

SENATE BILL 752

E4

4r1259
CF 4r1487

By: **Senator Pugh**

Introduced and read first time: January 31, 2014

Assigned to: Judicial Proceedings

A BILL ENTITLED

AN ACT concerning

Public Safety – 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 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; and generally relating to eyewitness identifications.

BY adding to

Article – Public Safety

Section 3–506(d) 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, EACH LAW ENFORCEMENT AGENCY IN THE STATE SHALL:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



(I) 1. ADOPT THE POLICE TRAINING COMMISSION'S EYEWITNESS IDENTIFICATION MODEL POLICY OF 2012; 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, 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.

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 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 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' CONFIDENCE LEVEL THAT THE PERSON IDENTIFIED IS THE PERPETRATOR OF THE CRIME;

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

(IV) GIVEN BEFORE THE EYEWITNESS IS GIVEN FEEDBACK.

(10) "LIVE LINEUP" MEANS A PROCEDURE IN WHICH A 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, THAT THE PERPETRATOR MAY OR MAY NOT BE AMONG THE PERSONS IN THE 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;

(2) AT LEAST FIVE FILLERS, IN ADDITION TO THE PERPETRATOR, SHALL BE INCLUDED WHEN AN ARRAY OF PHOTOGRAPHS IS DISPLAYED TO 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) EXCEPT AS PROVIDED IN PARAGRAPH (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;

(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.

(2) IF A VIDEO OR AUDIO RECORD OF THE IDENTIFICATION PROCEDURE CAPTURES ALL OF THE INFORMATION IN PARAGRAPH (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 take effect July 1, 2014.