

AMENDED IN ASSEMBLY MAY 27, 2011  
AMENDED IN ASSEMBLY MARCH 14, 2011  
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

**ASSEMBLY BILL**

**No. 308**

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**Introduced by Assembly Member Ammiano**

February 9, 2011

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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~~ *study and consider adopting* 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, in consultation with 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, *to develop on or before January 1, 2013, guidelines for policies and procedures*, 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.~~

*the Department of Justice to report to the Legislature on or before July 1, 2013, the guidelines developed pursuant to the provision described above, along with recommendations of any legislation needed to implement the guidelines.*

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, *or in a juvenile court proceeding concerning a person who is or may be adjudged a ward of the juvenile court*, 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~~*no*.

*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. In a criminal action, *or in a juvenile court proceeding if*
- 4 *the subject of the proceeding is or may be adjudged a ward of the*
- 5 *juvenile court*, expert testimony may be admitted regarding factors
- 6 that affect the reliability of eyewitness identification if the
- 7 proponent of the evidence establishes relevancy and proper
- 8 qualifications of the witness.
- 9 SEC. 2. Section 686.3 is added to the Penal Code, to read:
- 10 686.3. (a) The goal of a law enforcement criminal investigation
- 11 is to find and apprehend the person or persons responsible for
- 12 committing a crime.
- 13 (b) A comprehensive body of peer-reviewed studies of
- 14 eyewitness identification procedures ~~indicate~~ *indicates* that the
- 15 criminal justice system can improve the accuracy of eyewitness

1 identifications by implementing changes to identification  
2 procedures.

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

5 (d) Policies and procedures such as those recommended by the  
6 National Institute of Justice and the California Commission on the  
7 Fair Administration of Justice are readily available and have proven  
8 effective in other jurisdictions.

9 (e) It is the intent of the Legislature that law enforcement  
10 officials ~~adopt and implement~~ *study and consider adopting* the  
11 policies and procedures recommended by the California  
12 Commission on the Fair Administration of Justice in order to ensure  
13 that eyewitness identification procedures in California minimize  
14 the chance of misidentification of a suspect.

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

32 ~~SEC. 3. If the Commission on State Mandates determines that~~  
33 ~~this act contains costs mandated by the state, reimbursement to~~  
34 ~~local agencies and school districts for those costs shall be made~~  
35 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~  
36 ~~4 of Title 2 of the Government Code.~~

37 (2) *The Department of Justice shall report to the Legislature*  
38 *on or before July 1, 2013, the guidelines developed pursuant to*

- 1 *paragraph (1) along with recommendations of any legislation*
- 2 *needed to implement the guidelines.*

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