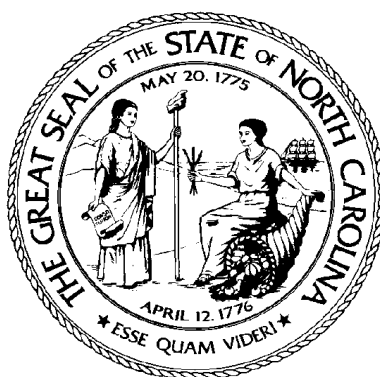


EYEWITNESS IDENTIFICATION REFORM ACT



North Carolina Department of Justice
Criminal Justice Standards Division

UPDATE MATERIAL

March 1, 2008

(Subject to periodic changes)



NC EYEWITNESS IDENTIFICATION REFORM ACT OF 2007

The 2007 North Carolina General Assembly passed the Eyewitness Identification Reform Act. This Act requires that certain steps be taken to administer lineups in criminal investigations conducted in North Carolina. The materials in this document are provided to help law enforcement officers comply with this law.

The attached materials are described as follows:

House Bill 1625 – Eyewitness Identification Reform Act

All officers should read this law.

Eyewitness Identification Instructions

The Eyewitness Identification Reform Act requires that eyewitnesses be provided with certain instructions prior to viewing a lineup. This eyewitness must acknowledge receipt of these instructions. This form has been provided to assist you in complying with the requirement. A Spanish version of the same form is also attached.

Eyewitness Identification Case Management Form

Completing this form for each eyewitness will help ensure you are complying with the new law.

Folder System Alternative

This is a description of how to administer a lineup using the “folder system.” This system is specifically recommended by the NC Criminal Justice Education and Training Standards Commission when no independent administrator is available.

Frequently Asked Questions

This information is provided to help answer questions you might have regarding the practices associated with the new law.

Contacts

These individuals are provided as resource contacts available to you should you have questions about the materials provided in this update.



GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

SESSION LAW 2007-421
HOUSE BILL 1625

AN ACT TO ENACT THE EYEWITNESS IDENTIFICATION REFORM ACT.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 15A of the General Statutes is amended by adding a new Article to read:

"Article 14A.

"Eyewitness Identification Reform Act.

"§ 15A-284.50. Short title.

This Article shall be called the "Eyewitness Identification Reform Act".

"§ 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.

"§ 15A-284.52. Eyewitness identification reform.

(a) Definitions. – The following definitions apply in this Article:

- (1) Eyewitness. – A person whose identification by sight of another person may be relevant in a criminal proceeding.
- (2) Filler. – A person or a photograph of a person who is not suspected of an offense and is included in a lineup.
- (3) Independent administrator. – A lineup administrator who is not participating in the investigation of the criminal offense and is unaware of which person in the lineup is the suspect.
- (4) Live lineup. – A procedure in which a group of people is displayed to an eyewitness for the purpose of determining if the eyewitness is able to identify the perpetrator of a crime.
- (5) Lineup. – A photo lineup or live lineup.
- (6) Lineup administrator. – The person who conducts a lineup.
- (7) Photo lineup. – A procedure in which an array of photographs is displayed to an eyewitness for the purpose of determining if the eyewitness is able to identify the perpetrator of a crime.

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

- (1) A lineup shall be conducted by an independent administrator or by an alternative method as provided by subsection (c) of this section.
- (2) Individuals or photos shall be presented to witnesses sequentially, with each individual or photo presented to the witness separately, in a previously

determined order, and removed after it is viewed before the next individual or photo is presented.

(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.

The eyewitness shall acknowledge the receipt of the instructions in writing. If the eyewitness refuses to sign, the lineup administrator shall note the refusal of the eyewitness to sign the acknowledgement and shall also sign the acknowledgement.

(4) In a photo lineup, the photograph of the suspect shall be contemporary and, to the extent practicable, shall resemble the suspect's appearance at the time of the offense.

(5) The lineup shall be composed so that the fillers generally resemble the eyewitness's description of the perpetrator, while ensuring that the suspect does not unduly stand out from the fillers. In addition:

- a. All fillers selected shall resemble, as much as practicable, the eyewitness's description of the perpetrator in significant features, including any unique or unusual features.
- b. At least five fillers shall be included in a photo lineup, in addition to the suspect.
- c. At least five fillers shall be included in a live lineup, in addition to the suspect.
- d. If the eyewitness has previously viewed a photo lineup or live lineup in connection with the identification of another person suspected of involvement in the offense, the fillers in the lineup in which the current suspect participates shall be different from the fillers used in any prior lineups.

