
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 711 Session of
2013

INTRODUCED BY GREENLEAF, FONTANA, RAFFERTY, TARTAGLIONE,
WASHINGTON, ERICKSON, HUGHES, SOLOBAY AND FERLO,
MARCH 20, 2013

REFERRED TO JUDICIARY, MARCH 20, 2013

AN ACT

1 Amending Titles 18 (Crimes and Offenses), 42 (Judiciary and
2 Judicial Procedure) and 44 (Law and Justice) of the
3 Pennsylvania Consolidated Statutes, further providing for
4 expungement; providing for informant testimony; further
5 providing for exceptions to sovereign immunity; adding
6 provisions relating to wrongful conviction and imprisonment;
7 and providing for recording of custodial interrogations and
8 for eyewitness identifications.

9 The General Assembly of the Commonwealth of Pennsylvania
10 hereby enacts as follows:

11 Section 1. Section 9122(a) of Title 18 of the Pennsylvania
12 Consolidated Statutes, amended October 25, 2012 (P.L.1655,
13 No.204), is amended to read:

14 § 9122. Expungement.

15 (a) Specific proceedings.--Criminal history record
16 information shall be expunged in a specific criminal proceeding
17 when:

18 (1) no disposition has been received or, upon request
19 for criminal history record information, no disposition has
20 been recorded in the repository within 18 months after the

1 date of arrest and the court of proper jurisdiction certifies
2 to the director of the repository that no disposition is
3 available and no action is pending. Expungement shall not
4 occur until the certification from the court is received and
5 the director of the repository authorizes such expungement;

6 (2) a court order requires that such nonconviction data
7 be expunged; [or]

8 (3) a person 21 years of age or older who has been
9 convicted of a violation of section 6308 (relating to
10 purchase, consumption, possession or transportation of liquor
11 or malt or brewed beverages), which occurred on or after the
12 day the person attained 18 years of age, petitions the court
13 of common pleas in the county where the conviction occurred
14 seeking expungement and the person has satisfied all terms
15 and conditions of the sentence imposed for the violation,
16 including any suspension of operating privileges imposed
17 pursuant to section 6310.4 (relating to restriction of
18 operating privileges). Upon review of the petition, the court
19 shall order the expungement of all criminal history record
20 information and all administrative records of the Department
21 of Transportation relating to said conviction[.]; or

22 (4) an individual:

23 (i) is found by the Commonwealth Court under 42
24 Pa.C.S. Ch. 85 Subch. D (relating to claims for wrongful
25 conviction and imprisonment) to have been wrongfully
26 convicted and imprisoned;

27 (ii) has agreed to a favorable written settlement
28 for a civil claim relating to a wrongful conviction and
29 imprisonment; or

30 (iii) has obtained a civil judgment that establishes

1 wrongful conviction and imprisonment.

2 * * *

3 Section 2. Title 42 is amended by adding a section to read:

4 § 5919.1. Informant testimony.

5 (a) Disclosures.--In any case in which the prosecution
6 attempts to introduce evidence of incriminating statements made
7 by the accused to an informant or overheard by an informant, the
8 prosecution shall timely disclose all of the following to the
9 defense:

10 (1) The intention of the prosecution to introduce the
11 testimony of an informant.

12 (2) The complete criminal history of an informant.

13 (3) Any deal, promise, inducement or benefit which the
14 offering party has made or will make to the informant.

15 (4) The substance of the testimony to be given by the
16 informant, including all statements made by the accused and
17 heard by the informant.

18 (5) The time and place of each statement, the time and
19 place of its disclosure to law enforcement officials and the
20 names of all persons who were present when the statement was
21 made.

22 (6) Whether, at any time, the informant recanted his
23 testimony and, if so, the time and place of the recantation,
24 the nature of the recantation and the names of the persons
25 who were present at the recantation.

26 (7) Other cases in which the informant testified and
27 whether the informant received any promise, inducement or
28 benefit in exchange for or after that testimony.

29 (8) Any other information relevant to the credibility of
30 the informant.

