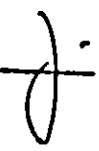


SIXTEENTH CONGRESS OF THE REPUBLIC)
OF THE PHILIPPINES)
Third Regular Session)



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SENATE
S. No. 3173

RECEIVED BY: 

Introduced by Senator Miriam Defensor Santiago

AN ACT
IMPROVING THE ACCURACY OF EYEWITNESS IDENTIFICATIONS

EXPLANATORY NOTE

Eyewitness testimony is powerful evidence in a courtroom, but it is not error-proof. In fact, misidentifications are the leading cause of wrongful convictions overturned by DNA testing. This information is contained in a July 2009 report released by the Innocence Project, an organization based in the Benjamin N. Cardozo School of Law at Yeshiva University, New York, U.S.A.

The findings in "Reevaluating Lineups: Why Witnesses Make Mistakes and How to Reduce the Chance of a Misidentification," include:

- 240 people, serving an average of 12 years in prison, have been exonerated through DNA testing in the United States, and 75% of those wrongful convictions (179 individual cases as of this report) involved eyewitness misidentification.
- In 38% of the misidentification cases, multiple eyewitnesses misidentified the same innocent person.
- Over 250 witnesses misidentified innocent suspects.
- 53% percent of the misidentification cases (among those where race is known) involved cross-racial misidentifications.

- In 50% of the misidentifications cases, eyewitness testimony was the central evidence used against the defendant (without other corroborating evidence like confessions, forensic science or informant testimony).
- In 36% of the misidentification cases, the real perpetrator was identified through DNA evidence.

The Innocence Project has drafted model legislation to modify the criminal justice system. Since traditional eyewitness identifications remain among the most commonly used and compelling evidence brought against criminal defendants in several jurisdictions including the Philippines, we must review these methods and address possible weak areas to prevent the innocent from being punished, and the true criminals from getting away.

This bill seeks to establish standards and specific procedures with respect to the collection and handling of eyewitness evidence in criminal investigations by law enforcement agencies that are shown by reliable evidence to enhance the accuracy of eyewitness identification.¹


MIRIAM DEFENSOR SANTIAGO
at

¹ This bill was originally filed during the Fourteenth Congress, Third Regular Session.

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AN ACT
IMPROVING THE ACCURACY OF EYEWITNESS IDENTIFICATIONS

Be it enacted by the Senate and the House of Representatives of the Philippines in Congress assembled:

1 SECTION 1. *Short Title.* – This Act shall be known as the “Eyewitness
2 Identification Reform Act.”

3 SECTION 2. *Declaration of Policy.* – It is the policy of the State to convict the
4 guilty and protect the innocent. Towards this end, an improvement of the accuracy of
5 eyewitness identifications, will enhance the integrity of the State’s criminal justice
6 process by an adherence to best practices in evidence gathering.

7 SECTION 3. *Definition of Terms.* – For purposes of this Act, the term:

8 (A) “Administrator” means the person conducting the photo or live lineup;

9 (B) “Blind” means the administrator does not know the identity of the suspect;

10 (C) “Blinded” means the administrator may know who the suspect is, but does not
11 know which lineup member is being viewed by the eyewitness;

12 (D) “Eyewitness” means a person who observes another person at or near the
13 scene of an offense;

14 (E) “Filler” means either a person or a photograph of a person who is not
15 suspected of an offense and is included in an identification procedure;

16 (F) “Identification procedure” means a live lineup, a photo lineup, or a showup;

1 (G) "Live lineup" means an identification procedure in which a group of persons,
2 including the suspected perpetrator of an offense and other persons not suspected of the
3 offense, is displayed to an eyewitness for the purpose of determining whether the
4 eyewitness identifies the suspect as the perpetrator;

5 (H) "Photo lineup" means an identification procedure in which an array of
6 photographs, including a photograph of the suspected perpetrator of an offense and
7 additional photographs of other persons not suspected of the offense, is displayed to an
8 eyewitness either in hard copy form or via computer for the purpose of determining
9 whether the eyewitness identifies the suspect as the perpetrator;

10 (I) "Secretary" means the Secretary of the Department of Justice;

11 (J) "Show-up" means an identification procedure in which an eyewitness is
12 presented with a single suspect for the purpose of determining whether the eyewitness
13 identifies this individual as the perpetrator; and

14 (K) "Suspect" means the person believed by law enforcement to be the possible
15 perpetrator of the crime.

