

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

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HOUSE BILL 566  
PROPOSED COMMITTEE SUBSTITUTE H566-PCS20340-ST-36

Short Title: Amend Eyewitness ID/Show-Up.

(Public)

Sponsors:

Referred to:

April 6, 2015

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE EYEWITNESS IDENTIFICATION REFORM ACT TO  
3 CLARIFY THAT THE PROVISIONS OF THE ACT APPLY TO LAW ENFORCEMENT  
4 OFFICERS WHO ARE EYEWITNESSES, TO CLARIFY THAT A PHOTO LINEUP IS  
5 DIFFERENT FROM A SHOW-UP, AND TO ESTABLISH A PROCEDURE FOR  
6 CONDUCTING A SHOW-UP.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** G.S. 15A-284.52 reads as rewritten:

9 **"§ 15A-284.52. Eyewitness identification reform.**

10 (a) Definitions. – The following definitions apply in this Article:

- 11 (1) Eyewitness. – ~~A person~~person, including a law enforcement officer, whose  
12 identification by sight of another person may be relevant in a criminal  
13 proceeding.
- 14 (2) Filler. – A person or a photograph of a person who is not suspected of an  
15 offense and is included in a lineup.
- 16 (3) Independent administrator. – A lineup administrator who is not participating  
17 in the investigation of the criminal offense and is unaware of which person  
18 in the lineup is the suspect.
- 19 (4) Lineup. – A photo lineup or live lineup.
- 20 (5) Lineup administrator. – The person who conducts a lineup.
- 21 (6) Live lineup. – A procedure in which a group of people is displayed to an  
22 eyewitness for the purpose of determining if the eyewitness is able to  
23 identify the perpetrator of a crime.
- 24 (7) Photo lineup. – A procedure in which an array of photographs is displayed to  
25 an eyewitness for the purpose of determining if the eyewitness is able to  
26 identify the perpetrator of a crime.
- 27 (8) Show-up. – A procedure in which an eyewitness is presented with a single  
28 live suspect for the purpose of determining whether the eyewitness is able to  
29 identify the perpetrator of a crime.

30 (b) Eyewitness Identification Procedures. – Lineups conducted by State, county, and  
31 other local law enforcement officers shall meet all of the following requirements:

- 32 (1) A lineup shall be conducted by an independent administrator or by an  
33 alternative method as provided by subsection (c) of this section.
- 34 (2) Individuals or photos shall be presented to witnesses sequentially, with each  
35 individual or photo presented to the witness separately, in a previously



- 1 determined order, and removed after it is viewed before the next individual  
2 or photo is presented.
- 3 (3) Before a lineup, the eyewitness shall be instructed that:  
4 a. The perpetrator might or might not be presented in the lineup,  
5 b. The lineup administrator does not know the suspect's identity,  
6 c. The eyewitness should not feel compelled to make an identification,  
7 d. It is as important to exclude innocent persons as it is to identify the  
8 perpetrator, and  
9 e. The investigation will continue whether or not an identification is  
10 made.
- 11 The eyewitness shall acknowledge the receipt of the instructions in writing.  
12 If the eyewitness refuses to sign, the lineup administrator shall note the  
13 refusal of the eyewitness to sign the acknowledgement and shall also sign  
14 the acknowledgement.
- 15 (4) In a photo lineup, the photograph of the suspect shall be contemporary and,  
16 to the extent practicable, shall resemble the suspect's appearance at the time  
17 of the offense.
- 18 (5) The lineup shall be composed so that the fillers generally resemble the  
19 eyewitness's description of the perpetrator, while ensuring that the suspect  
20 does not unduly stand out from the fillers. In addition:  
21 a. All fillers selected shall resemble, as much as practicable, the  
22 eyewitness's description of the perpetrator in significant features,  
23 including any unique or unusual features.  
24 b. At least five fillers shall be included in a photo lineup, in addition to  
25 the suspect.  
26 c. At least five fillers shall be included in a live lineup, in addition to  
27 the suspect.  
28 d. If the eyewitness has previously viewed a photo lineup or live lineup  
29 in connection with the identification of another person suspected of  
30 involvement in the offense, the fillers in the lineup in which the  
31 current suspect participates shall be different from the fillers used in  
32 any prior lineups.
- 33 (6) If there are multiple eyewitnesses, the suspect shall be placed in a different  
34 position in the lineup or photo array for each eyewitness.
- 35 (7) In a lineup, no writings or information concerning any previous arrest,  
36 indictment, or conviction of the suspect shall be visible or made known to  
37 the eyewitness.
- 38 (8) In a live lineup, any identifying actions, such as speech, gestures, or other  
39 movements, shall be performed by all lineup participants.
- 40 (9) In a live lineup, all lineup participants must be out of view of the eyewitness  
41 prior to the lineup.
- 42 (10) Only one suspect shall be included in a lineup.
- 43 (11) Nothing shall be said to the eyewitness regarding the suspect's position in the  
44 lineup or regarding anything that might influence the eyewitness's  
45 identification.
- 46 (12) The lineup administrator shall seek and document a clear statement from the  
47 eyewitness, at the time of the identification and in the eyewitness's own  
48 words, as to the eyewitness's confidence level that the person identified in a  
49 given lineup is the perpetrator. The lineup administrator shall separate all  
50 witnesses in order to discourage witnesses from conferring with one another

1 before or during the procedure. Each witness shall be given instructions  
2 regarding the identification procedures without other witnesses present.