1 (b) Hearing.--In any capital case in which the prosecution
2 attempts to introduce testimony of incriminating statements made
3 by the accused to an informant or overheard by an informant, the
4 court shall conduct a hearing before the introduction of the
5 testimony to determine whether the testimony is reliable. If the
6 prosecution fails to show by a preponderance of the evidence
7 that the statement is reliable, the court may not allow the
8 testimony to be heard at trial. At this hearing, the court shall
9 consider the factors enumerated in subsection (a) as well as any
10 other factors relating to reliability. A hearing under this
11 subsection is not required if the defendant waives the right to
12 the hearing or if an electronic recording was made of the
13 statement of the accused.

14 (c) Applicability.--This section applies to informant
15 evidence obtained in the course of the investigation of a
16 felony.

17 (d) Definitions.--As used in this section the following
18 words and phrases shall have the meanings given to them in this
19 subsection:

20 "Electronic recording." An audio or audiovisual recording of
21 a statement.

22 "Informant." An individual whom the prosecution offers as a
23 witness to testify about admissions of an accused that were made
24 to or overheard by the informant while both the informant and
25 the accused were incarcerated in a penal institution.

26 Section 3. Section 8521(a) of Title 42 is amended to read:
27 § 8521. Sovereign immunity generally.

28 (a) General rule.--Except as otherwise provided in this
29 subchapter and Subchapter D (relating to claims for wrongful
30 conviction and imprisonment), no provision of this title shall

1 constitute a waiver of sovereign immunity for the purpose of 1
2 Pa.C.S. section 2310 (relating to sovereign immunity reaffirmed;
3 specific waiver) or otherwise.

4 * * *

5 Section 4. Section 8522(b) of Title 42 is amended by adding
6 a paragraph to read:

7 § 8522. Exceptions to sovereign immunity.

8 * * *

9 (b) Acts which may impose liability.--The following acts by
10 a Commonwealth party may result in the imposition of liability
11 on the Commonwealth and the defense of sovereign immunity shall
12 not be raised to claims for damages caused by:

13 * * *

14 (10) Wrongful conviction and imprisonment.--Wrongful
15 conviction and imprisonment for which claims may be brought
16 under Subchapter D (relating to claims for wrongful
17 conviction and imprisonment).

18 * * *

19 Section 5. Chapter 85 of Title 42 is amended by adding a
20 subchapter to read:

21 SUBCHAPTER D

22 CLAIMS FOR WRONGFUL CONVICTION AND IMPRISONMENT

23 Sec.

24 8581. Eligibility.

25 8582. Statement of claim and basis of award.

26 8583. Commonwealth Court.

27 8584. Presentation of claim.

28 8585. Damages.

29 8586. Report and order.

30 8587. Notice.

1 8588. Statute of limitations.

2 § 8581. Eligibility.

3 Any person convicted and subsequently imprisoned for one or
4 more crimes that the person did not commit and who has been
5 released from prison and is not subject to retrial, or the heirs
6 of such person if the person is deceased, may present a claim
7 for damages against the Commonwealth. Other than credit for time
8 served, a claimant is not entitled to compensation under this
9 subchapter for any portion of a sentence spent incarcerated
10 during which the claimant was also serving a consecutive or
11 concurrent sentence for another crime to which this subchapter
12 does not apply. The acceptance by the claimant of any judicial
13 award, compromise or settlement shall be in writing and shall,
14 except when procured by fraud, be final and conclusive on the
15 claimant and completely bar any further action by the claimant
16 against the Commonwealth for the same subject matter.

17 § 8582. Statement of claim and basis of award.

18 (a) Evidence of claim.--To present a claim for wrongful
19 conviction and imprisonment, the claimant must establish that:

20 (1) He has been convicted of one or more crimes and
21 subsequently sentenced to a term of imprisonment and has
22 served all or any part of the sentence.

23 (2) His actual innocence has been established by:

24 (i) being pardoned by the Governor for the crime or
25 crimes for which he was sentenced, and which are the
26 basis for the claim, on the grounds that the crime or
27 crimes were either not committed at all or, if committed,
28 were not committed by the defendant;

29 (ii) having the judgment of conviction of the
30 claimant reversed or vacated and the accusatory

1 instrument dismissed if the judgment of conviction was
2 reversed or vacated or the accusatory instrument was
3 dismissed on grounds consistent with innocence; or

4 (iii) if a new trial was ordered, either being found
5 not guilty at the new trial or not being retried and the
6 accusatory instrument dismissed.

