

AMENDED IN SENATE SEPTEMBER 10, 2013

AMENDED IN ASSEMBLY APRIL 11, 2013

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 807

Introduced by Assembly Member Ammiano

February 21, 2013

~~An act to amend Sections 13010.5, 13012, and 13012.5 of the Penal Code, relating to criminal justice statistics. An act to add Section 806 to the Evidence Code, and to add Sections 686.3 and 1127i to the Penal Code, relating to criminal investigations.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 807, as amended, Ammiano. ~~Criminal justice statistics. Criminal investigations: eyewitness identification.~~

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 if the proponent of the evidence establishes relevancy and proper qualifications of the witness.

Existing law generally regulates the collection and admissibility of evidence for purposes of criminal prosecutions.

This bill would authorize any law enforcement agency to adopt regulations for conducting photo and live lineups with eyewitnesses, and provides that specified procedures should be considered when adopting the regulations, including sequentially presenting photos used in an identification procedure and separating all witnesses when viewing an identification procedure.

Existing law provides that in any criminal case which is being tried before the court with a jury, all requests for instructions on points of law must be made to the court before commencement of argument.

This bill would require the court in a criminal trial or proceeding in which a witness testifies to an identification made before trial, as specified, and where the local law enforcement agency in that jurisdiction has adopted recommended live and photo eyewitness identification procedures, to give specified instructions to the jury, including an instruction that they may consider evidence that law enforcement officers did or did not follow specified procedures during identification procedures when determining the reliability of the eyewitness identification. The bill would authorize the court to provide the same instructions in a jurisdiction that has not adopted the recommended live and photo eyewitness identification procedures.

~~Existing law requires the Department of Justice to collect specified criminal justice information from local law enforcement agencies, to tabulate, analyze, and interpret the collected data, and to prepare an annual report presenting the criminal justice statistics for the previous year.~~

~~This bill would require the Department of Justice to include in the annual report additional statistical information relating to complaints received by law enforcement agencies, as specified, and criminal convictions of peace officers. The bill would also make technical, nonsubstantive changes.~~

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

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

- 1 SECTION 1. *The Legislature finds and declares the following:*
- 2 (a) *The goal of a law enforcement criminal investigation is to*
- 3 *find and apprehend the person or persons responsible for*
- 4 *committing a crime.*
- 5 (b) *Eyewitness identification procedure studies indicate that*
- 6 *the criminal justice system can significantly decrease the rate of*
- 7 *erroneous eyewitness identifications by implementing changes to*
- 8 *identification procedures.*
- 9 (c) *A decrease in the number of erroneous eyewitness*
- 10 *identifications will increase public trust in the criminal justice*

1 system, which, in turn, will increase the ability of law enforcement
2 and prosecutors to convict the guilty and protect our communities.

3 (d) New policies and procedures, such as those recommended
4 by the National Institute of Justice, are readily available and have
5 proven effective in other jurisdictions. States, including New Jersey
6 and Oregon, have recognized and adopted the importance of tested
7 eyewitness identification procedures that are shown to increase
8 reliability. Several local jurisdictions in California have also
9 adopted tested eyewitness identification procedures with great
10 success and significant cost savings.

11 SEC. 2. Section 806 is added to the Evidence Code, to read:

12 806. Expert testimony may be admitted regarding factors that
13 affect the reliability of eyewitness identification, including the
14 identification procedure, if the proponent of the evidence
15 establishes relevancy and proper qualifications of the witness.

16 SEC. 3. Section 686.3 is added to the Penal Code, to read:

17 686.3. (a) Any local law enforcement agency, including, but
18 not limited to, police departments, sheriffs, and prosecutors, may
19 adopt regulations for conducting photo and live lineups with
20 eyewitnesses. In adopting the regulations, those agencies are
21 encouraged to consider all of the following procedures:

22 (1) Prior to conducting the identification procedure, and as
23 close in time to the incident as possible, have the eyewitness
24 complete a standardized form describing the perpetrator of the
25 offense.

26 (2) If practicable, have the investigator conducting the
27 identification procedure be a person who is not aware of which
28 person in the identification procedure is suspected as the
29 perpetrator of the offense.

30 (3) Present photos used in an identification procedure
31 sequentially, and not simultaneously.

32 (4) Prior to any identification procedure, instruct an eyewitness
33 of all the following:

34 (A) The perpetrator may not be among the persons in the
35 identification procedure.