(6) If there are multiple eyewitnesses, the suspect shall be placed in a different position in the lineup or photo array for each eyewitness.

(7) In a lineup, no writings or information concerning any previous arrest, indictment, or conviction of the suspect shall be visible or made known to the eyewitness.

(8) In a live lineup, any identifying actions, such as speech, gestures, or other movements, shall be performed by all lineup participants.

(9) In a live lineup, all lineup participants must be out of view of the eyewitness prior to the lineup.

(10) Only one suspect shall be included in a lineup.

(11) Nothing shall be said to the eyewitness regarding the suspect's position in the lineup or regarding anything that might influence the eyewitness's identification.

(12) The lineup administrator shall seek and document a clear statement from the eyewitness, at the time of the identification and in the eyewitness's own words, as to the eyewitness's confidence level that the person identified in a given lineup is the perpetrator. The lineup administrator shall separate all witnesses in order to discourage witnesses from conferring with one another

before or during the procedure. Each witness shall be given instructions regarding the identification procedures without other witnesses present.

(13) If the eyewitness identifies a person as the perpetrator, the eyewitness shall not be provided any information concerning the person before the lineup administrator obtains the eyewitness's confidence statement about the selection. There shall not be anyone present during the live lineup or photographic identification procedures who knows the suspect's identity, except the eyewitness and counsel as required by law.

(14) Unless it is not practical, a video record of live identification procedures shall be made. If a video record is not practical, the reasons shall be documented, and an audio record shall be made. If neither a video nor audio record are practical, the reasons shall be documented, and the lineup administrator shall make a written record of the lineup.

(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.

(c) Alternative Methods for Identification if Independent Administrator Is Not Used. – In lieu of using an independent administrator, a photo lineup eyewitness identification procedure may be conducted using an alternative method specified and approved by the North Carolina Criminal Justice Education and Training Standards Commission. Any alternative method shall be carefully structured to achieve neutral administration and to prevent the administrator from knowing which photograph is being presented to the eyewitness during the identification procedure. Alternative methods may include any of the following:

(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.

(2) A procedure in which photographs are placed in folders, randomly numbered, and shuffled and then presented to an eyewitness such that the administrator cannot see or track which photograph is being presented to the witness until after the procedure is completed.

(3) Any other procedures that achieve neutral administration.

(d) Remedies. – All of the following shall be available as consequences of compliance or noncompliance with the requirements of this section:

(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.

"§ 15A-284.53. Training of law enforcement officers.

Pursuant to its authority under G.S. 17C-6 and G.S. 17E-4, the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission, in consultation with the Department of Justice, shall create educational materials and conduct training programs on how to conduct lineups in compliance with this Article."

SECTION 2. This act becomes effective March 1, 2008, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 24th day of July, 2007.

s/ Beverly E. Perdue
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 9:14 a.m. this 23rd day of August, 2007

NC EYEWITNESS IDENTIFICATION REFORM ACT OF 2007
Eyewitness Identification Instructions

Instructions to be used when conducting any lineup on or after March 1, 2008:

1. Review wording on the Eyewitness Identification Form.
2. Check one option under Section b of the form.
3. Read the language of the form to the witness, including only the Section b option you have selected.
4. Ask the witness to sign and date the form. *The Lineup Administrator shall write the word "Refused" on the Eyewitness line in the event the eyewitness refuses to sign.*
5. Sign and date the form yourself.
6. Maintain a copy of this form in the investigative file.

I am required by North Carolina General Statutes to instruct you prior to viewing this lineup, that:

- a. The perpetrator might or might not be presented in the lineup.
- b. ☐ The lineup administrator does not know the suspect's identity, or
☐ The lineup administrator knows the suspect's identity and is using an approved lineup method that does not require an independent administrator.
- c. You, as 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.

I acknowledge receipt of the above instructions.