7 (b) Basis of award.--To obtain a judgment in the claimant's
8 favor, the claimant must demonstrate that:

9 (1) The claimant was convicted of one or more crimes and
10 subsequently sentenced to a term of imprisonment and has
11 served all or any part of the sentence.

12 (2) By clear and convincing evidence his actual
13 innocence has been established under subsection (a) (2).

14 § 8583. Commonwealth Court.

15 Proceedings before the court shall be governed by rules
16 established by the court, which shall emphasize, to the greatest
17 extent possible, informality of proceedings. No claimant shall
18 be required to be represented or accompanied by an attorney.

19 § 8584. Presentation of claim.

20 All claims of wrongful conviction and imprisonment shall be
21 presented to and heard by the Commonwealth Court. Upon
22 presentation of a claim under section 8582 (relating to
23 statement of claim and basis of award), the court shall fix a
24 time and place to hear the claim. At least 15 days prior to the
25 time fixed for the hearing, the court shall mail notice thereof
26 to the claimant and to the district attorney in the district
27 where the claimant was prosecuted for the crimes which serve as
28 the basis for this claim. The district attorney may offer
29 evidence and argue in opposition to the claim for damages. If
30 the claimant was prosecuted by the Office of Attorney General,

1 then that office, rather than the district attorney, must be
2 notified that it may oppose the claim under this section.
3 § 8585. Damages.

4 If the Commonwealth Court finds that the claimant was
5 wrongfully convicted and imprisoned, it may award damages as
6 follows:

7 (1) A minimum of \$50,000 for each year of incarceration,
8 as adjusted annually to account for inflation from the
9 effective date of this section, and prorated for partial
10 years served.

11 (2) In a lump sum or as an annuity as chosen by the
12 claimant.

13 (3) Compensation for any reasonable reintegrative
14 services and mental and physical health care costs incurred
15 by the claimant for the time period between his release from
16 incarceration and the date of his award.

17 (4) Reasonable attorney fees calculated at 10% of the
18 damage award plus expenses. Exclusive of expenses, these fees
19 may not exceed \$75,000, as adjusted annually to account for
20 inflation from the effective date of this section, unless the
21 court approves an additional amount for good cause. These
22 fees may not be deducted from the compensation due the
23 claimant nor may his counsel receive additional fees from the
24 client for this matter.

25 (5) Compensation to those entitled to child-support
26 payments owed by the claimant that became due, and interest
27 on child-support arrearages that accrued during the time the
28 claimant served in prison but were not paid. Such
29 compensation is to be provided out of the total cash award to
30 the claimant under paragraph (1).

1 (6) In any case for which compensation is authorized by
2 this subchapter, the payment of compensation may be:

3 (i) to or for the benefit of the claimant; or

4 (ii) in the case of death of the claimant, to or for
5 the benefit of any one or more of the heirs at law of the
6 claimant who at the time of the claimant's demise were
7 dependent upon the claimant for support.

8 (7) To decide damages, the Commonwealth Court shall
9 consider all circumstances surrounding the claim, including,
10 but not limited to, the length of the claimant's wrongful
11 incarceration, any injuries the claimant sustained while
12 incarcerated, any other need for financial aid and any other
13 relevant matters. Insofar as practical, the Commonwealth
14 Court shall formulate standards for uniform application in
15 recommending compensation.

16 (8) The damage award is not subject to any cap
17 applicable to private parties in civil lawsuits.

18 (9) The damage award may not be offset by any expenses
19 incurred by the Commonwealth or any political subdivision of
20 the Commonwealth, including, but not limited to, expenses
21 incurred to secure the claimant's custody or to feed, clothe
22 or provide medical services for the claimant, nor may the
23 court offset the value of any services or reduction in fees
24 for services or the value thereof to be provided to the
25 claimant that may be awarded to the claimant under this
26 section.

