

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 82

(Senator Hunter, *original sponsor*)

[Passed March 10, 2007; in effect from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §62-1E-1, §62-1E-2 and §62-1E-3, all relating to creating the Eyewitness Identification Act; and establishing definitions, eyewitness identification procedures, a study task force and related training.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §62-1E-1, §62-1E-2 and §62-1E-3, all to read as follows:

ARTICLE 1E. EYEWITNESS IDENTIFICATION ACT.

§62-1E-1. Definitions.

For the purposes of this article:

- (1) "Eyewitness" means a person whose identification of another person may be relevant in a criminal proceeding.
- (2) "Lineup" means a live or photographic array of persons of similar appearance.
- (3) "Lineup administrator" means the person who conducts a lineup.
- (4) "Live lineup" means a procedure in which a group of people is displayed to an eye witness for the purpose of determining if the eyewitness is able to identify the perpetrator of a crime.
- (5) "Photo lineup" means a procedure in which an array of photographs is displayed to an eyewitness for the purpose of determining if the eyewitness is able to identify the perpetrator of a crime.

§62-1E-2. Eyewitness identification procedures.

(a) Before a lineup, the eyewitness should be given the following three instructions:

- (1) That the perpetrator might or might not be present in the lineup;
- (2) That the eyewitness is not required to make an identification; and
- (3) That it is as important to exclude innocent persons as it is to identify the perpetrator.

(b) Law-enforcement officers should make a written record of a lineup, including the following information:

- (1) The date, time and location of the lineup.
- (2) The names of every person in the lineup, if known, and all other persons present at the lineup.
- (3) The words used by the eyewitness in any identification, including words that describe the

eyewitness' certainty or uncertainty in the identification at the time the identification is made.

- (4) Whether it was a photo lineup or live lineup.
- (5) The number of photos or individuals that were presented in the lineup.
- (6) Whether the lineup administrator knew which person in the lineup was the suspect.
- (7) Whether, before the lineup, the eyewitness was instructed that the perpetrator might or might not be presented in the lineup.
- (8) Whether the lineup was simultaneous or sequential.
- (9) The signature, or initials, of the eyewitness, or notation if the eyewitness declines or is unable to sign.
- (10) A video of the lineup and the eyewitness' response may be included.

(c) There is hereby created a task force to study and identify best practices for eyewitness identification. The task force consists of the following members:

- (1) The Director of Criminal Justice Services, or his or her designee, who shall chair, without voting, the task force;
- (2) The Superintendent of the State Police, or his or her designee;
- (3) A victim advocate to be designated by the Director of Criminal Justice Services;
- (4) The Director of Public Defender Services, or his or her designee;
- (5) The Executive Director of the West Virginia Prosecuting Attorneys Institute, or his or her designee;
- (6) A circuit judge designated by the Chief Justice of the West Virginia Supreme Court of Appeals;
- (7) Two professionals in the field of forensic sciences, one to be designated by the Executive Director of the West Virginia Prosecuting Attorneys Institute and the other to be designated by the Director of Public Defender Services;
- (8) The President of the West Virginia Fraternal Order of Police, or his or her designee;
- (9) A representative of the Innocence Project of the West Virginia University College of Law;
- (10) Two licensed practitioners of criminal law, one to be designated by the Executive Director of the West Virginia Prosecuting Attorneys Institute and the other to be designated by the Director of Public Defender Services;
- (11) The President of the West Virginia Sheriff's Association, or his or her designee.

(d) The task force, or their assigned designees, shall serve without compensation, and in consultation with eyewitness identification practitioners and experts, shall develop recommended guidelines for policies, procedures and training with respect to the collection and handling of eyewitness evidence in criminal investigations by law-enforcement agencies that are consistent with the reliable evidence supporting best practices. The purpose of the guidelines is to provide law-enforcement agencies with information regarding eyewitness identification policies and procedures to increase the accuracy of the crime investigation process.

(e) Such guidelines shall include procedures for the administration of live and photographic lineups and instructions that will increase the accuracy of eyewitness identifications. The task force, in developing these guidelines, shall consider:

- (1) The use of blind administration of live and photo lineups;
- (2) The issuance of specific instructions to the eyewitness before and during the identification procedure;
- (3) The number and selection of fillers to be used in live and photo lineups;
- (4) Sequential versus simultaneous presentation of lineup members;
- (5) Whether only one suspect should be included in any live or photo lineup;

- (6) The timing of when the administrator should request and record the eyewitness's statement of his confidence in his selection;
 - (7) Whether to refrain from providing of any confirmatory information to the eyewitness;
 - (8) The visual recording of the lineup and its administration;
 - (9) The video or audio recording of the lineup procedure;
 - (10) Any other policies or procedures the task force determines to be relevant; and
 - (11) What training, if any, should be made available to law- enforcement personnel in the use of these procedures.
- (f) Not later than the fifteenth day of December, two thousand eight, the task force shall submit a report on the guidelines developed and recommendations concerning their use to the standing committees of the Legislature having cognizance of matters relating to criminal law and procedure. Minority reports may also be issued. The task force shall terminate on the fifteenth day of December, two thousand nine, unless earlier terminated by legislative action.

§62-1E-3. Training of law-enforcement officers.

The Superintendent of State Police may create educational materials and conduct training programs to instruct law-enforcement officers and recruits how to conduct lineups in compliance with this section.