statement. If
13 the eyewitness refuses to sign, the lineup administrator
14 shall note the refusal of the eyewitness to sign the
15 results and shall also sign the notation.

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

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

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

20 (5) The words used by the eyewitness in an
21 identification, including words that describe the
22 eyewitness's certainty of identification.

23 (6) Whether it was a photo lineup or live lineup and
24 how many persons or photographs were presented in the
25 lineup.

26 (7) The sources of all persons or photographs used as

1 fillers in the lineup.

2 (8) In a photo lineup, the actual photographs shown to
3 the eyewitness.

4 (9) In a live lineup, a photograph or other visual
5 recording of the lineup that includes all persons who
6 participated in the lineup.

7 (g) Unless it is not practical or the eyewitness refuses, a
8 video record of 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 an official report prepared prior to conducting the
13 eyewitness identification procedure and verified under
14 oath as provided in Section 2-605 of the Code of Civil
15 Procedure attesting to the veracity of the report;

16 (B) an audio record shall be made, if practical;
17 and

18 (C) if a live lineup, the lineup shall be
19 photographed.

20 (2) If an audio record is not practical, the reasons
21 shall be documented in an official report prepared prior to
22 conducting the eyewitness identification procedure and
23 verified under oath as provided in Section 2-605 of the
24 Code of Civil Procedure attesting to the veracity of the
25 report.

26 (h) The photographs, recordings, and the written record of

1 the lineup required by this Section shall be disclosed to the
2 accused and his or her defense counsel during discovery
3 proceedings as provided in Illinois Supreme Court Rules. All
4 photographs of suspected perpetrators shown to an eyewitness
5 during a lineup shall be disclosed to the accused and his or
6 her defense counsel during discovery proceedings as provided in
7 Illinois Supreme Court Rules.

8 (i) 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 considered by the court in
13 adjudicating a motion to suppress an eyewitness
14 identification or any other motion to bar an eyewitness
15 identification.

16 (2) When evidence of compliance or noncompliance with
17 the requirements of this Section has been presented at
18 trial, the jury shall be instructed that it may consider
19 credible evidence of compliance or noncompliance to
20 determine the reliability of an eyewitness identification.

21 (725 ILCS 5/107A-5 rep.)

22 (725 ILCS 5/107A-10 rep.)

23 Section 10. The Code of Criminal Procedure of 1963 is
24 amended by repealing Sections 107A-5 and 107A-10."