27 (10) The award of damages shall include reimbursement
28 for any statutorily mandated and court-assessed costs, fines,
29 restitution and fees to the extent that they have been
30 collected.

1 (11) A decision of the Commonwealth Court on behalf of
2 the claimant shall result in the automatic expungement of the
3 criminal history record of the claimant as it relates to the
4 crimes that form the basis of this claim. As part of its
5 decision, the court shall specifically direct the
6 Pennsylvania State Police and the prosecuting district
7 attorney of the original crimes that form the basis of this
8 claim to expunge the record consistent with this paragraph.
9 Accordingly, the court shall forward a copy of its decision
10 to the Pennsylvania State Police and to the prosecuting
11 district attorney.

12 (12) The damage award is not subject to any Commonwealth
13 taxes.

14 § 8586. Report and order.

15 The Commonwealth Court shall issue a ruling and order and
16 provide the State Treasurer a statement of the total
17 compensation due and owing to the claimant from the
18 Commonwealth.

19 § 8587. Notice.

20 (a) Court.--A court granting judicial relief as described in
21 section 8582(a) (relating to statement of claim and basis of
22 award) shall provide a copy of this subchapter to the individual
23 seeking such relief at the time the court determines that the
24 claimant's claim is likely to succeed. The individual shall be
25 required to acknowledge his receipt of a copy of this subchapter
26 in writing on a form established by the Supreme Court. The
27 acknowledgment shall be entered on the docket by the court and
28 shall be admissible in any proceeding filed by a claimant under
29 this subchapter.

30 (b) Board of Pardons.--Upon the issuance of a full pardon on

1 or after the effective date of this subchapter, the Board of
2 Pardons shall provide a copy of this subchapter to an individual
3 when pardoned as described in section 8582(a). The individual
4 shall be required to acknowledge his receipt of a copy of this
5 subchapter in writing on a form established by the board, which
6 shall be retained on file by the board as part of its official
7 records and shall be admissible in any proceeding filed by a
8 claimant under this subchapter.

9 (c) Failure to provide notice.--In the event a claimant
10 granted judicial relief or a full pardon on or after the
11 effective date of this subchapter shows he did not properly
12 receive a copy of the information required by this section, the
13 claimant shall receive a one-year extension on the two-year time
14 limit provided in section 8588 (relating to statute of
15 limitations).

16 (d) Notice by Supreme Court.--The Supreme Court shall make
17 reasonable attempts to notify all persons who were granted
18 judicial relief as described in section 8582(a), prior to the
19 enactment of this subchapter, of their rights under this
20 subchapter.

21 § 8588. Statute of limitations.

22 An action for compensation brought by a wrongfully convicted
23 person under this subchapter shall be commenced within two years
24 after either the grant of a pardon or the grant of judicial
25 relief and satisfaction of other conditions described in section
26 8582 (relating to statement of claim and basis of award). Any
27 action by the Commonwealth challenging or appealing the grant of
28 judicial relief tolls the two-year period. Persons convicted,
29 incarcerated and released from custody prior to the effective
30 date of this subchapter shall commence an action under this

1 subchapter within five years of the effective date.

2 Section 6. Title 44 is amended by adding a chapter to read:

3 CHAPTER 83

4 INVESTIGATION

5 Subchapter

6 A. Recording of Interrogations

7 B. Eyewitness Identifications

8 SUBCHAPTER A

9 RECORDING OF INTERROGATIONS

10 Sec.

11 8301. Definitions.

12 8302. Recording requirement.

13 8303. Applicability.

14 8304. Wiretap exception to recording.

15 8305. Sanctions.

16 8306. Handling and preservation of electronic recordings.

17 § 8301. Definitions.

18 The following words and phrases when used in this subchapter
19 shall have the meanings given to them in this section unless the
20 context clearly indicates otherwise:

21 "Custodial interrogation." An interview in which a question,
22 statement or other conduct is reasonably likely to elicit an
23 incriminating response and occurs while the individual
24 interviewed is in custody.

