

# The Eyewitness

## Eyewitness Identification Act

G.S. Section 15A-284.51 *et seq.*

**→ § 15A-284.51. Purpose**

The purpose of this Article is to help solve crime, convict the guilty, and exonerate the innocent in criminal proceedings by improving procedures for eyewitness identification of suspects.

Added by S.L. 2007-421, § 1, eff. Mar. 1, 2008.

## Eyewitness Identification Act Reforms

### → § 15A-284.52. Eyewitness identification reform

(b) Eyewitness Identification Procedures.--Lineups conducted by State, county, and other local law enforcement officers shall meet all of the following requirements:

“A lineup shall be conducted by an independent administrator”

“Individuals or photos shall be presented to witnesses sequentially . . . and removed after it is viewed before the next individual or photo is presented.”

## Eyewitness Identification Act Reforms

### G.S. 15A-284.52 (b)(3)

“Before a lineup, the eyewitness shall be instructed that:

- a. The perpetrator might or might not be presented in the lineup,
- b. The lineup administrator does not know the suspect's identity,
- c. The eyewitness should not feel compelled to make an identification,
- d. It is as important to exclude innocent persons as it is to identify the perpetrator, and
- e. The investigation will continue whether or not an identification is made.

## Eyewitness Identification Act Reforms

(b) Eyewitness Identification Procedures.--Lineups conducted by State, county, and other local law enforcement officers shall meet all of the following requirements:

### Other "Shalls"

- Photo shall be contemporary and resemble appearance at time of crime
- Fillers generally resemble eyewitness's description, shall include 5 fillers per suspect, fillers must differ from photo array to photo array
- Suspect placed in different position for each eyewitness
- No information concerning arrest visible
- Identifying actions done by all lineup members
- All lineup members out of view before lineup

## Eyewitness Identification Act Reforms

- One suspect per lineup
- Nothing said about suspect's position "or regarding anything that might influence the . . . identification."
- Administrator shall seek and document a clear statement at the time of identification of confidence
- No one present who knows other than eyewitness and attorney
- "Unless it is not practical, a video record . . . shall be made."

## Eyewitness Identification Act Reforms

G.S. 15A-284.52 (b)(15)

Other "Shalls"

(15) Whether video, audio, or in writing, the record shall include all of the following information:

- a. All identification and nonidentification results obtained during the identification procedure, signed by the eyewitness, including the eyewitness's confidence statement. If the eyewitness refuses to sign, the lineup administrator shall note the refusal of the eyewitness to sign the results and shall also sign the notation.
- b. The names of all persons present at the lineup.
- c. The date, time, and location of the lineup.
- d. The words used by the eyewitness in any identification, including words that describe the eyewitness's certainty of identification.
- e. Whether it was a photo lineup or live lineup and how many photos or individuals were presented in the lineup.
- f. The sources of all photographs or persons used.
- g. In a photo lineup, the photographs themselves.
- h. In a live lineup, a photo or other visual recording of the lineup that includes all persons who participated in the lineup.

## Eyewitness Identification Act Reforms

G.S. 15A-284.52 (c)

Other "Shalls"

- (1) Automated computer programs that can automatically administer the photo lineup directly to an eyewitness and prevent the administrator from seeing which photo the witness is viewing until after the procedure is completed.

## Eyewitness Identification Act Reforms

### Violations

#### G.S. 15A-284.52 (d)

- (1) Failure to comply with any of the requirements of this section shall be considered by the court in adjudicating motions to suppress eyewitness identification.
- (2) Failure to comply with any of the requirements of this section shall be admissible in support of claims of eyewitness misidentification, as long as such evidence is otherwise admissible.
- (3) When evidence of compliance or noncompliance with the requirements of this section has been presented at trial, the jury shall be instructed that it may consider credible evidence of compliance or noncompliance to determine the reliability of eyewitness identifications.

In *State v. Pigott*, the Court explained that the initial inquiry in any claim of improper identification, is whether "the identification procedure in question was unnecessarily suggestive." 320 N.C. 96, 98 (1987). Once an impermissibly suggestive procedure has been employed, the remaining factors address the question of whether "the procedure employed was so suggestive that there is a substantial likelihood of irreparable misidentification." *Id.* at 99. As presently employed by the Courts of North Carolina, the six factors in *Knight*, have now been reduced to five: (1) the opportunity of the witness to view the criminal at the time of the crime; (2) the witness' degree of attention; (3) the accuracy of the witness' prior description; (4) the level of certainty demonstrated at the confrontation; and (5) the time between the crime and the confrontation." *Pigott*, 320 N.C. at 99-100. See *State v. Finchback*, 140 N.C. App. 512, 518 (2000). While the Defendants bear the burden of showing a constitutional violation in connection with the process used for a pretrial identification, once such a violation has been established, it is the State that must demonstrate by clear and convincing evidence that there has not been a substantial likelihood of irreparable misidentification. *State v. Knight*, 282 N.C. at 226-227.

