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2 Councilmember Kathy Patterson
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5 A BILL
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11 IN THE COUNCIL IN THE DISTRICT OF COLUMBIA
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16 Councilmember Kathy Patterson introduced the following bill, which was referred to the
17 Committee on _____.
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20 To create and mandate an eyewitness identification process; to codify best practices in
21 identification procedures; to require that line-up procedures be recorded; and to create a
22 rebuttable presumption that a line-up procedure not in accordance with this law is
23 unreliable.
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26 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
27 act may be cited as the "Eyewitness Identification Procedure Act of 2004."

28 Sec. 2. Definitions.

29 For the purposes of this section:

30 (1) "Line-up" means a procedure conducted by law enforcement in which a witness views
31 a number of persons or photographs and is asked whether the witness can make an identification.

32 Unless specifically stated otherwise, reference to a line-up in this act refers to both a line-up
33 composed of actual persons and a photographic display.

34 (2) "Photographic display" means a group of photographs of possible suspects and/or
35 fillers shown to the witness during a lineup procedure.

1 (3) "Double blind" means that the person conducting the lineup is not aware of which
2 member of the live lineup or photographic display is the actual suspect, and the person choosing
3 from the lineup is told by the person conducting the procedure that the suspect might not be in
4 the live lineup or photographic display.

5 (4) "Sequential line-up" means that the person choosing from the lineup views only one
6 member of the live line-up or photographic display at a time and states his or her judgment that
7 the person is or is not the suspected perpetrator at that time and before viewing another member
8 of the live line-up or photographic display.

9 (5) "Filler" means persons placed in a lineup that resemble in some way the description
10 the witness gave to investigators of the possible perpetrator. Fillers are expected to reasonably
11 resemble the suspect in significant features.

12 Sec. 3. Procedures for Neutral Investigator Conducting a Double Blind Sequential Line-
13 up:

14 (a) Double blind, sequential line-up procedures conducted by a neutral investigator shall
15 be the standard practice in District of Columbia law enforcement agencies. Different procedures
16 are to be used only in the case of exigent circumstances and remain subject to provisions in
17 section 6.

18 (b) Investigators must separate all witnesses. Each witness should be given instructions
19 regarding the identification procedures without other witnesses present. Witnesses should not be
20 allowed to confer with one another before, during, or after the procedure.

21 (c) Prior to the line-up itself, investigators must thoroughly explain a form provided to the
22 witness describing line-up procedures. The content of this form is stated in Section 4. This
23 explanation, which may be given by video instruction, must include:

1 (1) an explanation to the witness that the investigator does not know which
2 person, if any, is the actual suspect in the case;

3 (2) an explanation to the witness that the actual suspect may or may not be
4 present in the line-up;

5 (3) an instruction that each individual in the line-up will be viewed
6 individually;

7 (4) an assurance that an identification does not have to be made and that
8 the police will continue to investigate the incident regardless of whether the witness identifies
9 anyone in the lineup;

10 (5) an instruction to the witness to take as much as they need with each
11 photograph or live line-up participant before making a determination;

12 (6) an explanation to the witness that the investigator must ask how certain
13 they are if an identification is made, and will subsequently record this response;

14 (7) an explanation that the lineup may be videotaped;

15 (8) an instruction that the witness should not discuss the lineup with any
16 other witnesses.

17 (d) Investigators must clearly record in writing both identifications and non-
18 identifications made by witnesses during a line-up to preserve the true outcome of the procedure
19 and subsequently have the witness sign the documented results along with the date and time of
20 the lineup procedure. A standard form should be used for recording line-up results.

21 (e) Investigators performing the line-up procedure must have no knowledge of the person
22 deemed the actual suspect in the line-up.

1 (f) Investigators may not make any comment, gesture, facial expression, noise or other
2 response when a witness makes an identification or non-identification.

3 (g) Witnesses should not receive any feedback from investigators after the identification.

4 (h) Investigators must ensure that all photographs or live line-up participants have
5 reasonably similar characteristics (face, profile, height, weight, build, posture, gait, voice, age,
6 skin tone, distinguishing features, specific articles of clothing, etc.). Fillers should resemble the
7 witness's description of the perpetrator. Suspects should not stand out significantly from other
8 participants in a line-up. Investigators must create a reasonably consistent appearance between
9 the suspect and fillers with respect to unique, remarkable, or unusual features. Investigators
10 should examine photographic spreads before presentation to a witness to ensure the suspect does
11 not stand out.

12 (i) Investigators must present photographs or live line-up participants in random order
13 and allow the witness as much time as they need with each photograph or live line-up participant.

14 (j) Investigators may only present photographs or live line-up participants to the witness
15 one at a time, or "sequentially". The witness must make a determination on each individual in the
16 lineup before the next individual is shown. The investigator must record all comments and
17 determinations by the witness for each participant in the lineup.

18 (k) If the witness makes an identification, the investigator should ask the witness to
19 describe in her or her own words how certain the witness is of identification. The investigator
20 should record the witness's response.