25 "Custody." A state of affairs in which the individual who is
26 interviewed by a law enforcement officer is physically deprived
27 of his freedom in any significant way or is placed in a
28 situation in which he reasonably believes his freedom of action
29 or movement is restricted.

30 "Electronic recording." An audiovisual or audio recording of

1 a statement.

2 "Interview." A conversation between a law enforcement
3 officer and another individual that takes place in the course of
4 a criminal investigation.

5 "Law enforcement agency." A government entity whose
6 responsibilities include enforcement of criminal laws or the
7 investigation of suspected criminal activity.

8 "Law enforcement officer." An officer or other employee of a
9 law enforcement agency whose personal responsibilities include
10 enforcement of criminal laws or the investigation of suspected
11 criminal activity.

12 "Statement." An oral, written, sign language or nonverbal
13 communication that takes place during a custodial interrogation.

14 § 8302. Recording requirement.

15 An electronic recording must be made of any custodial
16 interrogation relating to the investigation of the following
17 offenses:

18 (1) An offense under 18 Pa.C.S. Ch. 25 (relating to
19 criminal homicide).

20 (2) An offense classified as a felony under 18 Pa.C.S.
21 Ch. 31 (relating to sexual offenses).

22 (3) An offense under 18 Pa.C.S. Ch. 37 (relating to
23 robbery).

24 (4) An offense classified as a felony under 18 Pa.C.S. §
25 3301 (relating to arson and related offenses).

26 (5) An attempt under 18 Pa.C.S. § 901 (relating to
27 criminal attempt) or conspiracy under 18 Pa.C.S. § 903
28 (relating to criminal conspiracy) to commit an offense
29 referred to in paragraph (1), (2), (3) or (4).

30 § 8303. Applicability.

1 (a) Exceptions.--Section 8302 (relating to recording
2 requirement) does not apply if the court finds all of the
3 following:

4 (1) That the statement is admissible as evidence.

5 (2) That the statement is proven by a preponderance of
6 the evidence to have been made voluntarily and to be
7 reliable.

8 (3) That a law enforcement officer made a
9 contemporaneous record of the reason for not making an
10 electronic recording of the statement, or it was proven by a
11 preponderance of the evidence that it was not feasible to
12 make such a record. The reason provided must be consistent
13 with paragraph (4).

14 (4) That it is proven by a preponderance of the evidence
15 that one or more of the following circumstances existed at
16 the time of the custodial interrogation:

17 (i) The statement was made spontaneously and was not
18 made in response to a question.

19 (ii) The statement was made spontaneously in the
20 course of the routine intake processing of the
21 individual.

22 (iii) The law enforcement officer in good faith
23 failed to make an electronic recording of the custodial
24 interrogation because the officer inadvertently failed to
25 operate the recording equipment properly, or without the
26 officer's knowledge, the recording equipment
27 malfunctioned or stopped operating.

28 (iv) The custodial interrogation took place in
29 another jurisdiction and was conducted by an official of
30 that jurisdiction in compliance with the law of that

1 jurisdiction.

2 (v) The law enforcement officers conducting or
3 contemporaneously observing the custodial interrogation
4 reasonably believed that the making of an electronic
5 recording would jeopardize the safety of the individual,
6 a law enforcement officer, a confidential informant or
7 another individual.

8 (vi) The law enforcement officers conducting or
9 contemporaneously observing the custodial interrogation
10 reasonably believed that the crime for which the
11 individual was subjected to custodial interrogation was
12 not among those listed in section 8302.

13 (vii) Exigent circumstances existed which prevented
14 or made infeasible the making of an electronic recording
15 of the custodial interrogation.

16 (viii) Before the custodial interrogation, the
17 individual to be interrogated indicated that he would
18 participate only if the custodial interrogation were not
19 electronically recorded and, if feasible, the agreement
20 to participate without recording were electronically
21 recorded.

22 (b) Exclusions.--Section 8302 does not apply to a statement
23 if any of the following apply:

24 (1) The statement is offered as evidence solely to
25 impeach or rebut the testimony of the individual interrogated
26 and not as substantive evidence.

27 (2) The custodial interrogation takes place before a
28 grand jury or court of record.

