

3.5 Eyewitness Identification Reform Act

North Carolina's Eyewitness Identification Reform Act (EIRA), G.S. 15A-284.50 through G.S. 15A-284.53, was passed in 2007. EIRA sets forth rules governing pretrial eyewitness identification lineups, whether live or by photo array. The law was passed after organizations such as the North Carolina Actual Innocence Commission, among others, found that certain identification procedures help prevent wrongful identifications and wrongful convictions. The opening section of the EIRA reflects this view: "The purpose of this Article is to help solve crime, convict the guilty, and exonerate the innocent in criminal proceedings by improving procedures for eyewitness identification of suspects." G.S. 15A-284.51. The law reflects best practices developed to prevent suggestive pretrial identification procedures, including a requirement that lineups must be "double-blind", i.e., conducted by someone who is not participating in the investigation and does not know which person is the suspect; that individuals or photographs should be presented to witnesses sequentially rather than simultaneously; and that lineups should include at least five fillers resembling the suspect at the time of the crime. G.S. 15A-284.52(b) and (c).

The specific statutory requirements go beyond the constitutional minimum in ensuring that lineups are conducted in a non-suggestive manner. Reliability is at the heart of whether an identification procedure is constitutional, however, and the EIRA requirements could be viewed as North Carolina's interpretation of what it takes to ensure that identification procedures are reliable.

In the case of an EIRA violation, the following remedies are available:

- Failure to comply with EIRA shall be considered by the court in adjudicating motions to suppress eyewitness identification.
- Failure to comply with the requirements of EIRA is admissible in support of claims of misidentification, so long as the evidence is otherwise admissible.
- When evidence of compliance or noncompliance with EIRA is presented at trial, the jury shall be instructed that it may consider credible evidence of compliance or noncompliance in determining the reliability of eyewitness identifications.

G.S. 15A-284.52(d).