16 SECTION 4. *Eyewitness Identification Procedures.* – Any criminal justice entity
17 conducting eyewitness identification procedures shall adopt specific procedures for
18 conducting photo and live lineups that comply with the following requirement:

19 (A) Prior to a photo or live lineup, law enforcement shall record as complete a
20 description as possible of the perpetrator provided by the eyewitness, in the eyewitness'
21 own words. This statement shall also include information regarding the conditions under
22 which the eyewitness observed the perpetrator including location, time, distance,
23 obstructions, lighting, weather conditions, and other impairments, including but not
24 limited to alcohol, drugs, stress, and visual/auditory disabilities. The eyewitness shall also
25 be asked if he needs glasses or contact lenses and whether he was wearing them at the

1 time of the offense. The administrator shall note whether the eyewitness was wearing
2 glasses or contact lenses at the time of the identification procedure;

3 (B) Unless impracticable, a blind or blinded administrator shall conduct the live or
4 photo lineup;

5 (C) When it is impracticable for a blind administrator to conduct the eyewitness
6 identification procedure, the investigator shall state in writing the reason therefor;

7 (D) The eyewitness shall be instructed, without other eyewitnesses present, prior
8 to any live or photo lineup that:

9 (1) The perpetrator may or may not be among the persons in the
10 identification procedure or, in the case of a showup, may or may not be the person
11 that is presented to the eyewitness;

12 (2) The administrator does not know who the perpetrator is;

13 (3) The eyewitness should not feel compelled to make an identification;

14 (4) The investigation will continue whether or not an identification is
15 made;

16 (5) The procedure requires the administrator to ask the eyewitness to state,
17 in his own words, how certain he is of any identification; and

18 (6) The eyewitness is not to discuss the identification procedure or its
19 results with other eyewitnesses involved in the case and should not speak with the
20 media;

21 (E) In a photo lineup, the photograph of the suspect shall be contemporary and
22 shall resemble his or her appearance at the time of the offense;

23 (F) In a photo lineup, there shall be no characteristics of the photographs
24 themselves or the background context in which they are placed which shall make any of
25 the photographs unduly stand out;

1 (G) A photo or live lineup shall be composed so that the fillers generally resemble
2 the eyewitness's description of the perpetrator, while ensuring that the suspect does not
3 unduly stand out from the fillers;

4 (H) In a photo or live lineup, fillers shall possess the following characteristics:

5 (1) All fillers selected shall resemble the eyewitness' description of the
6 perpetrator in significant features (*i.e.*, face, weight, build, skin tone, etc.),
7 including any unique or unusual features (*i.e.*, scar, tattoo, etc.);

8 (2) At least five fillers shall be included in a photo lineup, in addition to
9 the suspect;

10 (3) At least four fillers shall be included in a live lineup, in addition to the
11 suspect; and

12 (4) If the eyewitness has previously viewed a photo lineup or live lineup in
13 connection with the identification of another person suspected of involvement in
14 the offense, the fillers in the lineup in which the instant suspect participates shall
15 be different from the fillers used in any prior lineups;

16 (I) If there are multiple eyewitnesses:

17 (1) Each eyewitness shall view photo or live lineups separately;

18 (2) The suspect shall be placed in a different position in the live lineup
19 and/or photo lineup for each eyewitness; and

20 (3) The eyewitnesses shall not be permitted to communicate with each
21 other until all identification procedures have been completed;

22 (J) In an identification procedure, no writings or information concerning the
23 instant or any previous arrest, indictment or conviction of the suspect shall be visible or
24 made known to the eyewitness;

