

11.6 Suppression of Illegal Identifications

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A. Constitutional Grounds

Due Process prohibits identification procedures that are impermissibly suggestive. For a discussion of applicable law and cases addressing whether identification procedures are impermissibly suggestive, see 1 NORTH CAROLINA DEFENDER MANUAL § 14.4, *Illegal Identification Procedures* (2d ed. 2013).

B. Eyewitness Identification Reform Act

In 2007, the North Carolina General Assembly enacted the Eyewitness Identification Reform Act (hereinafter “the Act”) in order to create uniform eyewitness identification procedures and reduce the risk of misidentification. *See* G.S. 15A-284.50 through G.S. 15A-284.53. The Act initially applied only to photo line-ups and live line-ups, not show-ups. *State v. Rawls*, 207 N.C. App. 415, 423 (2010). In 2015, the General Assembly amended the Act so that it would also apply to show-ups. *See* 2015 N.C. Sess. Laws Ch. 212 (H 566).

Although the Act does not specify that it is applicable to juvenile delinquency proceedings, the purpose of the Act is “to help solve crime, convict the guilty, and exonerate the innocent” by improving eyewitness identification procedures. G.S. 15A-284.51. As these ends are equally important in juvenile court, counsel should argue that any eyewitness identification of a juvenile by lineup must comply with the requirements of the Act.

The Act provides several requirements for photo line-ups. For instance, photo line-ups must be conducted by an independent administrator, who must show the photos to the witness sequentially, one at a time. G.S. 15A-284.52(b). The Act also provides requirements for show-ups. A show-up is only permitted “when a suspect matching the description of the perpetrator is located in close proximity in time and place to the crime, or there is reasonable belief that the perpetrator has changed his or her appearance in close time to the crime, and only if there are circumstances that require the immediate display of a suspect to an eyewitness.” G.S. 15A-284.52(c1). Officers may not conduct a show-up with a photograph, but must use a live suspect. *Id.*

There are two remedies for non-compliance with the Act that could be argued in a juvenile case. First, failure to comply with any of the statutory requirements may be considered by the court in ruling on a motion to suppress an eyewitness identification. Second, failure to comply with any of the statutory requirements is admissible as evidence to support a claim of eyewitness misidentification if the evidence is otherwise

admissible. G.S. 15A-284.52(d)(1), (2). If a juvenile line-up or show-up does not comply with statutory requirements, counsel should cite the Act in a written motion to suppress, in argument, and in questioning regarding eyewitness misidentification.

For a further discussion of the Eyewitness Identification Reform Act, *see* John Rubin, [2007 Legislation Affecting Criminal Law and Procedure](#), ADMINISTRATION OF JUSTICE BULLETIN No. 2008/01, at 2–4 (Jan. 2008).