

AMENDED IN ASSEMBLY MARCH 14, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 308

Introduced by Assembly Member Ammiano

February 9, 2011

An act to add Section 806 to the Evidence Code, and to add Section 686.3 to the Penal Code, relating to criminal investigations.

LEGISLATIVE COUNSEL'S DIGEST

AB 308, as amended, Ammiano. Criminal investigations: eyewitness identification: lineups.

Existing law does not regulate how law enforcement officials prepare or conduct eyewitness photo or live lineup identifications.

This bill would declare the legislative intent that law enforcement officials adopt and implement the policies and procedures regulating eyewitness lineup identifications that are recommended by the California Commission on the Fair Administration of Justice in order to ensure that eyewitness identification procedures in California minimize the chance of misidentification of a suspect.

This bill would require the Department of Justice and the Commission on Peace Officer Standards and Training, on or before July 1, 2012, to develop guidelines in consultation with local law enforcement agencies, prosecutors, defense attorneys, and other legal experts, as specified, in order to ensure the reliability of eyewitness identifications, as specified. *The bill would require all law enforcement agencies to adopt the guidelines by January 1, 2013.*

Existing law allows opinion testimony from expert witnesses to be admitted at trial upon specified showings.

This bill would allow expert testimony regarding the reliability of an eyewitness identification to be admitted at trial *in a criminal action*, if the proponent of the evidence establishes relevancy and proper qualifications of the witness.

Because this bill requires local agencies to adopt new guidelines, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 806 is added to the Evidence Code, to
2 read:

3 806. ~~Consistent with existing law~~ *In a criminal action*, expert
4 testimony may be admitted regarding factors that affect the
5 reliability of eyewitness identification if the proponent of the
6 evidence establishes relevancy and proper qualifications of the
7 witness.

8 SEC. 2. Section 686.3 is added to the Penal Code, to read:

9 686.3. (a) The goal of a law enforcement criminal investigation
10 is to find and apprehend the person or persons responsible for
11 committing a crime.

12 (b) A comprehensive body of peer-reviewed studies of
13 eyewitness identification procedures indicate that the criminal
14 justice system can improve the accuracy of eyewitness
15 identifications by implementing changes to identification
16 procedures.

17 (c) Improving the accuracy of eyewitness identifications will
18 increase public trust in the criminal justice system.

19 (d) Policies and procedures such as those recommended by the
20 National Institute of Justice and the California Commission on the
21 Fair Administration of Justice are readily available and have proven
22 effective in other jurisdictions.

1 (e) It is the intent of the Legislature that law enforcement
2 officials adopt and implement the policies and procedures
3 recommended by the California Commission on the Fair
4 Administration of Justice in order to ensure that eyewitness
5 identification procedures in California minimize the chance of
6 misidentification of a suspect.

7 (f) On or before July 1, 2012, the Department of Justice, and
8 the Commission on Peace Officers Standards and Training, in
9 consultation with local law enforcement agencies, prosecutors,
10 defense attorneys, and other legal experts, including representatives
11 of the California District Attorneys Association, the Los Angeles
12 District Attorney, the California Public Defenders Association,
13 and the California Attorneys for Criminal Justice, shall develop
14 guidelines for policies and procedures with respect to collection
15 and handling of eyewitness evidence in criminal investigations by
16 all law enforcement agencies operating in California. These
17 guidelines shall be developed to ensure reliable and accurate
18 suspect identifications and shall be consistent with the reliable
19 evidence supporting best practices, including the recommendations
20 of the California Commission on the Fair Administration of Justice.
21 All law enforcement agencies shall adopt the guidelines by
22 ~~December 31, 2012~~ *January 1, 2013*.

23 SEC. 3. If the Commission on State Mandates determines that
24 this act contains costs mandated by the state, reimbursement to
25 local agencies and school districts for those costs shall be made
26 pursuant to Part 7 (commencing with Section 17500) of Division
27 4 of Title 2 of the Government Code.

O