29 § 8304. Wiretap exception to recording.

30 Notwithstanding 18 Pa.C.S. Ch. 57 (relating to wiretapping

1 and electronic surveillance), a law enforcement officer engaged
2 in custodial interrogation under section 8302 (relating to
3 recording requirement) may record that custodial interrogation
4 without consent or knowledge of that individual being held or
5 interrogated. A law enforcement officer may nevertheless obtain
6 an individual's consent to recording or inform that individual
7 that the custodial interrogation will be recorded.

8 § 8305. Sanctions.

9 Except as provided in section 8303 (relating to
10 applicability), if the statement is obtained in violation of the
11 terms of this subchapter and is otherwise admissible, the trial
12 court shall instruct the jury that a State statute required the
13 recording of the statement to ensure a more reliable
14 determination at trial as to the circumstances and substance of
15 any statement made by the defendant, that the police failed to
16 abide by the terms of the statute and therefore no recording is
17 available for the jury and that the jury may take into account
18 the failure to record the statement in determining what weight
19 to give the statement.

20 § 8306. Handling and preservation of electronic recordings.

21 (a) Handling.--The law enforcement agency shall clearly
22 identify and catalog all electronic recordings.

23 (b) Preservation.--

24 (1) If a juvenile or criminal proceeding is brought
25 against a person interrogated in an electronically recorded
26 custodial interrogation, law enforcement personnel shall
27 preserve the electronic recording until all appeals,
28 postconviction and habeas corpus proceedings by the
29 individual interrogated are concluded or the time within
30 which such proceedings must be brought has expired.

1 (2) If a juvenile or criminal proceeding is not brought
2 against an individual interrogated in an electronically
3 recorded custodial interrogation, law enforcement personnel
4 shall preserve the electronic recording until all applicable
5 Federal and State statutes of limitations bar prosecution of
6 the individual.

7 SUBCHAPTER B

8 EYEWITNESS IDENTIFICATIONS

9 Sec.

10 8311. Short title of subchapter.

11 8312. Legislative purpose.

12 8313. Definitions.

13 8314. Eyewitness identification procedures.

14 8315. Trial practice.

15 8316. Dissemination of identification procedures.

16 § 8311. Short title of subchapter.

17 This subchapter shall be known and may be cited as the
18 Eyewitness Identification Improvement Act.

19 § 8312. Legislative purpose.

20 The purpose of this subchapter is to help solve crime,
21 convict the guilty and protect the innocent in criminal
22 proceedings by improving procedures for eyewitness
23 identification of suspected perpetrators while ensuring that
24 police can promptly, safely and effectively investigate crimes.

25 § 8313. Definitions.

26 The following words and phrases when used in this subchapter
27 shall have the meanings given to them in this section unless the
28 context clearly indicates otherwise:

29 "Administrator." The individual who conducts a live or photo
30 lineup.

1 "Blind lineup." A lineup where either of the following
2 occurs:

3 (1) In the case of a live or photo lineup, the
4 administrator does not know the identity of the suspect.

5 (2) In the case of a photo lineup in which the
6 administrator knows the identity of the suspect, the
7 administrator does not know which photograph the eyewitness
8 is viewing at any given time.

9 "Eyewitness." An individual who observes another individual
10 at or near the scene of a criminal offense.

11 "Filler." An individual who is not suspected of an offense
12 and is included in an identification procedure.

13 "Identification procedure." An investigative procedure in
14 which a law enforcement official requests an eyewitness to
15 attempt to identify an individual who perpetrated a criminal
16 offense. The term includes a live lineup, a photo lineup or a
17 show-up.

18 "Law enforcement agency." A governmental entity whose
19 responsibilities include enforcement of criminal laws or the
20 investigation of suspected criminal activity.

21 "Law enforcement officer." An officer or other employee of a
22 law enforcement agency whose personal responsibilities include
23 enforcement of criminal laws or the investigation of suspected
24 criminal activity.

25 "Live lineup." An identification procedure in which several
26 individuals, including the suspect and fillers, are displayed to
27 an eyewitness for the purpose of determining whether the
28 eyewitness identifies the suspect as the perpetrator.

