SENATE BILL 860

E4 (4lr1931)

ENROLLED BILL

— Judicial Proceedings/Judiciary —

Introduced by **Senators Gladden, Jones–Rodwell, ~~and Kelley~~ Kelley, and Forehand**

Read and Examined by Proofreaders:

_____

Proofreader.

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Proofreader.

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

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

_____

President.

CHAPTER _____

AN ACT concerning

Public Safety – ~~Photo and Lineup~~ Eyewitness Identification – Procedures

FOR the purpose of requiring, on or before a certain date, each law enforcement agency in the State to adopt and implement a certain policy relating to certain identification procedures and file a copy with the Department of State Police; requiring the Department, on or before a certain date, to compile certain written policies; requiring the Department to allow public inspection of certain policies; requiring that a certain identification procedure be conducted by a certain administrator; ~~requiring the Police Training Commission to adopt certain standards and conduct certain training programs;~~ requiring certain identification procedures to be conducted in a certain manner; requiring that a certain record of a certain identification procedure be made; ~~requiring evidence of a failure to comply with this Act to be dealt with by a certain court in a certain manner;~~ defining certain terms; providing for the application of this Act;

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.

~~providing for a delayed effective date;~~ and generally relating to eyewitness identifications.

BY adding to
Article – Public Safety
Section 3–506(d) ~~and (e)~~ and 3–506.1
Annotated Code of Maryland
(2011 Replacement Volume and 2013 Supplement)

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

Article – Public Safety

3–506.

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

(I) 1. ADOPT THE POLICE TRAINING COMMISSION'S EYEWITNESS IDENTIFICATION MODEL POLICY; OR

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

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

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

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

~~**(E) THE POLICE TRAINING COMMISSION SHALL ADOPT STANDARDS AND CONDUCT TRAINING PROGRAMS RELATING TO IDENTIFICATION PROCEDURES THAT COMPLY WITH § 3–506.1 OF THIS SUBTITLE.**~~

3–506.1.

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

(2) "ADMINISTRATOR" MEANS THE PERSON CONDUCTING AN IDENTIFICATION PROCEDURE.

(3) "BLIND" MEANS THE ADMINISTRATOR DOES NOT KNOW THE IDENTITY OF THE SUSPECT.

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

(5) "EYEWITNESS" MEANS A PERSON WHO OBSERVES ANOTHER PERSON AT OR NEAR THE SCENE OF AN OFFENSE.

(6) "FILLER" MEANS A PERSON OR A PHOTOGRAPH OF A PERSON WHO IS NOT SUSPECTED OF AN OFFENSE AND IS INCLUDED IN AN IDENTIFICATION PROCEDURE.

(7) "FOLDER SHUFFLE METHOD" MEANS A SYSTEM FOR CONDUCTING A PHOTO LINEUP THAT:

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

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

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

(9) "IDENTIFICATION STATEMENT" MEANS A ~~STATEMENT AS TO WHETHER THE EYEWITNESS BELIEVES THAT THE PERPETRATOR HAS BEEN IDENTIFIED DURING THE IDENTIFICATION PROCEDURE~~ DOCUMENTED STATEMENT THAT IS SOUGHT BY THE ADMINISTRATOR WHEN AN IDENTIFICATION IS MADE:

(I) FROM THE EYEWITNESS;

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

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

~~(III)~~ (IV) GIVEN BEFORE THE EYEWITNESS IS GIVEN FEEDBACK.

(10) "LIVE LINEUP" MEANS A PROCEDURE IN WHICH A ~~GROUP OF PERSONS IS DISPLAYED TO AN EYEWITNESS FOR THE PURPOSE OF DETERMINING IF THE EYEWITNESS IS ABLE TO IDENTIFY THE PERPETRATOR OF THE CRIME~~ PERPETRATOR IS PLACED AMONG A GROUP OF OTHER PERSONS WHOSE GENERAL APPEARANCE RESEMBLES THE PERPETRATOR.

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

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

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

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

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

(II) THE FOLDER SHUFFLE METHOD.

(3) BEFORE AN IDENTIFICATION PROCEDURE IS CONDUCTED, AN EYEWITNESS SHALL BE INSTRUCTED, WITHOUT OTHER EYEWITNESSES PRESENT, ~~AND ACKNOWLEDGE THE RECEIPT OF THE INSTRUCTIONS IN WRITING THAT:~~

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

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

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

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

~~(V) EXCLUDING INNOCENT PERSONS IS AS IMPORTANT AS IDENTIFYING THE PERPETRATOR; AND~~

~~(VI) THE EYEWITNESS IS NOT TO DISCUSS THE IDENTIFICATION PROCEDURE OR THE RESULTS OF THE PROCEDURE WITH OTHER EYEWITNESSES INVOLVED IN THE CASE AND SHOULD NOT SPEAK TO THE MEDIA~~ **THAT THE PERPETRATOR MAY OR MAY NOT BE AMONG THE PERSONS IN THE IDENTIFICATION PROCEDURE.**

~~(4) IN AN IDENTIFICATION PROCEDURE, EACH INDIVIDUAL OR PHOTO SHALL BE:~~

~~(I) PRESENTED TO AN EYEWITNESS:~~

~~1. SEQUENTIALLY;~~

~~2. WITH EACH INDIVIDUAL OR PHOTO PRESENTED TO THE EYEWITNESS SEPARATELY; AND~~

~~3. IN A PREVIOUSLY DETERMINED ORDER; AND~~

~~(II) REMOVED BEFORE THE NEXT INDIVIDUAL OR PHOTO IS PRESENTED TO THE EYEWITNESS.~~

~~(5) AS THE INDIVIDUALS OR PHOTOS ARE PRESENTED TO AN EYEWITNESS, THE ADMINISTRATOR SHALL DOCUMENT IN WRITING ALL IDENTIFICATION STATEMENTS MADE BY THE EYEWITNESS.~~

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

~~(7) ONLY ONE SUSPECT MAY BE INCLUDED IN EACH IDENTIFICATION PROCEDURE.~~

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

(C) IN AN IDENTIFICATION PROCEDURE:

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

(2) AT LEAST FIVE FILLERS, IN ADDITION TO THE ~~SUSPECT~~ PERPETRATOR, SHALL BE INCLUDED WHEN AN ARRAY OF PHOTOGRAPHS IS DISPLAYED TO AN EYEWITNESS ~~OR A LIVE LINEUP IS CONDUCTED FOR AN EYEWITNESS~~; AND

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

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

(E) IF THERE ARE MULTIPLE EYEWITNESSES:

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

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

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

(F) (1) ~~UNLESS NOT PRACTICAL, THE ADMINISTRATOR SHALL MAKE A VIDEO OR AUDIO RECORD OF THE IDENTIFICATION PROCEDURE.~~

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

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

(II) THE SIGNED IDENTIFICATION STATEMENT OF THE EYEWITNESS ~~IN THE EYEWITNESS'S OWN WORDS~~;

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

(IV) THE DATE AND TIME OF THE IDENTIFICATION PROCEDURE;

(V) ANY EYEWITNESS IDENTIFICATION OF A FILLER; AND

(VI) ALL PHOTOGRAPHS USED IN THE IDENTIFICATION PROCEDURE.

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

~~(G) FOR AN IDENTIFICATION PROCEDURE:~~

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

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

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

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

SECTION ~~2.~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~July 1, 2014~~ ~~January 1, 2015~~ October 1, 2014.