

Senate Bill 355

By: Senators Cowser of the 46th, McKoon of the 29th and Stone of the 23rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure,
2 so as to require a procedure for enhancing witness identification accuracy; to provide for
3 definitions; to provide for written policies relating to witness identification protocol; to
4 provide for the consequences of failing to comply with witness procedures; to amend Title
5 35 of the Official Code of Georgia Annotated, relating to law enforcement officers and
6 agencies, so as to provide for training in enhancing witness identification accuracy; to
7 provide for related matters; to provide for effective dates and applicability; to repeal
8 conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 SECTION 1.

11 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
12 amended by adding a new chapter to read as follows:

13 "CHAPTER 20

14 17-20-1.

15 As used in this chapter, the term:

16 (1) 'Filler' means individuals who are not suspects.

17 (2) 'Law enforcement agency' means a governmental unit of one or more persons
18 employed full time or part time by the state, a state agency or department, or a political
19 subdivision which performs as its principal function activities relating to preventing and
20 detecting crime and enforcing state laws or local ordinances, employees of which unit are
21 authorized to make arrests for crimes while acting within the scope of their authority.

22 (3) 'Live lineup' means an identification procedure in which a suspect and fillers are
23 displayed in person to a witness.

24 (4) 'Photo lineup' means an identification procedure in which a photograph of a suspect
25 and photographs of fillers are displayed to a witness, either in hard copy form or via
26 computer.

27 (5) 'Showup' means an identification procedure in which a witness is presented with a
28 single person.

29 (6) 'Suspect' means the person believed by law enforcement to be the possible perpetrator
30 of an alleged crime.

31 (7) 'Witness' means a person who observes an alleged crime.

32 17-20-2.

33 (a) Not later than July 1, 2015, any law enforcement agency that conducts live lineups,
34 photo lineups, or showups shall adopt written policies for using such procedures for the
35 purpose of determining whether a witness identifies someone as the perpetrator of an
36 alleged crime. Each law enforcement agency in this state that administers live lineups,
37 photo lineups, or showups shall provide a copy of its written policies to the Georgia Peace
38 Officer Standards and Training Council not later than July 1, 2015.

39 (b) A law enforcement agency shall adopt policies and practices to enhance the objectivity
40 and reliability of identifications by witnesses which minimize the possibility of mistaken
41 identifications. If a policy is adopted pursuant to this Code section, it shall include, but
42 shall not be limited to:

43 (1) With respect to a live lineup, having a person who does not know the identity of the
44 suspect conduct the live procedure;

45 (2) With respect to an identification procedure in which a photograph of a suspect and
46 photographs of fillers are displayed to a witness, either in hard copy form or via
47 computer, having a person who does not know the identity of the suspect conduct the
48 photo procedure;

49 (3) With respect to an identification procedure in which a photograph of a suspect and
50 photographs of fillers are displayed to a witness in hard copy form, having a person who
51 knows the identity of the suspect use a procedure in which photographs are placed in
52 folders, randomly shuffled, and then presented to the witness so that the person
53 conducting such procedure cannot physically see which photograph is being viewed by
54 the witness until the procedure is complete;

55 (4) Providing the witness with instructions that minimize the likelihood of an inaccurate
56 identification;

57 (5) Composing a live lineup or photo lineup so that the fillers generally resemble the
58 witness's description of the perpetrator;

59 (6) Composing a live lineup or photo lineup so that the suspect does not unduly stand out
 60 from the fillers;

61 (7) Using a minimum of four fillers in a live lineup and a minimum of five fillers in a
 62 photo lineup; and

63 (8) Having the person conducting a live lineup, photo lineup, or showup seek and
 64 document, at the time that an identification of a person or photograph is made, and in the
 65 witness's own words, a clear statement from the witness as to the witness's confidence
 66 level that the person or photograph identified is the person or photograph of the person
 67 who committed the alleged crime.

68 (c) All law enforcement agency written policies adopted pursuant to this Code section
 69 shall be subject to public disclosure and inspection notwithstanding any provision to the
 70 contrary in Article 4 of Chapter 18 of Title 50.

71 17-20-3.

72 If a law enforcement agency that conducts a live lineup, photo lineup, or showup does not
 73 adopt and report written policies as provided in Code Section 17-20-2, such agencies shall
 74 adopt the guidelines and procedures of the Georgia Peace Officer Standards and Training
 75 Council as set forth in Code Section 35-1-18.

76 17-20-4.

77 If it is brought to the attention of the court in any criminal proceedings that a law
 78 enforcement agency has failed to comply with its written policies or the policies adopted
 79 by the Georgia Peace Officer Standards and Training Council, as applicable, there shall be
 80 a rebuttable presumption of prejudice and bad faith, and the court shall prohibit the state
 81 from introducing the evidence gathered as a result of the live lineup, photo lineup, or
 82 showup, and may enter such other order as it deems just under the circumstances."

83 **SECTION 2.**

84 Title 35 of the Official Code of Georgia Annotated, relating to law enforcement officers and
 85 agencies, is amended in Chapter 1, relating to general provisions for law enforcement
 86 officers and agencies, by adding a new Code section to read as follows:

87 "35-1-18.

88 (a) As used in this Code section, the terms 'live lineup,' 'photo lineup,' 'showup,' 'suspect,'
 89 and 'witness' shall have the same meaning as set forth in Code Section 17-20-1.

90 (b) The Georgia Peace Officer Standards and Training Council and the Georgia Public
 91 Safety Training Center shall establish guidelines and procedures for enhancing witness
 92 identification of suspects in accordance with Chapter 20 of Title 17 and shall incorporate

93 such guidelines and procedures into their training materials and into all courses for which
94 they have responsibility and oversight.

95 (c) The guidelines and procedures adopted pursuant to subsection (b) of this Code section
96 shall include all of the requirements set forth in subsection (b) of Code Section 17-20-2 and
97 shall also:

98 (1) Require presentation of members of a live lineup one at a time;

99 (2) Require a video record of the entirety of a live lineup, photo lineup and, when
100 practicable, a showup;

101 (3) Preserve photographic documentation of all members of a live lineup and photo
102 lineup and showup suspects;

103 (4) Preserve all descriptions of the perpetrator provided by a witness; and

104 (5) Adopt relevant practices shown to enhance the reliability of a showup, including
105 identifying the circumstances under which a showup is warranted; transporting the
106 witness to a neutral, non-law enforcement location where the detained suspect is being
107 held; removing the suspect from the law enforcement squad car; removing restraints from
108 the suspect when he or she is being observed by the witness; and administering the
109 showup close in time to the commission of the alleged crime."

110 **SECTION 3.**

111 This Act shall become effective on July 1, 2015; provided, however, that for the purpose of
112 developing the written guidelines and training programs required by this Act, this section and
113 this Act shall become effective upon its approval by the Governor or upon its becoming law
114 without such approval.

115 **SECTION 4.**

116 All laws and parts of laws in conflict with this Act are repealed.