

The Senate Committee on Judiciary Non-Civil offers the following substitute to SB 94:

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 policy requirements; to prohibit suppression of evidence under certain
5 circumstances; to provide for related matters; to provide for an effective date; to repeal
6 conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

8 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
9 amended by adding a new chapter to read as follows:
10

"CHAPTER 20

11 17-20-1.

12 As used in this chapter, the term:

13 (1) 'Fillers' means individuals who are not suspects.

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

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

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

25 (5) 'Showup' means an identification procedure in which a witness is presented with a
26 single individual.

27 (6) 'Suspect' means the individual believed by law enforcement to be the possible
28 perpetrator of an alleged crime.

29 (7) 'Witness' means an individual who observes an alleged crime.

30 17-20-2.

31 (a) Not later than July 1, 2016, any law enforcement agency that conducts live lineups,
32 photo lineups, or showups shall adopt written policies for using such procedures for the
33 purpose of determining whether a witness identifies someone as the perpetrator of an
34 alleged crime.

35 (b) Live lineup, photo lineup, and showup policies shall include the following:

36 (1) With respect to a live lineup, having an individual who does not know the identity
37 of the suspect conduct the live procedure;

38 (2) With respect to a photo lineup, having an individual:

39 (A) Who does not know the identity of the suspect conduct the photo lineup; or

40 (B) Who knows the identity of the suspect use a procedure in which photographs are
41 placed in folders, randomly shuffled, and then presented to the witness so that the
42 individual conducting such procedure cannot physically see which photograph is being
43 viewed by the witness until the procedure is complete;

44 (3) Providing the witness with instruction that the perpetrator of the alleged crime may
45 or may not be present in the live lineup or photo lineup;

46 (4) Composing a live lineup or photo lineup so that the fillers generally resemble the
47 witness's description of the perpetrator of the alleged crime;

48 (5) Using a minimum of four fillers in a live lineup and a minimum of five fillers in a
49 photo lineup; and

50 (6) Having the individual conducting a live lineup, photo lineup, or showup seek and
51 document, at the time that an identification of an individual or photograph is made, and
52 in the witness's own words without necessarily referencing a numeric or percentage
53 standard, a clear statement from the witness as to the witness's confidence level that the
54 individual or photograph identified is the individual or photograph of the individual who
55 committed the alleged crime.

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

59 17-20-3.

60 The court may consider the failure to comply with the requirements of this chapter with
61 respect to an identification; provided, however, that such failure shall not mandate the
62 exclusion of identification evidence."

63 **SECTION 2.**

64 This Act shall become effective on July 1, 2016.

65 **SECTION 3.**

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