3 (13) If the eyewitness identifies a person as the perpetrator, the eyewitness shall  
4 not be provided any information concerning the person before the lineup  
5 administrator obtains the eyewitness's confidence statement about the  
6 selection. There shall not be anyone present during the live lineup or  
7 photographic identification procedures who knows the suspect's identity,  
8 except the eyewitness and counsel as required by law.

9 (14) Unless it is not practical, a video record of live identification procedures  
10 shall be made. If a video record is not practical, the reasons shall be  
11 documented, and an audio record shall be made. If neither a video nor audio  
12 record are practical, the reasons shall be documented, and the lineup  
13 administrator shall make a written record of the lineup.

14 (15) Whether video, audio, or in writing, the record shall include all of the  
15 following information:

16 a. All identification and nonidentification results obtained during the  
17 identification procedure, signed by the eyewitness, including the  
18 eyewitness's confidence statement. If the eyewitness refuses to sign,  
19 the lineup administrator shall note the refusal of the eyewitness to  
20 sign the results and shall also sign the notation.

21 b. The names of all persons present at the lineup.

22 c. The date, time, and location of the lineup.

23 d. The words used by the eyewitness in any identification, including  
24 words that describe the eyewitness's certainty of identification.

25 e. Whether it was a photo lineup or live lineup and how many photos or  
26 individuals were presented in the lineup.

27 f. The sources of all photographs or persons used.

28 g. In a photo lineup, the photographs themselves.

29 h. In a live lineup, a photo or other visual recording of the lineup that  
30 includes all persons who participated in the lineup.

31 (c) Alternative Methods for Identification if Independent Administrator Is Not Used. –  
32 In lieu of using an independent administrator, a photo lineup eyewitness identification  
33 procedure may be conducted using an alternative method specified and approved by the North  
34 Carolina Criminal Justice Education and Training Standards Commission. Any alternative  
35 method shall be carefully structured to achieve neutral administration and to prevent the  
36 administrator from knowing which photograph is being presented to the eyewitness during the  
37 identification procedure. Alternative methods may include any of the following:

38 (1) Automated computer programs that can automatically administer the photo  
39 lineup directly to an eyewitness and prevent the administrator from seeing  
40 which photo the witness is viewing until after the procedure is completed.

41 (2) A procedure in which photographs are placed in folders, randomly  
42 numbered, and shuffled and then presented to an eyewitness such that the  
43 administrator cannot see or track which photograph is being presented to the  
44 witness until after the procedure is completed.

45 (3) Any other procedures that achieve neutral administration.

46 (c1) Show-Up Procedures. – A show-up conducted by State, county, and other local law  
47 enforcement officers shall meet all of the following requirements:

48 (1) A show-up may only be conducted when a suspect matching the description  
49 of the perpetrator is located in close proximity in time and place to the  
50 crime, or there is reasonable belief that the perpetrator has changed his or his

1 appearance in close time to the crime, and only if there are circumstances  
2 that require the immediate display of a suspect to an eyewitness.

3 (2) A show-up shall only be performed using a live suspect and shall not be  
4 conducted with a photograph.

5 (3) Investigators shall photograph a suspect at the time and place of the show-up  
6 to preserve a record of the appearance of the suspect at the time of the  
7 show-up procedure.

8 (c2) The North Carolina Criminal Justice Education and Training Standards Commission  
9 shall develop a policy regarding standard procedures for the conduct of show-ups in accordance  
10 with this section. The policy shall apply to all law enforcement agencies and shall address all of  
11 the following, in addition to the provisions of this section:

12 (1) Standard instructions for eyewitnesses.

13 (2) Confidence statements by the eyewitness, including information related to  
14 the eyewitness' vision, the circumstances of the events witnessed, and  
15 communications with other eyewitnesses, if any.

16 (3) Training of law enforcement officers specific to conducting show-ups.

17 (4) Any other matters deemed appropriate by the Commission.

18 (d) Remedies. – All of the following shall be available as consequences of compliance  
19 or noncompliance with the requirements of this section:

20 (1) Failure to comply with any of the requirements of this section shall be  
21 considered by the court in adjudicating motions to suppress eyewitness  
22 identification.

23 (2) Failure to comply with any of the requirements of this section shall be  
24 admissible in support of claims of eyewitness misidentification, as long as  
25 such evidence is otherwise admissible.

26 (3) When evidence of compliance or noncompliance with the requirements of  
27 this section has been presented at trial, the jury shall be instructed that it may  
28 consider credible evidence of compliance or noncompliance to determine the  
29 reliability of eyewitness identifications.

30 (e) Nothing in this section shall be construed to require a law enforcement officer while  
31 acting in his or her official capacity to be required to participate in a lineup or show-up as an  
32 eyewitness."

33 **SECTION 2.** G.S. 15A-284.53 reads as rewritten:

34 "**§ 15A-284.53. Training of law enforcement officers.**

35 Pursuant to its authority under G.S. 17C-6 and G.S. 17E-4, the North Carolina Criminal  
36 Justice Education and Training Standards Commission and the North Carolina Sheriffs'  
37 Education and Training Standards Commission, in consultation with the Department of Justice,  
38 shall create educational materials and conduct training programs on how to conduct lineups and  
39 show-ups in compliance with this Article."

40 **SECTION 3.** The standards to be adopted by the North Carolina Criminal Justice  
41 and Training Standards Commissions, as enacted in G.S. 15A-284.52(c2) in Section 1 of this  
42 act, shall be adopted on or before August 1, 2016, and shall be applicable to all law  
43 enforcement on August 1, 2016. The remainder of this act becomes effective December 1,  
44 2015, and applies to eyewitness identifications and show-ups conducted on or after that date.