

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 200**

5 (SENATOR LAIRD, *original sponsor*)

6 _____
7 [Passed April 13, 2013; in effect ninety days from passage.]
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10
11 AN ACT to amend and reenact §62-1E-1, §62-1E-2 and §62-1E-3 of the
12 Code of West Virginia, 1931, as amended, all relating to
13 eyewitness identification, lineups and showups; defining terms
14 and updating definitions; establishing certain recommended
15 procedures before a lineup or showup; setting forth additional
16 instructions to be given prior to a lineup or showup;
17 expanding eyewitness identification procedures; recommending
18 all lineups to be conducted in a sequential and blind manner;
19 expressing a legislative preference for lineups over showups;
20 prohibiting photographic showups; eliminating a task force
21 that is no longer active; and requiring each law-enforcement
22 agency performing lineups or showups to create specific
23 procedures for conducting lineups and showups.

24 *Be it enacted by the Legislature of West Virginia:*

25 That §62-1E-1, §62-1E-2 and §62-1E-3 of the Code of West

1 Virginia, 1931, as amended, be amended and reenacted, all to read
2 as follows:

3 **ARTICLE 1E. EYEWITNESS IDENTIFICATION ACT.**

4 **§62-1E-1. Definitions.**

5 For the purposes of this article:

6 (1) "Administrator" means the person conducting the live
7 lineup, photo lineup or showup.

8 (2) "Suspect" means the person believed by law enforcement to
9 be the possible perpetrator of the crime.

10 (3) "Blind" means the administrator does not know the identity
11 of the suspect.

12 (4) "Blinded" means the administrator may know who the suspect
13 is, but does not know which lineup member is being viewed by the
14 eyewitness.

15 (5) "Eyewitness" means a person whose identification of
16 another person may be relevant in a criminal proceeding.

17 (6) "Filler" means either a person or a photograph of a person
18 who is not suspected of an offense and is included in an
19 identification procedure.

20 (7) "Folder shuffle method" means a procedure for displaying
21 a photo lineup with the following steps:

22 (A) Photos used in a photo lineup are placed in their own
23 respective folder, and the folders are shuffled, numbered and then
24 presented to an eyewitness such that the administrator cannot see
25 or track which photo is being presented to the witness until after
26 the procedure is completed;

1 (B) The procedure is completed only when the eyewitness has
2 viewed the entire array of numbered folders, even if an affirmative
3 identification is made prior to the eyewitness viewing all of the
4 numbered folders;

5 (C) If an eyewitness requests a second viewing, the eyewitness
6 must be shown all of the lineup members again, even if the
7 eyewitness makes an identification during this second showing; and

8 (D) The eyewitness shall be allowed to review the folders only
9 once after the initial viewing is complete.

10 (8) "Lineup" means a live lineup or photo lineup of persons or
11 photographs of persons matching as close as possible the
12 eyewitness's description of the perpetrator.

13 (9) "Live lineup" means a procedure in which a group of people
14 is displayed to an eyewitness for the purpose of determining if the
15 eyewitness is able to identify the perpetrator of a crime.

16 (10) "Photo lineup" means a procedure in which an array of
17 photographs is displayed to an eyewitness for the purpose of
18 determining if the eyewitness is able to identify the perpetrator
19 of a crime.

20 (11) "Sequential presentation" means presenting live or photo
21 lineup persons to the eyewitness one-by-one rather than all at
22 once.

23 (12) "Showup" means an identification procedure in which an
24 eyewitness is presented with a single suspect for the purpose of
25 determining whether the eyewitness identifies this individual as
26 the perpetrator.

1 **§62-1E-2. Eyewitness identification procedures.**

2 (a) Prior to a lineup or showup, law enforcement should record
3 as complete a description as possible of the perpetrator provided
4 by the eyewitness, in the eyewitness's own words. This statement
5 should also include information regarding the conditions under
6 which the eyewitness observed the perpetrator including location,
7 time, distance, obstructions, lighting and weather conditions. The
8 eyewitness should also be asked if he or she wears or has been
9 prescribed glasses or contact lenses and whether he or she was
10 wearing them at the time of the witnessed event. The administrator
11 should record whether or not the eyewitness was wearing glasses or
12 contact lenses at the time of the lineup or showup.