36 (B) The eyewitness should not feel compelled to make an
37 identification.

38 (C) An identification or failure to make an identification will
39 not end the investigation.

- 1 (5) *If the identification procedure is being done sequentially,*
2 *instruct an eyewitness of all of the following prior to the*
3 *identification procedure:*
- 4 (A) *Each photograph or person shall be viewed one at a time.*
5 (B) *The photographs or persons shall be displayed in random*
6 *order.*
7 (C) *The eyewitness should take as much time as needed in*
8 *making a decision about each photograph or person before moving*
9 *to the next one.*
- 10 (D) *All photographs or persons will be shown to the eyewitness,*
11 *even if an identification is made before all photographs or persons*
12 *have been viewed.*
- 13 (6) *Compose an identification procedure so that the fillers*
14 *generally fit the description of the person suspected as the*
15 *perpetrator, and in the case of a photo lineup, the photograph of*
16 *the person suspected as the perpetrator resemble his or her*
17 *appearance at the time of the offense and does not unduly stand*
18 *out.*
- 19 (7) *If the eyewitness has previously viewed an identification*
20 *procedure in connection with the identification of another person*
21 *suspected of involvement in the offense, have the fillers in the*
22 *lineup in which the person suspected as the perpetrator participates*
23 *be different from the fillers used in any prior lineups.*
- 24 (8) *In a live lineup, have any identification actions, such as*
25 *speaking or making gestures or other movements, be performed*
26 *by all lineup participants.*
- 27 (9) *All live lineup participants shall be out of the view of the*
28 *eyewitness prior to the beginning of the identification procedure.*
- 29 (10) *Have only one suspected perpetrator included in any*
30 *identification procedure.*
- 31 (11) *Have all witnesses separated when viewing an identification*
32 *procedure.*
- 33 (12) *If the eyewitness identifies a person he or she believes to*
34 *be the perpetrator, then have all of the following apply:*
- 35 (A) *The investigator shall immediately inquire as to the*
36 *eyewitness's confidence level in the accuracy of the identification.*
37 (B) *No information concerning the identified person shall be*
38 *given to the eyewitness prior to obtaining the eyewitness's*
39 *statement of confidence level.*

- 1 (13) *Have a written record of the identification procedure be*
2 *made that includes, at a minimum, all of the following:*
- 3 (A) *All identification and nonidentification results obtained*
4 *during the identification procedure and signed by the eyewitness.*
- 5 (B) *A statement of the eyewitness' own words regarding how*
6 *certain he or she is regarding the accuracy of his or her*
7 *identification and signed by him or her.*
- 8 (C) *The names of all persons present at the identification*
9 *procedure.*
- 10 (D) *The date, time, and location of the identification procedure.*
- 11 (E) *If the identification procedure was conducted sequentially,*
12 *the order in which the photographs or persons were displayed to*
13 *the eyewitness.*
- 14 (F) *Color copies of all photographs used in a photo lineup.*
- 15 (G) *Identification information and the sources of all photographs*
16 *used in a photo lineup.*
- 17 (H) *Identification information for all individuals used in a live*
18 *lineup and a video recording of the lineup.*
- 19 (b) *For purposes of this section, the following terms have the*
20 *following meanings:*
- 21 (1) *"Eyewitness" means a person whose identification of*
22 *another person may be relevant in a criminal investigation.*
- 23 (2) *"Filler" means either a person or a photograph of a person*
24 *who is not suspected of an offense and is included in an*
25 *identification procedure.*
- 26 (3) *"Identification procedure" means either a photo lineup or*
27 *a live lineup.*
- 28 (4) *"Investigator" means the person conducting the live or*
29 *photo lineup.*
- 30 (5) *"Live lineup" means a procedure in which a group of*
31 *persons, including the person suspected as the perpetrator of an*
32 *offense and other persons not suspected of the offense, is displayed*
33 *to an eyewitness for the purpose of determining whether the*
34 *eyewitness is able to identify the suspect as the perpetrator.*
- 35 (6) *"Photo lineup" means a procedure in which an array of*
36 *photographs, including a photograph of the person suspected as*
37 *the perpetrator of an offense and additional photographs of other*
38 *persons not suspected of the offense, is displayed to an eyewitness*
39 *for the purpose of determining whether the eyewitness is able to*
40 *identify the suspect as the perpetrator.*