Eyewitness Signature

Date

Print Name

Lineup Administrator

Date



NC EYEWITNESS IDENTIFICATION REFORM ACT OF 2007
Eyewitness Identification Instructions

Instrucciones Para El Testigo Ocular

Soy requerido por los Estatutos General de Carolina del Norte de decirle a usted que antes de mirar a la línea de fotos, que:

- a. El perpetrador puede o no puede estar en la línea de fotos.
- b. ☐ El administrador de la línea de fotos no sabe la identidad del sospechoso.
☐ El administrador de la línea de fotos sabe la identidad del sospechoso y está usando un método aprobado para la línea de fotos que no es necesario a tener un administrador independiente.
- c. Usted, como el testigo ocular, no se sienta obligado hacer una identificación.
- d. Es importante a excluir personas inocentes, como es identificar el perpetrador y
- e. La investigación continuara sea o no sea una identificación.

Yo acuso recibo de las instrucciones arriba.

Firma del Testigo Ocular

Fecha

Escriba el Nombre

Administrador de la Línea de Fotos

Fecha



NC EYEWITNESS IDENTIFICATION REFORM ACT OF 2007
Eyewitness Identification Case Management Form

Suspect's Name: _____

_____ fillers have been used to create this lineup. **(At least five (5) shall be used.)**

These fillers resemble, as much as practicable, the eyewitness's description of the perpetrator in significant features, including any unique or unusual features.

Sources of photos or persons used in the lineup: _____

Date of Lineup: _____

Time of Lineup: _____

Location: _____

Persons present: _____

Location of other witnesses (if any) during administration of lineup: _____

Other witnesses should not be in the area when the lineup is being conducted.

Eyewitness Name: _____

Has the eyewitness been advised of the "Eyewitness Identification Instructions" and acknowledged same?

☐

Yes

Any words used by the witness in any identification:

Eyewitness Confidence Statement:

Instructions: Ask the witness to tell you in their own words their level of confidence that the person they have identified is the perpetrator. Document the statement below.

Eyewitness Signature: _____

In the event of a refusal to sign, note the refusal and sign yourself.

_____ I have attached the actual photos used in the lineup to this form.

_____ I have attached a photo or other visual recording of the lineup to this form.

A video record of the live lineup shall be made. If it is not practical, the reasons shall be documented below and an audio record shall be made. If neither audio nor video is practical, the administrator shall make a written record of the lineup and attach such written record as a separate page to this form, documenting the reasons that it was not practical below.

Administrator – Print and Sign Name: _____



NC EYEWITNESS IDENTIFICATION REFORM ACT OF 2007
Folder system alternative: when an independent administrator is not available

The Folder System: A Recommended Practice for the “Blind” Administration of Eyewitness Procedures for Law Enforcement Agencies with Limited Resources.

In recent studies of eyewitnesses and human memory it has been suggested that eyewitness evidence is much like trace evidence left at a crime scene. Like trace evidence, eyewitness memory is an imprint left in the mind of the witness. But also like trace evidence, it is susceptible to contamination if not handled properly. The result can be failure to identify the true perpetrator or erroneous identification of an innocent person.

This recommendation was written to provide information regarding legal requirements and best practices surrounding collection and preservation of eyewitness evidence when law enforcement resources are limited. In some situations, it may be difficult to have an independent administrator conduct the sequential photographic lineup. In those situations, the investigating officer may conduct the lineup, but only with safeguards to ensure that he/she is not in a position to unintentionally influence the victim/witness's selection. A simple and inexpensive alternative is the folder system, described below.

1. Follow the procedures previously described for gathering one photo of the suspect and a minimum of five filler photos.
2. The suspect photograph and the other five filler photographs should be placed into folders. The folders should then be shuffled until the officer does not know what folder the suspect photograph is in; once this is accomplished the folders should be numbered one (1) through six (6) and kept in order. This should all be done out of the presence of the person who will view the photographic lineup.
3. Seat the witness at a desk or table or otherwise provide a comfortable environment.
4. Position yourself close enough to the witness to verbally communicate with him/her but in a place where the witness will be able to open a folder and look at the photograph without your being able to see the photograph. This will make it impossible for you to unintentionally communicate information to the witness about which folder contains the suspect's photograph.
5. The administrator should provide instructions to the witness. The witness should be informed that the suspect may or may not be contained in the photographs he/she is about to see and that the administrator does not know which folder contains the suspect.
6. Without looking at the photograph in the folder, the administrator is to hand each folder to the witness individually. Each time the witness has viewed the contents of the folder, the witness should return the folder to the administrator. The order of the photographs should be preserved, in a facedown position. This is done in case the victim/witness desires to view the lineup a second time and to assist with the documentation in step nine (9).



