

Department of Legislative Services  
Maryland General Assembly  
2006 Session

FISCAL AND POLICY NOTE

House Bill 807  
Judiciary

(Delegate Rosenberg, *et al.*)

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**Criminal Procedure - Eyewitness Identification Evidence - Inadmissible -  
Exception**

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Eyewitness identification evidence is not admissible in the State's case in a criminal proceeding 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 bill applies prospectively to criminal proceedings and extrajudicial identifications that commence or occur on or after the October 1, 2006 effective date.

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**Fiscal Summary**

**State Effect:** Potential operational impact on the 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.

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**Analysis**

**Bill Summary:** 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 made contemporaneously with the identification procedure;
- the signature of the witness; and
- any other relevant information.

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

- the photographs used in the lineup;
- the order and number of times 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 contain a photographic or other visual recording of the lineup that includes all participants and reflects 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:** Eyewitness identification testimony and in-court identification of a criminal defendant is generally admissible.

Lineups and other extrajudicial identifications that are “unnecessarily suggestive and conducive to irreparable mistaken identification” violate a criminal defendant’s due process rights. *See Stovall v. Deno*, 388 U.S. 293, 302 (1967). When confronting due process challenges to identification procedures, courts evaluate whether the identification was reliable in spite of the suggestive procedures under a totality of the circumstances.

**State Expenditures:** The State Police currently keep some records of identification procedures and provide the information to the 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:** 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.

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### **Additional Information**

**Prior Introductions:** A similar bill, HB 973 of 2005, received a hearing in the House Judiciary Committee, but was later withdrawn.

**Cross File:** SB 863 (Senator Kelley) – Judicial Proceedings.

**Information Source(s):** State’s Attorneys’ Association; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of State Police; *Criminal Procedure Handbook*, Fifth Amendment § 2:28, Thomson West (2006); Department of Legislative Services

**Fiscal Note History:** First Reader - February 27, 2006  
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