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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 715 Session of  
2023

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INTRODUCED BY HUGHES, FONTANA, KEARNEY, CAPPELLETTI, SCHWANK,  
KANE, COSTA AND STREET, JUNE 2, 2023

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REFERRED TO LAW AND JUSTICE, JUNE 2, 2023

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AN ACT

1 Amending Title 44 (Law and Justice) of the Pennsylvania  
2 Consolidated Statutes, providing for investigations.

3 The General Assembly of the Commonwealth of Pennsylvania  
4 hereby enacts as follows:

5 Section 1. Title 44 of the Pennsylvania Consolidated  
6 Statutes is amended by adding a chapter to read:

7 CHAPTER 83

8 INVESTIGATIONS

9 Subchapter

10 A. Eyewitness Identifications

11 B. (Reserved)

12 SUBCHAPTER A

13 EYEWITNESS IDENTIFICATIONS

14 Sec.

15 8301. Scope of subchapter.

16 8302. Legislative purpose.

17 8303. Definitions.

18 8304. Eyewitness identification procedures.

1 8305. Jury instructions.

2 8306. Education and training program.

3 § 8301. Scope of subchapter.

4 This subchapter relates to eyewitness identification  
5 improvement.

6 § 8302. Legislative purpose.

7 The purpose of this subchapter is to help solve crime,  
8 convict the guilty and protect the innocent in criminal  
9 proceedings by improving procedures for eyewitness  
10 identification of suspected perpetrators while ensuring that  
11 police can promptly, safely and effectively investigate crimes.

12 § 8303. Definitions.

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

16 "Administrator." The individual who conducts a live lineup  
17 or photo lineup.

18 "Blind lineup." A lineup where either of the following  
19 occurs:

20 (1) For a live lineup or photo lineup, the administrator  
21 does not know the identity of the suspect.

22 (2) For a photo lineup in which the administrator knows  
23 the identity of the suspect, the administrator does not know  
24 which photograph the eyewitness is viewing at a given time.

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

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

29 "Identification procedure." An investigative procedure in  
30 which a law enforcement official requests an eyewitness to

1 attempt to identify an individual who perpetrated a criminal  
2 offense. The term includes a live lineup, a photo lineup or a  
3 show-up.

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

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

11 "Live lineup." An identification procedure in which several  
12 individuals, including the suspect and fillers, are displayed to  
13 an eyewitness for the purpose of determining whether the  
14 eyewitness identifies the suspect as the perpetrator.

15 "Photo lineup." An identification procedure in which an  
16 array of photographs, comprising a photograph of the suspect and  
17 photographs of fillers, is displayed to an eyewitness either in  
18 hard copy form or via computer for the purpose of determining  
19 whether the eyewitness identifies the suspect as the  
20 perpetrator.

21 "Show-up." An identification procedure in which an  
22 eyewitness is presented with a suspect for the purpose of  
23 determining whether the eyewitness identifies the individual as  
24 the perpetrator.

25 "Suspect." The individual believed by law enforcement  
26 investigators to be the possible perpetrator of the crime.

27 § 8304. Eyewitness identification procedures.

28 (a) General rule.--An eyewitness identification procedure  
29 conducted by a law enforcement agency must comply with this  
30 section.

1 (b) Description of the perpetrator.--Except as provided  
2 under subsection (h) (1), the eyewitness's description of the  
3 perpetrator and the circumstances under which the eyewitness  
4 observed the perpetrator, in the eyewitness's own words, shall  
5 be obtained and documented immediately prior to a live lineup or  
6 photo lineup, unless a description was recorded or otherwise  
7 documented by law enforcement personnel before the commencement  
8 of the identification procedure. An eyewitness description shall  
9 be preserved and provided as part of discovery.

10 (c) Blind lineup administration.--Subject to the exceptions  
11 in this subsection, a blind lineup shall be conducted. If the  
12 lineup is not blind, the administrator shall state in writing  
13 the reason that a blind lineup was not used. A blind lineup  
14 shall not be required to be conducted if any of the following  
15 apply:

16 (1) A blind lineup is not practicable under the  
17 circumstances. The administrator shall state in writing the  
18 reasons that a blind lineup is not practicable.

19 (2) The law enforcement agency employs a single lineup  
20 administrator who conducts each of its lineups, counsel for  
21 the suspect is present at the lineup and the identification  
22 procedure complies with subsections (d), (e), (f), (g), (i)  
23 and (j).

24 (3) The law enforcement agency audiovisually records the  
25 identification process and the identification procedure  
26 complies with subsections (d), (e), (f), (g), (i) and (j).

27 (d) Preliminary instructions.--Prior to a live lineup or photo  
28 lineup, the administrator shall apprise the eyewitness of all of  
29 the following:

30 (1) That the perpetrator may or may not be among the

1 individuals presented in the identification procedure and  
2 that the eyewitness shall not assume that the administrator  
3 knows who the perpetrator is.