7. Show every folder even if the witness makes identification, hand the witness the next folder until you have gone through all the folders containing photographs. If a witness asks why he/she must view the rest of the photographs despite already making an identification; tell the witness the procedure requires the officer to show the rest of the photos. Showing all photos in the lineup ensures that the photograph lineup procedure will reveal as much information as possible. For instance, a witness may make an identification of an early photograph, but then change his/her mind after viewing a later photo. This change supplies important information about both the suspect and the witness.
8. The administrator should then document and record the results of the procedure. This should include: the date, time and location of the lineup procedure; the name of the administrator; the names of all of the individuals present during the lineup; the number of photos shown; the order in which the folders were presented; the sources of all of the photos that were used; a statement of confidence *in the witness's own words* as to the certainty of his identification; and any additional information the administrator deems pertinent to the procedure.



NC EYEWITNESS IDENTIFICATION REFORM ACT OF 2007

Frequently Asked Questions

1. Who is an "independent administrator" under the new statute?

A lineup administrator who is not participating in the investigation of the criminal offense and is unaware of which person in the lineup is the suspect.

2. How many fillers must be included with the suspect in a photo or video lineup?

The statutory minimum is five (5) for a total of six (6) persons in the lineup.

3. Can I use the suspect's current or prior booking photo as his photo in the lineup?

Be careful. No information concerning any previous arrest, indictment, or conviction of the suspect shall be visible or made known to the eyewitness. The suspect photo must also be recent and to the extent possible, shall resemble the suspect's appearance at the time of the offense.

4. I've read in the new statute about lineups being administered by independent administrators. Can I still administer my own lineups?

Not live lineups. Photo lineups may still be administered by the investigating law enforcement officer with careful adherence to the new statute. The "folder system" has been recommended by the North Carolina Criminal Justice Education and Training Standards Commission to be used when an independent administrator is not available.

5. Can I administer the lineup without an independent administrator using a computer method?

Yes, but be careful. Many agencies use computers to help develop lineup photographs, and in some instances the lineup is actually presented to the witness on computer-- but very few agencies have used the computer to solely administer the lineup in lieu of an independent administrator. Consult your supervisors, agency legal advisor and local prosecutor's office when preparing policy for these kinds of situations.

6. How do I administer a lineup myself using the folder system?

Step-by-step guidelines are available in a document that accompanied these FAQs: The Folder System: A Recommended Practice for the "Blind" Administration of Eyewitness Procedures for Law Enforcement Agencies with Limited Resources.



7. Do I have to use the NCJA forms?

No. The forms are not a requirement. They have simply been provided to make initial statutory compliance simpler for law enforcement.

8. Can the investigating law enforcement officer be present as a passive observer while a lineup is being conducted by an independent administrator?

No. There shall not be anyone present during live or photo lineups who knows the suspect's identity except the eyewitness and counsel as required by law.

9. Can the exact lineup be shown to every eyewitness to a crime?

Yes and no. You may use the same lineup with the same fillers but the position of the suspect within the lineup must be changed for each witness.

10. If a crime being investigated has two or more suspects can one lineup be conducted provided that five fillers are used for every suspect included?

No. Only one suspect shall be included in a lineup.

11. Can the five fillers be the same for each individual suspect when conducting multiple lineups for multiple suspects?

No. If the eyewitness has previously viewed another lineup in connection with another individual suspected of involvement in the offense, the fillers in any subsequent lineup must be different.

12. What if a witness requests to view a certain lineup participant or photo again?

The witness may view the lineup again but the photos should be shuffled again and the witness must look at all the photographs.

13. What if that witness asks to view the lineup a third time?

Best practices seem to dictate that witnesses should not view more than twice.

14. Does this change how we administer show-ups?

No. The statute is not interpreted to apply to show-ups.

15. Can I choose to use an alternative method for a photo lineup even if my agency has an independent administrator available?

Yes. For photo lineups it is always discretionary whether to choose to use an independent administrator or to choose to use a statutory compliant alternative method such as the folder system.



NC EYEWITNESS IDENTIFICATION REFORM ACT OF 2007 Contacts

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