

# HOUSE BILL No. 4922

June 14, 2007, Introduced by Reps. Bieda, Condino, Kathleen Law, Tobocman, Vagnozzi, Miller, Rick Jones and Alma Smith and referred to the Committee on Judiciary.

A bill to regulate eyewitness identifications; and to provide for certain powers and duties of certain state and local officers and agencies.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 1. As used in this act:

2           (a) "Eyewitness" means a person who observes another person at  
3 or near the scene of a criminal offense.

4           (b) "Filler" means either a person or a photograph of a person  
5 who is not suspected of an offense but is included in an  
6 identification procedure.

7           (c) "Identification procedure" means either a photo lineup or  
8 a live lineup.

9           (d) "Investigator" means the person conducting a live or photo  
10 lineup.

11           (e) "Live lineup" means a procedure in which a group of

1 persons, including the person suspected as the perpetrator of an  
2 offense and other persons not suspected of the offense, is  
3 displayed to an eyewitness for the purpose of determining whether  
4 the eyewitness is able to identify the suspect as the perpetrator.

5 (f) "Photo lineup" means a procedure in which an array of  
6 photographs, including a photograph of the person suspected as the  
7 perpetrator of an offense and additional photographs of other  
8 persons not suspected of the offense, is displayed to an eyewitness  
9 for the purpose of determining whether the eyewitness is able to  
10 identify the suspect as the perpetrator.

11 (g) "Sequential" means a procedure in a live lineup or photo  
12 lineup in which the eyewitness views only 1 member of the lineup at  
13 a time and is shown all persons or photographs even if  
14 identification has been made before all the persons or photographs  
15 have been viewed.

16 (h) "Simultaneous" means a procedure in a live lineup or photo  
17 lineup in which the eyewitness views all of the members of a lineup  
18 in a live lineup at the same time or is shown all of the  
19 photographs in a photo lineup at the same time.

20 Sec. 2. Not later than January 1, 2008, each police department  
21 of a city, village, or township, each county sheriff's department,  
22 and the department of state police shall adopt procedures for the  
23 conducting of photo lineups and live lineups that comply with all  
24 of the following requirements:

25 (a) When practicable, the investigator shall be a person who  
26 is not aware of which person in the photo lineup or live lineup is  
27 suspected as the perpetrator of the offense and the lineup shall be

1 presented sequentially. If it is not practicable for the  
2 investigator to be a person who is not aware of which person in the  
3 photo or live lineup is suspected as the perpetrator of the  
4 offense, the lineup shall be presented simultaneously, not  
5 sequentially, and the investigator shall state in writing the  
6 reason that presentation of the lineup was not made by a person who  
7 was not aware of which person in the photo lineup or live lineup  
8 was suspected as the perpetrator of the offense.

9 (b) The eyewitness shall be given the following instructions  
10 before the identification procedure:

11 (i) The perpetrator may not be among the persons in the photo  
12 lineup or the live lineup, and it is as important to exclude  
13 innocent persons as it is to identify the perpetrator.

14 (ii) The eyewitness should not feel compelled to make an  
15 identification.

16 (iii) If the live lineup or photo lineup is administered in  
17 sequence rather than simultaneously, all of the following  
18 instructions:

19 (A) Each photograph or person will be viewed 1 at a time.

20 (B) The photographs or persons will be displayed in random  
21 order.

22 (C) The eyewitness should take as much time as needed in  
23 making a decision about each photograph or person before moving to  
24 the next one.

25 (D) All photographs or persons will be shown to the  
26 eyewitness, even if an identification is made before all have been  
27 viewed.

1 (c) The photo lineup or live lineup shall be composed so that  
2 the fillers generally resemble the eyewitness's description of the  
3 person suspected as the perpetrator and, in the case of a photo  
4 lineup, so that the photograph of the person suspected as the  
5 perpetrator resembles his or her appearance at the time of the  
6 offense and does not unduly stand out.

7 (d) If the eyewitness has previously viewed a photo lineup or  
8 live lineup in connection with the identification of another person  
9 suspected of involvement in the offense, the fillers in the lineup  
10 in which the person suspected as the perpetrator participates shall  
11 be different from the fillers used in any prior lineups.

12 (e) At least 5 fillers shall be included in the photo lineup  
13 and at least 4 fillers shall be included in the live lineup, in  
14 addition to the person suspected as the perpetrator.

15 (f) In a photo lineup, any writings or information concerning  
16 any previous arrest of the person suspected as the perpetrator  
17 shall not be visible to the eyewitness.

18 (g) In a live lineup, any identification actions, such as  
19 speaking or making gestures or other movements, shall be performed  
20 by all lineup participants.

21 (h) In a live lineup, all lineup participants shall be out of  
22 the view of the eyewitness at the beginning of the identification  
23 procedure.

24 (i) The person suspected as the perpetrator shall be the only  
25 suspected perpetrator included in the identification procedure.

26 (j) Nothing shall be said to the eyewitness regarding the  
27 position in the photo lineup or the live lineup of the person

1 suspected as the perpetrator, except as otherwise provided in  
2 subdivision (b) (iii) (D).

3 (k) Nothing shall be said to the eyewitness that might  
4 influence the eyewitness's selection of the person suspected as the  
5 perpetrator.

6 (l) The investigator shall seek, in the eyewitness's own words,  
7 his or her confidence level that the person or persons identified  
8 in the lineup is the suspect.

9 (m) If the eyewitness identifies a person as the perpetrator,  
10 the eyewitness shall not be provided any information concerning  
11 that person before obtaining the eyewitness's statement that he or  
12 she is certain of the selection.

13 (n) A written record of the identification procedure shall be  
14 made that includes all of the following information:

15 (i) All identification and nonidentification results obtained  
16 during the identification procedure, signed by the eyewitness,  
17 including the eyewitness's own words regarding how certain he or  
18 she is of the selection.

19 (ii) The names of all persons present at the identification  
20 procedure.

21 (iii) The date and time of the identification procedure.

22 (iv) In a live or photo lineup where the subjects were  
23 presented sequentially as opposed to simultaneously, the order in  
24 which the photographs or persons were displayed to the eyewitness.

25 (v) In a photo lineup, the photographs themselves.

26 (vi) In a photo lineup, identification information and the  
27 sources of all photographs used.

1           (vii) In a live lineup, a photo or other visual recording of  
2 the lineup that includes all persons who participated in the  
3 lineup.

4           Sec. 3. (1) Evidence of a failure to comply with any  
5 provisions of section 2 shall be considered by the trial court in  
6 adjudicating motions to suppress eyewitness identification.

7           (2) Evidence of a failure to comply with any provisions of  
8 section 2 is admissible in support of claims of eyewitness  
9 misidentification as long as that evidence is otherwise admissible.

10           (3) When evidence of a failure to comply with any provision of  
11 this act has been presented at trial, the jury shall be instructed  
12 that it may consider credible evidence of noncompliance in  
13 determining the reliability of eyewitness identifications.

14           Sec. 4. Subject to appropriations being made for that purpose,  
15 the department of state police shall create, administer, and  
16 conduct training programs for law enforcement officers and recruits  
17 on the methods and technical aspects of the eyewitness  
18 identification practices and procedures referenced in this act.