

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

House Bill 973
Judiciary

(Delegate Rosenberg, *et al.*)

Criminal Procedure - Eyewitness Identification Evidence and Eyewitness
Testimony

This bill establishes the admissibility of expert testimony in a criminal proceeding relating to the reliability of eyewitness identification evidence or eyewitness testimony under specified circumstances.

The bill only applies prospectively to criminal proceedings and extrajudicial identifications that commence or occur on or after the October 1, 2005 effective date.

Fiscal Summary

State Effect: Potential operational impact on District Court due to the possible increase in trial lengths. No effect on revenues.

Local Effect: Potential operational impact on circuit courts due to the possible increase in trial lengths. Potential impact on local law enforcement due to the requirement that records of identification procedures be kept and provided to defense attorneys. The actual effect could vary by jurisdiction. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: None.

Analysis

Bill Summary: On introduction by the State of eyewitness identification evidence or eyewitness testimony in a criminal proceeding, expert testimony relating to the reliability of eyewitness identification is admissible on motion of the defendant.

Eyewitness identification evidence is not admissible in the State's case unless a record of the identification procedure that produced the evidence was preserved, and all material and information related to the identification procedure was provided to the defendant in a timely manner before the proceeding in which the evidence is offered.

The record of an identification procedure must include:

- all identification and nonidentification results obtained during the procedure;
- the date and time of the procedure;
- a statement in the eyewitness' own words regarding the level of certainty of any identification; and
- the signature of the witness.

The record of an identification procedure that includes a photographic lineup must also include:

- the photographs used in the lineup;
- the order in which the photographs were displayed; and
- the sources of the photographs.

The record of an identification procedure that includes a live lineup must also include a photographic or other visual recording of the lineup that includes all participants and the order in which they were displayed to the eyewitness.

An in-court identification of a criminal defendant that was not previously obtained by an extrajudicial identification procedure is generally inadmissible. However, a court may admit an in-court identification, on motion by the State and after hearing, on the finding that the identification is reliable, relevant and has probative value that substantially outweighs the danger of unfair prejudice, confusion of the issues, misleading a jury, undue delay, waste of time, or the needless presentation of cumulative evidence.

Current Law: Expert testimony may be admitted if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue.

Eyewitness identification testimony and in-court identification of a criminal defendant is generally admissible.

State Expenditures: District Court criminal trial lengths could increase due to the addition of expert witness testimony. The actual impact is difficult to quantify because it is uncertain how many cases will actually be affected.

The State Police currently keep some records of identification procedures and provide the information to State's attorneys handling cases. State's attorneys provide defense attorneys an opportunity to view photo arrays, if requested. Lineups are photographed, in some cases, and that information is available to defense attorneys, if requested.

Local Expenditures: Circuit court criminal trial lengths could increase due to the addition of expert witness testimony. The actual impact is difficult to quantify because it is uncertain how many cases will actually be affected.

This bill may impose a mandate on local police agencies by requiring them to keep detailed records of the identification procedures, including taking photographs or other visual recordings of lineups. However, the impact is not readily ascertainable because some police agencies currently photograph lineups.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State's Attorneys' Association, Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of State Police, Department of Legislative Services

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Analysis by: Kineta A. Rotan

Direct Inquiries to:
(410) 946-5510
(301) 970-5510