

HOUSE BILL 1200

E4

(4lr1487)

ENROLLED BILL

— Judiciary/Judicial Proceedings —

Introduced by **Delegates Pena–Melnyk, Anderson, Barnes, Branch, Braveboy, Carr, Carter, Conaway, Davis, Dumais, Frick, Glenn, Harper, Haynes, Holmes, Nathan–Pulliam, Oaks, Stukes, Summers, Swain, F. Turner, V. Turner, Valderrama, Valentino–Smith, Vaughn, Waldstreicher, A. Washington, and Wilson**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

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 policy relating to certain
5 identification procedures and file a copy with the Department of State Police;
6 requiring the Department, on or before a certain date, to compile certain written
7 policies; requiring the Department to allow public inspection of certain policies;
8 requiring that a certain identification procedure be conducted by a certain
9 administrator; requiring certain identification procedures to be conducted in a
10 certain manner; requiring that a certain record of a certain identification
11 procedure be made; ~~requiring evidence of a failure to comply with this Act to be~~

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.



1 ~~dealt with by a certain court in a certain manner;~~ defining certain terms;
 2 ~~providing for a delayed effective date~~ *the application of this Act*; and generally
 3 relating to eyewitness identifications.

4 BY adding to
 5 Article – Public Safety
 6 Section 3–506(d) and 3–506.1
 7 Annotated Code of Maryland
 8 (2011 Replacement Volume and 2013 Supplement)

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

11 **Article – Public Safety**

12 3–506.

13 **(D) (1) ON OR BEFORE ~~AUGUST 1, 2014~~ JANUARY 1, 2015 2016, EACH**
 14 **LAW ENFORCEMENT AGENCY IN THE STATE SHALL:**

15 **(I) 1. ADOPT THE POLICE TRAINING COMMISSION’S**
 16 **EYEWITNESS IDENTIFICATION MODEL POLICY ~~OF 2012~~; OR**

17 **2. ADOPT AND IMPLEMENT A WRITTEN POLICY**
 18 **RELATING TO IDENTIFICATION PROCEDURES THAT COMPLIES WITH § 3–506.1**
 19 **OF THIS SUBTITLE; AND**

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

22 **(2) ON OR BEFORE ~~DECEMBER 31, 2014~~ FEBRUARY 1, 2015 2016,**
 23 **THE DEPARTMENT OF STATE POLICE SHALL COMPILE THE WRITTEN POLICIES**
 24 **RELATING TO IDENTIFICATION PROCEDURES OF EACH LAW ENFORCEMENT**
 25 **AGENCY IN THE STATE.**

26 **(3) THE DEPARTMENT OF STATE POLICE SHALL ALLOW PUBLIC**
 27 **INSPECTION OF EACH POLICY COMPILED UNDER THIS SUBSECTION.**

28 **3–506.1.**

29 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE**
 30 **MEANINGS INDICATED.**

31 **(2) “ADMINISTRATOR” MEANS THE PERSON CONDUCTING AN**
 32 **IDENTIFICATION PROCEDURE.**

1 (3) “BLIND” MEANS THE ADMINISTRATOR DOES NOT KNOW THE
2 IDENTITY OF THE SUSPECT.

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

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

8 (6) “FILLER” MEANS A PERSON OR A PHOTOGRAPH OF A PERSON
9 WHO IS NOT SUSPECTED OF AN OFFENSE AND IS INCLUDED IN AN
10 IDENTIFICATION PROCEDURE.

11 (7) “FOLDER SHUFFLE METHOD” MEANS A SYSTEM FOR
12 CONDUCTING A PHOTO LINEUP THAT:

13 (I) COMPLIES WITH THE REQUIREMENTS OF THIS SECTION;
14 AND

15 (II) IS CONDUCTED BY PLACING PHOTOGRAPHS IN
16 FOLDERS, RANDOMLY NUMBERING THE FOLDERS, SHUFFLING THE FOLDERS,
17 AND THEN PRESENTING THE FOLDERS SEQUENTIALLY SO THAT THE
18 ADMINISTRATOR CANNOT SEE OR TRACK WHICH PHOTOGRAPH IS BEING
19 PRESENTED TO THE EYEWITNESS UNTIL AFTER THE PROCEDURE IS
20 COMPLETED.