29 "Photo lineup." An identification procedure in which an
30 array of photographs, comprising a photograph of the suspect and

1 photographs of fillers, is displayed to an eyewitness either in
2 hard copy form or via computer for the purpose of determining
3 whether the eyewitness identifies the suspect as the
4 perpetrator.

5 "Show-up." An identification procedure in which an
6 eyewitness is presented with a suspect for the purpose of
7 determining whether the eyewitness identifies the individual as
8 the perpetrator.

9 "Suspect." The individual believed by law enforcement
10 investigators to be the possible perpetrator of the crime.
11 § 8314. Eyewitness identification procedures.

12 (a) General rule.--An eyewitness identification procedure
13 conducted by a law enforcement agency must comply with this
14 section.

15 (b) Description of the perpetrator.--Except as provided in
16 subsection (h) (1), the eyewitness's description of the
17 perpetrator and the circumstances under which the eyewitness
18 observed the perpetrator, in the eyewitness's own words, shall
19 be obtained and documented immediately prior to a live or photo
20 lineup, unless such a description was recorded or otherwise
21 documented by law enforcement personnel before the commencement
22 of the identification procedure.

23 (c) Blind lineup administration.--Subject to the exceptions
24 in this subsection, a blind lineup shall be conducted. If the
25 lineup is not blind, the administrator shall state in writing
26 the reason that a blind lineup was not used. A blind lineup need
27 not be conducted if any of the following apply:

28 (1) A blind lineup is not practicable under the
29 circumstances. The administrator shall state in writing the
30 reasons that a blind lineup is not practicable.

1 (2) The law enforcement agency employs a single lineup
2 administrator who conducts all of its lineups, counsel for
3 the suspect is present at the lineup and the identification
4 procedure complies with subsections (d), (e), (f), (g), (i)
5 and (j).

6 (3) The law enforcement agency audiovisually records the
7 identification process and that identification procedure
8 complies with subsections (d), (e), (f), (g), (i) and (j).

9 (d) Prel lineup instructions.--Prior to a live or photo
10 lineup, the administrator shall apprise the eyewitness of all of
11 the following:

12 (1) That the perpetrator may or may not be among the
13 individuals presented in the identification procedure.

14 (2) That the eyewitness should not feel compelled to
15 make an identification.

16 (3) That the investigation will continue whether or not
17 an identification is made.

18 (4) That if an identification is made, the administrator
19 will ask the eyewitness to state, in his own words, how
20 certain he is of the identification.

21 (e) Contact among eyewitnesses.--If more than one eyewitness
22 views a live or photo lineup in a session, the administrator
23 shall not permit the eyewitnesses to communicate with each other
24 until all identification procedures in the session have been
25 completed. Reasonable efforts shall be made so that an
26 eyewitness does not see or hear the identification or
27 nonidentification made by any other witness.

28 (f) Lineup composition.--The administrator shall conduct the
29 lineup such that:

30 (1) Only one suspect is included in a live or photo

1 lineup.

2 (2) In a live lineup, the following apply:

3 (i) All lineup participants are out of view of the
4 eyewitness prior to the identification procedure.

5 (ii) At least five fillers are used.

6 (iii) Any identifying actions, such as speech,
7 gestures or movements, are performed by all lineup
8 participants.

9 (3) In a photo lineup, the following apply:

10 (i) The photograph of the suspect is placed in a
11 different position in the lineup for each eyewitness.

12 (ii) At least five fillers are used.

13 (g) Comment after lineup.--An administrator or law
14 enforcement officer may not comment or otherwise indicate
15 whether an identification has identified a suspect.

16 (h) Show-ups.--The following apply to show-ups:

17 (1) When practicable and when safe for the witness and
18 law enforcement officers, the person conducting the show-up
19 shall obtain the eyewitness's description of the perpetrator
20 and shall record or otherwise document the description before
21 commencing the show-up. If compliance with this paragraph is
22 not practicable or safe, the person conducting the show-up
23 shall state in writing the reasons for the failure to comply.