25 (K) In a live lineup, any identifying actions such as speech, gestures or other
26 movements, shall be performed by all lineup participants;

1 (L) In a live lineup, all lineup participants must be out of view of the eyewitness
2 prior to the identification procedure;

3 (M) When there are multiple suspects, each identification procedure shall include
4 only one suspect;

5 (N) Nothing shall be said to the eyewitness regarding the suspect's position in the
6 photo or live lineup;

7 (O) Nothing shall be said to the eyewitness that might influence the eyewitness's
8 identification of any particular lineup member;

9 (P) If the eyewitness makes an identification, the administrator shall seek and
10 document a clear statement from the eyewitness at the time of the identification and in
11 the eyewitness' own words, as to the eyewitness's confidence level that the person
12 identified in a given identification procedure is the perpetrator;

13 (Q) If the eyewitness identifies a person as the perpetrator, the eyewitness shall not
14 be provided any information concerning such person before the administrator obtains the
15 eyewitness' confidence statement about the selection;

16 (R) A record of the identification procedure shall be made that includes all
17 identification and non-identification results obtained during the identification procedures,
18 signed by the eyewitnesses;

19 (S) Efforts shall be made to perform a live or photo lineup instead of a showup. –

20 (1) Showups shall only be performed using a live suspect and in exigent
21 circumstances that require the immediate display of a suspect to an eyewitness.

22 (2) In the event of the administration of a showup procedure:

23 (a) A full and detailed description of the perpetrator shall be
24 provided by the eyewitness before the eyewitness observes the suspect.
25 This statement shall also include information regarding the conditions
26 under which the eyewitness observed the perpetrator including location,

1 time, distance, obstructions, lighting, weather conditions, and other
2 impairments, including but not limited to alcohol, drugs, stress, and
3 visual/auditory disabilities. The eyewitness shall be also be asked if he
4 needs glasses or contact lenses and whether he was wearing them at the
5 time of the offense, The administrator shall note whether the eyewitness
6 was wearing glasses or contact lenses at the time of the Identification
7 procedure.

8 (b) The eyewitness shall be transported to a neutral, non-law
9 enforcement location where the suspect is being detained for the purposes
10 of a showup procedure.

11 (c) Eyewitnesses shall be provided with instructions prior to the
12 showup, including:

13 (i) The perpetrator may or may not be among the persons in
14 the identification procedure or, in the case of a showup, may or may
15 not be the person that is presented to the eyewitness;

16 (ii) The eyewitness should not feel compelled to make an
17 identification;

18 (iii) The investigation will continue whether or not an
19 identification is made;

20 (iv) The procedure requires the administrator to ask the
21 eyewitness to state, in his own words, how certain he is of any
22 identification; and

23 (v) The eyewitness is not to discuss the identification
24 procedure or its results with other eyewitnesses involved in the case
25 and should not speak with the media;

1 (d) Measures shall be taken by investigators at the showup,
2 including the administrator of the showup, to reduce potentially damaging
3 or prejudicial inferences that may be drawn by the eyewitness, including:

4 (i) Refraining from suggesting, through statements or non-
5 verbal conduct, that the suspect is or may be the perpetrator of the
6 crime;

7 (ii) Removing the suspect from a squad car; and

8 (iii) When practicable, removing handcuffs from the suspect;

9 (e) If there are multiple eyewitnesses, only one eyewitness at a time
10 shall participate in the showup procedure:

11 (i) Only one of the eyewitnesses shall be present at the
12 location of the showup procedure; and

13 (ii) If a positive identification is made, and an arrest is
14 justified, additional eyewitnesses shall be shown live or photo
15 lineups;

16 (f) If there are multiple suspects, these suspects shall be separated
17 and subjected to separate show-up procedures.

18 (g) If the eyewitness makes an identification, the administrator shall
19 seek and document a clear statement from the eyewitness, at the time of the
20 identification and in the eyewitness' own words, as to the eyewitness'
21 confidence level that the person identified in a given identification
22 procedure is the perpetrator.