13 (b) After completing the requirements of subsection (a) of
14 this section, but before a lineup or showup, the eyewitness should
15 be given the following instructions:

16 (1) That the perpetrator may or may not be present in the
17 lineup, or, in the case of a showup, may or may not be the person
18 that is presented to the eyewitness;

19 (2) That the eyewitness is not required to make an
20 identification;

21 (3) That it is as important to exclude innocent persons as it
22 is to identify the perpetrator;

23 (4) That the investigation will continue whether or not an
24 identification is made; and

25 (5) That the administrator does not know the identity of the
26 perpetrator.

1 (c) Nothing should be said, shown or otherwise suggested to
2 the eyewitness that might influence the eyewitness's identification
3 of any particular lineup or showup member, at any time prior to,
4 during or following a lineup or showup.

5 (d) All lineups should be conducted blind unless to do so
6 would place an undue burden on law enforcement or the
7 investigation. If conducting a blind lineup would place an undue
8 burden on law enforcement or the investigation, then the
9 administrator shall use the folder shuffle method.

10 (e) All lineups should be conducted in a sequential
11 presentation. When there are multiple suspects, each
12 identification procedure shall include only one suspect.

13 (f) At least four fillers should be used in all lineups. The
14 fillers shall resemble the description of the suspect as much as
15 practicable and shall not unduly stand out.

16 (g) In a photo lineup, there should be no characteristics of
17 the photos themselves or the background context in which they are
18 placed which shall make any of the photos unduly stand out.

19 (h) In a live lineup, all lineup participants must be out of
20 view of the eyewitness prior to the identification procedure.

21 (i) If there are multiple eyewitnesses for the same lineup:

22 (1) Each eyewitness should view the lineup or lineups
23 separately;

24 (2) The suspect should be placed in a different position in
25 the lineup for each eyewitness; and

26 (3) The eyewitnesses should not be permitted to communicate

1 with each other until all identification procedures have been
2 completed.

3 (j) Showups should only be performed using a live suspect and
4 only in exigent circumstances that require the immediate display of
5 a suspect to an eyewitness. A law-enforcement official shall not
6 conduct a showup with a single photo; rather a photo lineup must be
7 used.

8 (k) Law-enforcement officers should make a written or video
9 record of a lineup which shall be provided to the prosecuting
10 attorney in the event that any person is charged with the offense
11 under investigation. The written record shall include all steps
12 taken to comply with this article which shall include the following
13 information:

14 (1) The date, time and location of the lineup;

15 (2) The names of every person in the lineup, if known, and all
16 other persons present at the lineup;

17 (3) The words used by the eyewitness in any identification,
18 including words that describe the eyewitness's certainty or
19 uncertainty in the identification at the time the identification is
20 made;

21 (4) Whether it was a photo lineup or live lineup;

22 (5) The number of photos or individuals that were presented in
23 the lineup;

24 (6) Whether the lineup administrator knew which person in the
25 lineup was the suspect;

26 (7) Whether, before the lineup, the eyewitness was instructed

1 that the perpetrator might or might not be presented in the lineup;

2 (8) Whether the lineup was simultaneous or sequential;

3 (9) The signature, or initials, of the eyewitness, or notation
4 if the eyewitness declines or is unable to sign; and

5 (10) A video of the lineup and the eyewitness's response may
6 be included.

7 **§62-1E-3. Training of law-enforcement officers.**

8 The Superintendent of State Police may create educational
9 materials and conduct training programs to instruct law-enforcement
10 officers and recruits how to conduct lineups in compliance with
11 this section. Any West Virginia law-enforcement agency, as defined
12 in section one, article twenty-nine, chapter thirty of this code,
13 conducting eyewitness identification procedures shall adopt
14 specific written procedures for conducting photo lineups, live
15 lineups and showups that comply with this article on or before
16 January 1, 2014.