

1 AN ACT in relation to criminal law.

2 Be it enacted by the People of the State of Illinois,  
3 represented in the General Assembly:

4 Section 5. The Code of Criminal Procedure of 1963 is  
5 amended by adding Article 108D as follows:

6 (725 ILCS 5/Article 108D heading new)

7 ARTICLE 108D. IDENTIFICATION PROCEDURES IN CAPITAL CASES.

8 (725 ILCS 5/108D-1 new)

9 Sec. 108D-1. Eyewitness identification procedures in  
10 capital cases.

11 (a) In this Section:

12 "Capital trial" means the trial to determine the  
13 defendant's guilt for an offense for which the death sentence  
14 is authorized and prior to which the State's Attorney has not  
15 filed a certificate indicating he or she will not seek the  
16 death penalty or stated on the record in open court that the  
17 death penalty will not be sought.

18 "Eyewitness" means a witness who will testify that he  
19 observed the defendant at or near the scene of the offense.

20 "Photo lineup" means an identification procedure in which  
21 an array of photographs, including a photograph of the person  
22 suspected as the perpetrator of an offense and additional  
23 photographs of other persons not suspected of the offense, is  
24 displayed to an eyewitness for the purpose of determining  
25 whether the eyewitness is able to identify the suspect as the  
26 perpetrator.

27 "Live lineup" means an identification procedure in which  
28 a group of persons, including the person suspected as the  
29 perpetrator of an offense and other persons not suspected of

1 the offense, is displayed to an eyewitness for the purpose of  
2 determining whether the eyewitness is able to identify the  
3 suspect as the perpetrator.

4 "Identification procedure" means either a photo lineup or  
5 a live lineup.

6 "Filler" means either a person or a photograph of a  
7 person who is not suspected of an offense and is included in  
8 an identification procedure.

9 (b) During a capital trial, no eyewitness who has been  
10 exposed, prior to his or her testimony, to an identification  
11 procedure in which the defendant was included shall be  
12 permitted to identify the defendant, unless the  
13 identification procedure was conducted in compliance with the  
14 following requirements:

15 (1) The person conducting the identification  
16 procedure was someone other than the police officers or  
17 detectives who acted as the primary investigators on the  
18 case.

19 (2) The photo lineup or live lineup identification  
20 procedures were conducted in sequence so that the  
21 eyewitness was shown each photograph or each person one  
22 at a time rather than viewing the photographs or the  
23 persons simultaneously.

24 (3) The eyewitness was instructed prior to the  
25 identification procedure (a) that the perpetrator may not  
26 be among those in the photo lineup or the live lineup;  
27 (b) that the eyewitness should not feel compelled to make  
28 an identification; (c) that each person or photograph  
29 would be viewed one at a time; (d) that the photographs  
30 or persons would be displayed in random order; (e) that  
31 the eyewitness should take as much time as needed in  
32 making a decision about each photograph or person before  
33 moving to the next one; and (f) that all photographs or  
34 persons would be shown to the eyewitness, even if an

1 identification is made before all have been viewed.

2 (4) The photo lineup or live lineup was composed so  
3 that the fillers generally fit the description of the  
4 perpetrator and, in the case of a photo line-up, so that  
5 the photograph of the defendant resembled his appearance  
6 at the time of the offense and the defendant's photograph  
7 did not unduly stand out.

8 (5) If the eyewitness had previously viewed a photo  
9 or live lineup in connection with the identification of  
10 another person suspected of involvement in the offense,  
11 the fillers in the lineup in which the defendant  
12 participated were different from the fillers used in any  
13 prior lineups.

14 (6) At least 5 fillers were included in the photo  
15 lineup and at least 4 fillers were included in the live  
16 lineup, in addition to the defendant.

17 (7) In a photo lineup, no writings or information  
18 concerning any previous arrest of the defendant was  
19 visible to the eyewitness.

20 (8) In a live lineup, any identification actions,  
21 such as speaking or making gestures or other movements,  
22 were performed by all those included in the  
23 identification procedure.

24 (9) In a live lineup, all lineup participants were  
25 out of the view of the eyewitness at the beginning of the  
26 identification procedure.

27 (10) The defendant was the only suspected  
28 perpetrator included in the identification procedure.

29 (11) Nothing was said to the eyewitness regarding  
30 the defendant's position in the photo lineup or the live  
31 lineup, except as otherwise provided in clause (d) of  
32 paragraph (3) of this subsection (b).

33 (12) Nothing was said to the eyewitness that could  
34 have influenced the eyewitness's selection of the

1 defendant.

2 (13) After the defendant was identified, the  
3 eyewitness was not provided any information concerning  
4 the defendant prior to obtaining the eyewitness's  
5 statement that he or she was certain of the selection.

6 (14) A written record of the identification  
7 procedure was made that included the following  
8 information: (a) all identification and  
9 non-identification results obtained during the  
10 identification procedure, signed by the eyewitness,  
11 including the eyewitness's own words regarding how  
12 certain he or she was of the selection; (b) the names of  
13 all persons present at the identification procedure; (c)  
14 the date and time of the identification procedure; (d)  
15 the order in which the photographs or persons were  
16 displayed to the eyewitness; (e) in a photo lineup, the  
17 photographs themselves; (f) in a photo lineup,  
18 identification information and the sources of all  
19 photographs used; and (g) in a live lineup,  
20 identification information on all persons who  
21 participated in the lineup.

22 (15) A video recording was made of the entire  
23 identification procedure showing (a) the instructions  
24 provided to the eyewitness before the lineup; (b) the  
25 eyewitness throughout the lineup procedure, including the  
26 identification and non-identification results; and (c) in  
27 a live lineup, all of the participants in the lineup  
28 during the entire time each participant was displayed to  
29 the eyewitness.