

**HB 1105 – AS INTRODUCED**

2006 SESSION

06-2488

09/04

**HOUSE BILL 1105**

AN ACT relative to eyewitness identification procedures.

SPONSORS: Rep. Hammond, Graf 11; Rep. Ulery, Hills 27

COMMITTEE: Criminal Justice and Public Safety

## ANALYSIS

This bill establishes requirements for police departments when conducting eyewitness identifications.

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Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

06-2488

09/04

## STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Six*

AN ACT relative to eyewitness identification procedures.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 New Chapter; Eyewitness Identification Procedures. Amend RSA by inserting after chapter 106-K the following new chapter:

## CHAPTER 106-L

## EYEWITNESS IDENTIFICATION PROCEDURES

106-L:1 Definitions. For the purposes of this chapter:

I. “Eyewitness” means a person who observes another person at or near the scene of a criminal offense.

II. “Photo lineup” means a procedure in which an array of photographs, including a photograph of the person suspected as the perpetrator of an offense and additional photographs of other persons not suspected of the offense, is displayed to an eyewitness for the purpose of determining whether the eyewitness is able to identify the suspect as the perpetrator.

III. “Live lineup” means a procedure in which a group of persons, including the person suspected as the perpetrator of an offense and other persons not suspected of the offense, is displayed to an eyewitness for the purpose of determining whether the eyewitness is able to identify the suspect as the perpetrator.

IV. “Investigator” means the person conducting the live or photo lineup.

V. “Identification procedure” means either a photo lineup or a live lineup.

VI. “Filler” means either a person or a photograph of a person who is not suspected of an offense and is included in an identification procedure.

106-L:2 Eyewitness Identification Procedures. Every police department and the division of state police shall adopt procedures for conducting photo lineups and live lineups that comply with the following requirements:

I. When practicable, the investigator shall be a person who is not aware of which person in the photo lineup or live lineup is suspected as the perpetrator of the offense. The photo lineup or live lineup shall be conducted sequentially. When it is not practicable for the investigator to be a person who is not aware of which person in the photo or live lineup is suspected as the perpetrator of the offense:

(a) The lineup shall be presented simultaneously, not sequentially; and

(b) The investigator shall state in writing the reason that the presentation of the lineup was not made by a person who was not aware of which person in the photo lineup or live lineup was suspected as the perpetrator of the offense.

II. Prior to the identification procedure, the investigator shall instruct the eyewitness that:

(a) The perpetrator may not be among the persons in the photo lineup or the live lineup.

(b) The eyewitness should not feel compelled to make an identification.

(c) When administering a live lineup or photo lineup in sequence rather than simultaneously:

- (1) Each photograph or person will be viewed one at a time;
- (2) The photographs or persons will be displayed in random order;
- (3) The eyewitness should take as much time as needed in making a decision about each photograph or person before moving to the next one; and
- (4) All photographs or persons will be shown to the eyewitness, even if identification is made before all have been viewed.

III. When administering a live lineup or photo lineup in sequence rather than simultaneously, the investigator shall conduct the identification procedure with the eyewitness as follows:

- (a) Each photograph or person shall be viewed one at a time;
- (b) The photographs or persons shall be displayed in random order;
- (c) The eyewitness shall take as much time as needed in making a decision about each photograph or person before moving to the next one; and
- (d) All photographs or persons shall be shown to the eyewitness, even if identification is made before all have been viewed.

IV. The photo lineup or live lineup shall be composed so that the fillers generally fit the description of the person suspected as the perpetrator and, in the case of a photo lineup, so that the photograph of the person suspected as the perpetrator resembles his or her appearance at the time of the offense and is not unnecessarily suggestive.

V. At least 5 fillers shall be included in the photo lineup and at least 4 fillers shall be included in the live lineup, in addition to the person suspected as the perpetrator.

VI. The person suspected as the perpetrator shall be the only suspected perpetrator included in the identification procedure.

VII. The investigator shall seek, in the eyewitness's own words, his or her confidence level that the person or persons identified in the lineup is the suspect.

VIII. A written record of the identification procedure shall be made that includes the following information:

- (a) All identification and non-identification results obtained during the identification procedure, signed by the eyewitness, including the eyewitness's own words regarding how certain he or she is of the selection.

- (b) The names of all persons present at the identification procedure.
- (c) The date and time of the identification procedure.

106-L:3 Remedies for Noncompliance. Evidence of a failure to comply with any of the provisions of this chapter shall be admissible for consideration by the trial court in adjudicating motions to suppress eyewitness identification. Evidence of a failure to comply with any of the provisions of this chapter shall be admissible in support of claims of eyewitness misidentification as long as such evidence is otherwise admissible pursuant to the rules of evidence and criminal procedure.

2 Effective Date. This act shall take effect July 1, 2007.