24 (2) When practicable and when safe for the witness and
25 the law enforcement officers, the person conducting the show-
26 up shall apprise the eyewitness of all of the following
27 before commencing the show-up:

28 (i) That the perpetrator may or may not be the
29 individual presented to the eyewitness.

30 (ii) That the eyewitness should not feel compelled

1 to make an identification.

2 (iii) That the investigation will continue whether
3 or not an identification is made.

4 (iv) That if an identification is made, the
5 administrator will ask the eyewitness to state, in his
6 own words, how certain he is of the identification.

7 (3) When performing a show-up, law enforcement personnel
8 shall take reasonable measures to preclude the eyewitness
9 from drawing inferences prejudicial to the suspect, including
10 the following:

11 (i) Refraining from suggesting through statements or
12 nonverbal conduct that the suspect is or may be the
13 perpetrator of the crime.

14 (ii) When practicable and when safe for the witness
15 and the law enforcement officers, removing handcuffs from
16 the suspect and having the show-up take place at some
17 distance from a squad car.

18 (4) If there are multiple eyewitnesses to a criminal
19 offense under investigation, police shall make reasonable
20 efforts to prevent an eyewitness from seeing or hearing the
21 identification or nonidentification made by any other
22 witness.

23 (5) If an eyewitness is requested to make an
24 identification of more than one suspect at a show-up, the
25 suspects shall be separated and the person conducting the
26 show-up shall perform a separate show-up for each suspect
27 when practicable and when safe for the witness and the law
28 enforcement officers.

29 (i) Confidence statement.--If an eyewitness identifies an
30 individual as the perpetrator at an identification procedure,

1 the administrator shall immediately request a statement from the
2 eyewitness, in the eyewitness's own words, as to the
3 eyewitness's confidence level that the individual he identified
4 is the perpetrator. The eyewitness must not be permitted to see
5 or hear any information concerning the identified individual
6 until after the administrator obtains the eyewitness's
7 confidence statement.

8 (j) Record.--The administrator shall make a record of the
9 identification procedure. The record must include all
10 identification and nonidentification results obtained during the
11 identification procedure as well as any confidence statement.

12 § 8315. Trial practice.

13 (a) Suppression.--The trial court may consider evidence of
14 failure to comply with this subchapter in adjudicating a motion
15 to suppress an eyewitness identification.

16 (b) Misidentification.--Evidence of failure to comply with
17 this subchapter may be admitted at trial in support of a claim
18 of eyewitness misidentification.

19 (c) Jury instruction.--

20 (1) If sufficient evidence of failure to comply with
21 this subchapter is presented at trial, the trial court shall
22 instruct the jury that it may consider the evidence of
23 noncompliance as a reason to view the identification evidence
24 with caution.

25 (2) At the request of either party, the trial court may
26 instruct the jury as to the requirements of this subchapter
27 and how compliance or failure to comply with those
28 requirements may affect the reliability of the
29 identification.

30 § 8316. Dissemination of identification procedures.

1 (a) Training.--The Pennsylvania State Police and the
2 Municipal Police Officers' Education and Training Commission
3 shall develop and conduct a training program for law enforcement
4 officers and recruits regarding the method of conducting
5 identification procedures under this subchapter and the
6 scientific findings supporting the methods prescribed by this
7 subchapter.

8 (b) Adoption of procedures.--Each law enforcement agency
9 shall adopt a written protocol for eyewitness identification
10 procedures consistent with this subchapter.

11 Section 7. This act shall take effect as follows:

12 (1) This section shall take effect immediately.

13 (2) The addition of 42 Pa.C.S. § 5919.1 shall take
14 effect in 60 days.

15 (3) The following provisions shall take effect in 180
16 days:

17 (i) The amendment of 18 Pa.C.S. § 9122(a).

18 (ii) The amendment of 42 Pa.C.S. §§ 8521(a) and
19 8522(b).

20 (iii) The addition of 42 Pa.C.S. Ch. 85 Subch. D.

21 (4) The addition 44 Pa.C.S. Ch. 83 Subch. A shall take
22 effect in one year.

23 (5) The remainder of this act shall take effect in 120
24 days.