21 (8) “IDENTIFICATION PROCEDURE” MEANS A PROCEDURE IN
22 WHICH A LIVE LINEUP IS CONDUCTED OR AN ARRAY OF PHOTOGRAPHS,
23 INCLUDING A PHOTOGRAPH OF A SUSPECT AND ADDITIONAL PHOTOGRAPHS OF
24 OTHER PERSONS NOT SUSPECTED OF THE OFFENSE, IS DISPLAYED TO AN
25 EYEWITNESS IN HARD COPY FORM OR BY COMPUTER FOR THE PURPOSE OF
26 DETERMINING WHETHER THE EYEWITNESS IDENTIFIES THE SUSPECT AS THE
27 PERPETRATOR.

28 (9) “IDENTIFICATION STATEMENT” MEANS A DOCUMENTED
29 STATEMENT THAT IS SOUGHT BY THE ADMINISTRATOR WHEN AN
30 IDENTIFICATION IS MADE:

31 (I) FROM THE EYEWITNESS;

1 **(II) IN THE OWN WORDS OF THE EYEWITNESS, DESCRIBING**
2 **THE EYEWITNESS'S CONFIDENCE LEVEL THAT THE PERSON IDENTIFIED IS THE**
3 **PERPETRATOR OF THE CRIME;**

4 **(III) GIVEN AT THE TIME OF THE VIEWING BY THE**
5 **EYEWITNESS DURING THE IDENTIFICATION PROCEDURE; AND**

6 **(IV) GIVEN BEFORE THE EYEWITNESS IS GIVEN FEEDBACK.**

7 **(10) "LIVE LINEUP" MEANS A PROCEDURE IN WHICH A**
8 **PERPETRATOR IS PLACED AMONG A GROUP OF OTHER PERSONS WHOSE**
9 **GENERAL APPEARANCE RESEMBLES THE PERPETRATOR.**

10 **(11) "PERPETRATOR" MEANS A PERSON WHO COMMITTED AN**
11 **OFFENSE.**

12 **(12) "SUSPECT" MEANS A PERSON WHO IS SUSPECTED OF**
13 **COMMITTING AN OFFENSE.**

14 **(B) (1) AN IDENTIFICATION PROCEDURE SHALL BE CONDUCTED BY A**
15 **BLIND OR BLINDED ADMINISTRATOR.**

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

17 **(I) AN AUTOMATED COMPUTER PROGRAM THAT PREVENTS**
18 **THE ADMINISTRATOR FROM SEEING WHICH PHOTOS THE EYEWITNESS IS**
19 **VIEWING UNTIL AFTER THE IDENTIFICATION PROCEDURE IS COMPLETED; OR**

20 **(II) THE FOLDER SHUFFLE METHOD.**

21 **(3) BEFORE AN IDENTIFICATION PROCEDURE IS CONDUCTED, AN**
22 **EYEWITNESS SHALL BE INSTRUCTED, WITHOUT OTHER EYEWITNESSES**
23 **PRESENT, THAT THE PERPETRATOR MAY OR MAY NOT BE AMONG THE PERSONS**
24 **IN THE IDENTIFICATION PROCEDURE.**

25 **(4) WHEN AN IDENTIFICATION IS MADE IN A LIVE LINEUP OR**
26 **PHOTO ARRAY, THE ADMINISTRATOR SHALL DOCUMENT IN WRITING ALL**
27 **IDENTIFICATION STATEMENTS MADE BY THE EYEWITNESS.**

28 **(C) IN AN IDENTIFICATION PROCEDURE:**

29 **(1) EACH FILLER SHALL RESEMBLE THE DESCRIPTION OF THE**
30 **PERPETRATOR GIVEN BY THE EYEWITNESS IN SIGNIFICANT PHYSICAL**
31 **FEATURES, INCLUDING ANY UNIQUE OR UNUSUAL FEATURES;**

1 **(2) AT LEAST FIVE FILLERS, IN ADDITION TO THE PERPETRATOR,**
2 **SHALL BE INCLUDED WHEN AN ARRAY OF PHOTOGRAPHS IS DISPLAYED TO AN**
3 **EYEWITNESS; AND**

