

# SENATE BILL 986

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CF 2lr3034

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By: **Senator Gladden**

Introduced and read first time: February 16, 2012

Assigned to: Rules

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## A BILL ENTITLED

1 AN ACT concerning

2 **Public Safety – Eyewitness Identification – Procedures**

3 FOR the purpose of requiring, on or before a certain date, each law enforcement  
4 agency in the State to adopt and implement a certain written policy relating to  
5 certain identification procedures and file a copy with the Department of State  
6 Police; requiring the Department, on or before a certain date, to compile certain  
7 written policies; requiring that a certain identification procedure be conducted  
8 by a certain administrator; requiring a certain identification procedure to be  
9 conducted in a certain manner; requiring that a certain record of a certain  
10 identification procedure be made; requiring evidence of a failure to comply with  
11 this Act to be dealt with by a certain court in a certain manner; defining certain  
12 terms; and generally relating to eyewitness identifications.

13 BY adding to

14 Article – Public Safety  
15 Section 3–506(d) and 3–506.1  
16 Annotated Code of Maryland  
17 (2011 Replacement Volume)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
19 MARYLAND, That the Laws of Maryland read as follows:

20 **Article – Public Safety**

21 3–506.

22 **(D) (1) ON OR BEFORE OCTOBER 1, 2012, EACH LAW ENFORCEMENT**  
23 **AGENCY IN THE STATE SHALL:**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1                   **(I) ADOPT AND IMPLEMENT A WRITTEN POLICY RELATING**  
2 **TO IDENTIFICATION PROCEDURES THAT COMPLIES WITH § 3-506.1 OF THIS**  
3 **SUBTITLE; AND**

4                   **(II) FILE A COPY OF THE WRITTEN POLICY WITH THE**  
5 **DEPARTMENT OF STATE POLICE.**

6                   **(2) ON OR BEFORE OCTOBER 1, 2012, THE DEPARTMENT OF**  
7 **STATE POLICE SHALL COMPILE THE WRITTEN POLICIES RELATING TO**  
8 **IDENTIFICATION PROCEDURES OF EACH LAW ENFORCEMENT AGENCY IN THE**  
9 **STATE.**

10 **3-506.1.**

11                   **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE**  
12 **MEANINGS INDICATED.**

13                   **(2) “ADMINISTRATOR” MEANS THE PERSON CONDUCTING AN**  
14 **IDENTIFICATION PROCEDURE.**

15                   **(3) “BLIND” MEANS THE ADMINISTRATOR DOES NOT KNOW THE**  
16 **IDENTITY OF THE SUSPECT.**

17                   **(4) “BLINDED” MEANS THE ADMINISTRATOR MAY KNOW WHO THE**  
18 **SUSPECT IS BUT DOES NOT KNOW WHICH LINEUP MEMBER IS BEING VIEWED BY**  
19 **THE EYEWITNESS.**

20                   **(5) “EYEWITNESS” MEANS A PERSON WHO OBSERVES ANOTHER**  
21 **PERSON AT OR NEAR THE SCENE OF AN OFFENSE.**

22                   **(6) “FILLER” MEANS A PHOTOGRAPH OF A PERSON WHO IS NOT**  
23 **SUSPECTED OF AN OFFENSE AND IS INCLUDED IN AN IDENTIFICATION**  
24 **PROCEDURE.**

25                   **(7) “FOLDER SHUFFLE METHOD” MEANS A SYSTEM FOR**  
26 **CONDUCTING A PHOTO LINEUP THAT:**

27                   **(I) COMPLIES WITH THE REQUIREMENTS OF THIS SECTION;**  
28 **AND**

29                   **(II) IS CONDUCTED BY PLACING PHOTOGRAPHS IN**  
30 **FOLDERS, RANDOMLY NUMBERING THE FOLDERS, SHUFFLING THE FOLDERS,**  
31 **AND THEN PRESENTING THE FOLDERS SEQUENTIALLY SO THAT THE**

1 ADMINISTRATOR CANNOT SEE OR TRACK WHICH PHOTOGRAPH IS BEING  
2 PRESENTED TO THE WITNESS UNTIL AFTER THE PROCEDURE IS COMPLETED.