23 (T) Unless impracticable, a video record of the identification procedure shall be
24 made that includes the following information:

1 (1) All identification and non-identification results obtained during the
2 identification procedures, signed by the eyewitnesses, including the eyewitnesses'
3 confidence statements;

4 (2) The names of all persons present at the identification procedure;

5 (3) The date and time of the identification procedure;

6 (4) In a photo or live lineup, any eyewitness identifications of fillers; and

7 (5) In a photo or live lineup, the names of the lineup members and other
8 relevant identifying information, and the sources of all photographs or persons
9 used in the lineup;

10 (U) If a video record of the lineup is impracticable, the officer conducting the
11 lineup shall document the reason therefor, and an audio record of the identification
12 procedure shall be made which includes the items specified in Section 4(T), (paragraph 1-
13 5) of this Act. The audio record shall be supplemented by the all of the photographs used
14 in a photo lineup, and photographs of all of the individuals used in a live lineup or show-
15 up; and

16 (V) If both a video and audio record of the lineup are impracticable, the officer
17 conducting the lineup shall document in writing the reason therefor, and a written record
18 of the lineup shall be made which includes the items specified in Section 4(T), (paragraph
19 1-5) of this Act. The written record shall be supplemented by all of the photographs used
20 in a photo lineup, and photographs of all of the individuals used in a live lineup or
21 showup.

22 **SECTION 5. Remedies for Noncompliance. –**

23 (A) Evidence of a failure to comply with any of the provisions of this statute shall
24 be considered by trial courts in adjudicating motions to suppress eyewitness
25 identification;

1 **(B) Evidence of a failure to comply with any of the provisions of this statute shall**
2 **be admissible in support of claims of eyewitness misidentification as long as such**
3 **evidence is otherwise admissible.**

4 **SECTION 6. *Training of Law Enforcement Officers.* – The Department of Justice**
5 **shall create, administer and conduct training programs for law enforcement officers and**
6 **recruits regarding the methods, technical aspects and scientific findings regarding the**
7 **basis of the eyewitness identification practices and procedures referenced in this Act.**

8 **SECTION 7. *Creation of a Task Force to Establish the Implementing Rules and***
9 ***Regulations for Eyewitness Procedures.* –**

10 **(A) A task force shall be convened by the Secretary of the Department of Justice**
11 **and shall be composed of seven members:**

- 12 **(1) The Secretary of the DOJ;**
13 **(2) A dean of a duly accredited law school;**
14 **(3) A representative of the Philippine National Police;**
15 **(4) A representative of Office of the Prosecutor;**
16 **(5) A representative of the Public Attorney's Office;**
17 **(6) A member of the Committee on Justice and Human Rights of the**
18 **Senate; and**
19 **(7) A member of the Committee on Justice of the House of Representatives.**

20 **(B) The task force, in consultation with eyewitness identification practitioners and**
21 **experts, shall establish the implementing rules and regulations of this Act.**

22 **SECTION 8. *Appropriations.* – To carry out the provisions of this Act, such**
23 **amount as may be necessary is hereby authorized to be appropriated from the National**

1 Treasury. Thereafter, the amount necessary for the continuous operation of the Task
2 Force shall be included in the annual appropriation of the DOJ.

3 SECTION 9. *Separability Clause.* – If any provision of this Act is held invalid or
4 unconstitutional, the same shall not affect the validity and effectivity of the other
5 provisions hereof.

6 SECTION 10. *Repealing Clause.* – All laws, decrees, orders, and issuances, or
7 portions thereof, which are inconsistent with the provisions of this Act, are hereby
8 repealed, amended or modified accordingly.

9 SECTION 11. *Effectivity Clause.* – This Act shall take effect fifteen (15) days
10 after its publication in the *Official Gazette* or in two (2) newspapers of general
11 circulation.

Approved,

/lml4Dec2015