4 (2) That an individual's appearance can change based on  
5 facial hair, weight or hair color.

6 (3) That it is just as important to eliminate innocent  
7 individuals as it is to identify potential suspects.

8 (4) That the eyewitness should not feel compelled to  
9 make an identification.

10 (5) That the investigation will continue whether or not  
11 an identification is made.

12 (6) That if an identification is made, the administrator  
13 will ask the eyewitness to state, in the eyewitness's own  
14 words, how confident the eyewitness is of the identification.

15 (e) Contact among eyewitnesses.--If more than one eyewitness  
16 views a live lineup or photo lineup in a session, the  
17 administrator may not permit the eyewitnesses to communicate  
18 with each other until all identification procedures in the  
19 session have been completed. Reasonable efforts shall be made so  
20 that an eyewitness does not see or hear the identification or  
21 nonidentification made by any other eyewitness.

22 (f) Lineup composition.--The administrator shall conduct the  
23 lineup in a manner that:

24 (1) Only one suspect is included in a live lineup or  
25 photo lineup.

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

27 (i) Each lineup participant is out of view of the  
28 eyewitness prior to the identification procedure.

29 (ii) At least five fillers are used.

30 (iii) If a lineup participant is requested to speak,

1 move, gesture or change clothing, all lineup participants  
2 shall be asked to do the same.

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

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

6 (ii) At least five fillers are used.

7 (iii) The photo lineup shall be preserved in the  
8 original form the photo lineup was shown to each  
9 eyewitness.

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

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

14 (1) If practicable and safe for the eyewitness and law  
15 enforcement officers, the individual conducting the show-up  
16 shall obtain the eyewitness's description of the perpetrator  
17 and shall record or otherwise document the description before  
18 commencing the show-up, which shall be preserved and provided  
19 as part of discovery. If compliance with this paragraph is  
20 not practicable or safe, the individual conducting the show-  
21 up shall state in writing the reasons for the failure to  
22 comply, which shall be provided as part of discovery.

23 (2) If practicable and safe for the eyewitness and the  
24 law enforcement officers, the individual conducting the show-  
25 up shall apprise the eyewitness of each of the following  
26 before commencing the show-up:

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

29 (ii) That the eyewitness should not feel compelled  
30 to make an identification.

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

3           (iv) That if an identification is made, the  
4 administrator will ask the eyewitness to state, in the  
5 eyewitness's own words, how certain the eyewitness is of  
6 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) If practicable and safe for the eyewitness and  
15 the law enforcement officers, removing handcuffs from the  
16 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 eyewitness.

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 individual conducting the  
26 show-up shall perform a separate show-up for each suspect  
27 when practicable and safe for the eyewitness 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 identified is  
4 the perpetrator. The eyewitness must not be permitted to see or  
5 hear any information concerning the identified individual until  
6 after the administrator obtains the eyewitness's confidence  
7 statement.

8 (j) Record.--The administrator shall make an audiovisual or  
9 audio recording of the identification procedure. In addition to  
10 the recording, the administrator shall document and include each  
11 identification and any nonidentification result obtained during  
12 the identification procedure as well as any confidence  
13 statement, which shall be preserved and provided as part of  
14 discovery.

15 § 8305. Jury instructions.

16 (a) Requirements of subchapter.--At the request of either  
17 party, the trial court may instruct the jury as to the  
18 requirements of this subchapter and how compliance or failure to  
19 comply with the requirements may affect the reliability of the  
20 identification.

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

26 § 8306. Education and training program.

27 (a) Establishment.--The Pennsylvania State Police and the  
28 Municipal Police Officers' Education and Training Commission, in  
29 conjunction with the Pennsylvania District Attorneys  
30 Association, the Pennsylvania Innocence Project, the

1 Pennsylvania Association of Criminal Defense Lawyers, the Public  
2 Defender Association of Pennsylvania and the Juvenile Defenders  
3 Association of Pennsylvania, shall establish a comprehensive  
4 education and training program on eyewitness identification,  
5 including, but not limited to, the procedures under section 8304  
6 (relating to eyewitness identification procedures). As  
7 scientific findings regarding variables that affect a witness's  
8 vision and memory, practices for minimizing contamination and  
9 effective eyewitness identification protocols change and  
10 advance, the education and training shall be updated  
11 accordingly.

12 (b) Administration.--The Pennsylvania State Police and the  
13 Municipal Police Officers' Education and Training Commission  
14 shall administer to law enforcement officers and recruits the  
15 education and training program established under subsection (a).

16 (c) Requirement.--Each law enforcement agency shall require  
17 each law enforcement officer who is employed by the law  
18 enforcement agency and who performs eyewitness identification  
19 procedures to complete the education and training program  
20 established under subsection (a).

21 SUBCHAPTER B

22 (Reserved)

23 Section 2. This act shall take effect in 60 days.