3 (8) "IDENTIFICATION PROCEDURE" MEANS A PROCEDURE IN  
4 WHICH AN ARRAY OF PHOTOGRAPHS, INCLUDING A PHOTOGRAPH OF A  
5 SUSPECTED PERPETRATOR AND ADDITIONAL PHOTOGRAPHS OF OTHER  
6 PERSONS NOT SUSPECTED OF THE OFFENSE, IS DISPLAYED TO AN EYEWITNESS  
7 IN HARD COPY FORM OR BY COMPUTER FOR THE PURPOSE OF DETERMINING  
8 WHETHER THE EYEWITNESS IDENTIFIES THE SUSPECT AS THE PERPETRATOR.

9 (9) "IDENTIFICATION STATEMENT" MEANS A STATEMENT AS TO  
10 WHETHER THE EYEWITNESS BELIEVES THAT THE PERPETRATOR HAS BEEN  
11 IDENTIFIED DURING THE IDENTIFICATION PROCEDURE:

12 (I) FROM THE EYEWITNESS;

13 (II) IN THE OWN WORDS OF THE EYEWITNESS;

14 (III) GIVEN AT THE TIME OF THE VIEWING BY THE  
15 EYEWITNESS DURING THE IDENTIFICATION PROCEDURE; AND

16 (IV) GIVEN BEFORE THE EYEWITNESS IS GIVEN FEEDBACK.

17 (10) "PERPETRATOR" MEANS A PERSON WHO IS SUSPECTED OF  
18 COMMITTING AN OFFENSE.

19 (B) (1) AN IDENTIFICATION PROCEDURE SHALL BE CONDUCTED BY A  
20 BLIND OR BLINDED ADMINISTRATOR.

21 (2) AN ADMINISTRATOR MAY BE BLINDED THROUGH THE USE OF:

22 (I) AN AUTOMATED COMPUTER PROGRAM THAT PREVENTS  
23 THE ADMINISTRATOR FROM SEEING WHICH PHOTOS THE EYEWITNESS IS  
24 VIEWING UNTIL AFTER THE IDENTIFICATION PROCEDURE IS COMPLETED; OR

25 (II) THE FOLDER SHUFFLE METHOD.

26 (3) BEFORE AN IDENTIFICATION PROCEDURE IS CONDUCTED, AN  
27 EYEWITNESS SHALL BE INSTRUCTED, WITHOUT OTHER EYEWITNESSES  
28 PRESENT, THAT:

29 (I) THE PERPETRATOR MAY OR MAY NOT BE AMONG THE  
30 PERSONS IN THE IDENTIFICATION PROCEDURE;

1                   (II) THE ADMINISTRATOR DOES NOT KNOW WHO THE  
2 PERPETRATOR IS;

3                   (III) THE EYEWITNESS SHOULD NOT FEEL COMPELLED TO  
4 MAKE AN IDENTIFICATION;

5                   (IV) THE INVESTIGATION WILL CONTINUE WHETHER OR NOT  
6 AN IDENTIFICATION IS MADE;

7                   (V) IT IS AS IMPORTANT TO EXCLUDE INNOCENT PERSONS  
8 AS IT IS TO IDENTIFY THE PERPETRATOR; AND

9                   (VI) THE EYEWITNESS IS NOT TO DISCUSS THE  
10 IDENTIFICATION PROCEDURE OR THE RESULTS OF THE PROCEDURE WITH  
11 OTHER EYEWITNESSES INVOLVED IN THE CASE AND SHOULD NOT SPEAK TO THE  
12 MEDIA.