21 (l) For a live lineup, any identification actions such as speaking or moving must be
22 performed by each individual participant when they are sequentially shown to the witness.

1 (m) Investigators must utilize at least five (5) fillers for live line-ups and at least five (5)
2 fillers for photographic line-ups.

3 (n) Investigators must show witnesses the entire photographic display or allow each live
4 line-up participant to be shown, even if the witness identifies the suspected perpetrator.

5 (o) When such equipment is reasonably available, the police shall videotape live
6 sequential lineups or sequential photographic displays including the witness's comments,
7 determinations on each participant, and stated level of confidence. When such equipment is not
8 reasonably available, investigators should record the number of photos or individuals shown,
9 sources of all photos used, the presentation order of the line-up, names of persons present during
10 the line-up, and the number of times the line-up is viewed.

11 Sec. 4. Procedures For Witnesses Involved In Double Blind Sequential Line-ups

12 (a) Every witness viewing a double blind sequential photographic line-up or live line-up
13 must sign a form containing the following: "Please read the following description of how the
14 identification procedure will happen:

15 (1) You are not required to make an identification and the police will
16 continue to investigate regardless of the determination of the witness;

17 (2) The suspect may or may not be in the photographic display or live line-
18 up at all;

19 (3) It is just as important to clear innocent individuals from the line-up as
20 it is to implicate possible suspects;

21 (4) You should not assume that the investigator conducting the lineup
22 knows which person, if any, is the suspect in the case;

1 (5) You will be asked to rate your level of certainty if an identification is
2 made.

3 By signing this form I agree that I have read and understand the above information.”

4 (b) Witnesses must be informed of the procedures for both photographic line-ups and live
5 line-ups, including all items described in Section 3(c) of this Act.

6 Sec. 5. Procedures for Investigators Conducting a Showup.

7 (a) Showups should only be used in case of exigent circumstances requiring the prompt
8 display of a single suspect to a witness. If a showup is used, the exigent circumstances requiring
9 its use will be recorded and preserved by the investigator.

10 (b) If possible, investigators will encourage the suspect to consent to voluntary
11 detainment to participate in a live lineup or to consent to being photographed for use in a photo
12 lineup. A written consent that they are a willing participant in the lineup without promises,
13 threats, pressure, or coercion should be signed and dated by the suspect.

14 (c) Showups should only be conducted when the suspect matching the description of the
15 perpetrator is located in close proximity in time and place to the crime.

16 (d) A description of the perpetrator should be documented prior to the showup

17 (e) If practical, investigators should transport the witness to the location of the detained
18 suspect to limit the legal impact of the suspect's detention.

19 (f) Showups should not be conducted with more than one witness present at a time.

20 (g) Witnesses should be given a cautionary instruction prior to the showup that the
21 individual may not be the perpetrator.

1 (h) If there are multiple witnesses and one witness makes an identification during a
2 showup, investigators should reserve the remaining witnesses for another identification
3 procedure.

4 (i) Words or conduct of any type that may suggest to the witness that an individual is or
5 may be the perpetrator should be carefully avoided.

6 Sec. 6. Failure to Follow the Eyewitness Identification Procedure Act of 2004.

7 (a) Any identification of a person accused of a criminal offense in the Superior Court of
8 the District of Columbia which is made by a witness during a lineup or showup which is not
9 conducted in accordance with the procedures required by this Act shall be subject to a rebuttable
10 presumption that the identification is unreliable.

11 (b) This presumption may be overcome if the government proves by clear and convincing
12 evidence that the identification procedure was not suggestive and was reliable, otherwise the
13 identification will be suppressed.

14 (c) If suppression is not ordered:

15 (1) the existence of the statutory procedures and investigators' failure to comply
16 with those procedures shall be admissible in evidence to challenge the reliability of the
17 identification at trial; and

18 (2) properly qualified expert testimony about the failure to comply with statutory
19 procedures and the importance of the statutory procedures to ensuring reliability shall be
20 admissible in evidence along with the identification.

21 Sec. 8. Purpose and Construction of the Eyewitness Identification Procedure Act of
22 2004.

1 (a) This act is passed to ensure that identification procedures should always be conducted
2 in a manner that promotes fairness, accuracy, reliability, objectivity, and furthers the overall
3 interests of justice. This act shall be construed in light of its purpose.

4 (b) Nothing in this Act shall be construed to limit the admissibility of properly qualified
5 expert witnesses on matters relating to the reliability and accuracy of eyewitness identifications.

6 Sec. 9. Fiscal impact statement.

7 The Council adopts the fiscal impact statement in the committee report as the fiscal
8 impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act,
9 approved December 24, 1974 (87 Stat. 813, D.C. Official Code § 1-206.02(c)(3)).

10 Section 10. Effective date.

11 This act shall take effect following approval by the Mayor (or in the event of veto by the
12 Mayor, action by the Council to override the veto), a 60-day period of Congressional review as
13 provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December
14 24, 1973 (87 Stat. 813; D.C. Official Code §1-206.02(c)(2)), and publication in the District of
15 Columbia Register.