4 **(3) AT LEAST FOUR FILLERS, IN ADDITION TO THE PERPETRATOR,**
5 **SHALL BE INCLUDED IN A LIVE LINEUP.**

6 **(D) IF AN EYEWITNESS HAS PREVIOUSLY PARTICIPATED IN AN**
7 **IDENTIFICATION PROCEDURE IN CONNECTION WITH THE IDENTIFICATION OF**
8 **ANOTHER PERSON SUSPECTED OF INVOLVEMENT IN THE OFFENSE, THE**
9 **FILLERS IN THE IDENTIFICATION PROCEDURE SHALL BE DIFFERENT FROM THE**
10 **FILLERS USED IN ANY PRIOR IDENTIFICATION PROCEDURE.**

11 **(E) IF THERE ARE MULTIPLE EYEWITNESSES:**

12 **(1) THE IDENTIFICATION PROCEDURE SHALL BE CONDUCTED**
13 **SEPARATELY FOR EACH EYEWITNESS;**

14 **(2) THE SUSPECT SHALL BE PLACED IN A DIFFERENT POSITION**
15 **FOR EACH IDENTIFICATION PROCEDURE CONDUCTED FOR EACH EYEWITNESS;**
16 **AND**

17 **(3) THE EYEWITNESSES MAY NOT BE ALLOWED TO COMMUNICATE**
18 **WITH EACH OTHER UNTIL ALL IDENTIFICATION PROCEDURES HAVE BEEN**
19 **COMPLETED.**

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

23 **(I) ALL IDENTIFICATION AND NONIDENTIFICATION**
24 **RESULTS OBTAINED DURING THE IDENTIFICATION PROCEDURES;**

25 **(II) THE SIGNED IDENTIFICATION STATEMENT OF THE**
26 **EYEWITNESS;**

27 **(III) THE NAMES OF ALL PERSONS PRESENT AT THE**
28 **IDENTIFICATION PROCEDURE;**

29 **(IV) THE DATE AND TIME OF THE IDENTIFICATION**
30 **PROCEDURE;**

31 **(V) ANY EYEWITNESS IDENTIFICATION OF A FILLER; AND**

1 (VI) ALL PHOTOGRAPHS USED IN THE IDENTIFICATION
2 PROCEDURE.

3 (2) IF A VIDEO OR AUDIO RECORD OF THE IDENTIFICATION
4 PROCEDURE CAPTURES ALL OF THE INFORMATION IN PARAGRAPH (1) OF THIS
5 SUBSECTION, A WRITTEN RECORD IS NOT REQUIRED.

6 ~~(C) FOR AN IDENTIFICATION PROCEDURE:~~

7 ~~(1) EVIDENCE OF A FAILURE TO COMPLY WITH THE PROVISIONS~~
8 ~~OF THIS SECTION SHALL BE CONSIDERED BY THE COURT THAT ADJUDICATES A~~
9 ~~MOTION TO SUPPRESS THE IDENTIFICATION BY THE EYEWITNESS;~~

10 ~~(2) EVIDENCE OF A FAILURE TO COMPLY WITH THE PROVISIONS~~
11 ~~OF THIS SECTION IS ADMISSIBLE IN SUPPORT OF A CLAIM OF EYEWITNESS~~
12 ~~MISIDENTIFICATION IF THE EVIDENCE IS OTHERWISE ADMISSIBLE; AND~~

13 ~~(3) WHEN EVIDENCE OF A FAILURE TO COMPLY WITH THE~~
14 ~~PROVISIONS OF THIS SECTION IS PRESENTED AT TRIAL, THE JURY SHALL BE~~
15 ~~INSTRUCTED THAT THE JURY MAY CONSIDER CREDIBLE EVIDENCE OF~~
16 ~~NONCOMPLIANCE IN DETERMINING THE RELIABILITY OF AN EYEWITNESS~~
17 ~~IDENTIFICATION.~~

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
19 construed to apply only prospectively and may not be applied or interpreted to have any
20 effect on or application to any criminal case commenced before the effective date of this
21 Act.

22 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take
23 effect ~~July October January~~ October 1, 2014 2016 2014.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.