13                   (4) IN AN IDENTIFICATION PROCEDURE, PHOTOS SHALL BE:

14                   (I) PRESENTED TO AN EYEWITNESS:

15                                 1. SEQUENTIALLY;

16                                 2. WITH EACH PHOTO PRESENTED TO THE  
17 EYEWITNESS SEPARATELY; AND

18                                 3. IN A PREVIOUSLY DETERMINED ORDER; AND

19                   (II) REMOVED AFTER A PHOTO IS VIEWED BY THE  
20 EYEWITNESS AND BEFORE THE NEXT PHOTO IS PRESENTED TO THE  
21 EYEWITNESS.

22                   (5) AS THE PHOTOS ARE PRESENTED TO AN EYEWITNESS, THE  
23 ADMINISTRATOR SHALL DOCUMENT IN WRITING ALL IDENTIFICATION  
24 STATEMENTS MADE BY THE EYEWITNESS.

25                   (6) THE EYEWITNESS MAY NOT BE GIVEN EITHER POSITIVE OR  
26 NEGATIVE FEEDBACK AS TO THE ACCURACY OR INACCURACY OF AN  
27 IDENTIFICATION BY THE EYEWITNESS TO THE FULLEST EXTENT PRACTICABLE.

1           **(C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS**  
2 **SUBSECTION, THE ADMINISTRATOR SHALL MAKE A WRITTEN RECORD OF THE**  
3 **IDENTIFICATION PROCEDURE THAT INCLUDES THE FOLLOWING INFORMATION:**

4                   **(I) ALL IDENTIFICATION AND NONIDENTIFICATION**  
5 **RESULTS OBTAINED DURING THE IDENTIFICATION PROCEDURES, INCLUDING**  
6 **THE SIGNED IDENTIFICATION STATEMENT OF THE EYEWITNESS;**

7                   **(II) THE NAMES OF ALL PERSONS PRESENT AT THE**  
8 **IDENTIFICATION PROCEDURE;**

9                   **(III) THE DATE AND TIME OF THE IDENTIFICATION**  
10 **PROCEDURE;**

11                   **(IV) ANY EYEWITNESS IDENTIFICATION OF A FILLER; AND**

12                   **(V) ALL PHOTOGRAPHS USED IN THE IDENTIFICATION**  
13 **PROCEDURE.**

14           **(2) IF A VIDEO OR AUDIO RECORD OF THE IDENTIFICATION**  
15 **PROCEDURE CAPTURES ALL OF THE INFORMATION IN PARAGRAPH (1) OF THIS**  
16 **SUBSECTION, A WRITTEN RECORD IS NOT REQUIRED.**

17           **(D) FOR AN IDENTIFICATION PROCEDURE:**

18                   **(1) EVIDENCE OF A FAILURE TO COMPLY WITH THE PROVISIONS**  
19 **OF THIS SECTION SHALL BE CONSIDERED BY THE COURT THAT ADJUDICATES A**  
20 **MOTION TO SUPPRESS THE IDENTIFICATION BY THE EYEWITNESS;**

21                   **(2) EVIDENCE OF A FAILURE TO COMPLY WITH THE PROVISIONS**  
22 **OF THIS SECTION IS ADMISSIBLE IN SUPPORT OF A CLAIM OF EYEWITNESS**  
23 **MISIDENTIFICATION IF THE EVIDENCE IS OTHERWISE ADMISSIBLE; AND**

24                   **(3) WHEN EVIDENCE OF A FAILURE TO COMPLY WITH THE**  
25 **PROVISIONS OF THIS SECTION IS PRESENTED AT TRIAL, THE JURY SHALL BE**  
26 **INSTRUCTED THAT THE JURY MAY CONSIDER CREDIBLE EVIDENCE OF**  
27 **NONCOMPLIANCE IN DETERMINING THE RELIABILITY OF AN EYEWITNESS**  
28 **IDENTIFICATION.**

29           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
30 July 1, 2012.