1 *SEC. 4. Section 1127i is added to the Penal Code, to read:*

2 *1127i. (a) In any criminal trial or proceeding in which a*
3 *witness testifies to an identification made before trial, either by*
4 *viewing photographs or in-person lineups, and where the local*
5 *law enforcement agency in that jurisdiction has adopted the*
6 *recommended live and photo eyewitness identification procedures*
7 *listed in Section 686.3, the court shall instruct the jury as follows*
8 *or admonish the jury with a substantially similar instruction:*

9 *(1) The procedures listed in Section 686.3 are designed to*
10 *decrease the likelihood of misidentification when the police conduct*
11 *an identification procedure, such as a lineup. As jurors, you may*
12 *consider evidence that police officers did or did not follow those*
13 *procedures when you decide whether a witness in this case was*
14 *correct or mistaken in identifying the defendant as the perpetrator*
15 *of the crime.*

16 *(2) Use of these procedures alone does not mean that the witness*
17 *is correct or is credible, but only that police followed procedures*
18 *that are designed to decrease the likelihood that the witness will*
19 *make a mistake during the lineup or other identification procedure.*

20 *(3) If police officers did not follow the procedures recommended*
21 *in Section 686.3, consider the eyewitness identification with caution*
22 *and close scrutiny. This does not mean that you may arbitrarily*
23 *disregard his or her testimony, but you should give it the weight*
24 *you think it deserves in the light of all the evidence in the case.*

25 *(b) In any criminal proceeding or trial in which a witness*
26 *testifies to an identification made before trial in a jurisdiction that*
27 *has not adopted the recommended live and photo eyewitness*
28 *identification procedures listed in Section 686.3, the court may,*
29 *but is not required to, provide the jury with the instruction in*
30 *subdivision (a) or admonish the jury with a substantially similar*
31 *instruction.*

32 *(c) In addition to the jury instruction required under subdivision*
33 *(a) and authorized under subdivision (b), the court may, but is not*
34 *required to, provide the jury with any additional instructions the*
35 *court may deem necessary.*

36 ~~SECTION 1. Section 13010.5 of the Penal Code is amended~~
37 ~~to read:~~

38 ~~13010.5. The department shall collect data pertaining to the~~
39 ~~juvenile justice system for criminal history and statistical purposes.~~
40 ~~This information shall serve to assist the department in complying~~

1 with the reporting requirement of paragraphs (3) and (4) of
2 subdivision (a) of Section 13012, measuring the extent of juvenile
3 delinquency, determining the need for and effectiveness of relevant
4 legislation, and identifying long-term trends in juvenile
5 delinquency. Any data collected pursuant to this section may
6 include criminal history information which may be used by the
7 department to comply with the requirements of Section 602.5 of
8 the Welfare and Institutions Code.

9 SEC. 2. Section 13012 of the Penal Code is amended to read:

10 13012. (a) The annual report of the department provided for
11 in Section 13010 shall contain statistics showing all of the
12 following:

13 (1) The amount and the types of offenses known to the public
14 authorities.

15 (2) The personal and social characteristics of criminals and
16 delinquents.

17 (3) The administrative actions taken by law enforcement,
18 judicial, penal, and correctional agencies or institutions, including
19 those in the juvenile justice system, in dealing with criminals or
20 delinquents.

21 (4) The administrative actions taken by law enforcement,
22 prosecutorial, judicial, penal, and correctional agencies, including
23 those in the juvenile justice system, in dealing with minors who
24 are the subject of a petition or hearing in the juvenile court to
25 transfer their case to the jurisdiction of an adult criminal court or
26 whose cases are directly filed or otherwise initiated in an adult
27 criminal court.

28 (5) (A) The total number of each of the following:

29 (i) Citizens' complaints received by law enforcement agencies
30 under Section 832.5.

31 (ii) Complaints received by law enforcement agencies against
32 the personnel of a department or agency that employs peace officers
33 that are made by that personnel's supervisor or by the personnel
34 of another department or agency that employs peace officers.

35 (iii) Complaints received by law enforcement agencies against
36 the personnel of a department or agency that employs peace officers
37 in which the identity of the complainant is unknown.

38 (B) The department shall categorize each complaint into one of
39 the categories identified in clauses (i) to (viii), inclusive, and report

- 1 the number of complaints received by law enforcement agencies
2 within each of those categories.
- 3 (i) “Excessive force,” which means a complaint regarding the
4 use or threatened use of excessive force against a person.
- 5 (ii) “Improper arrest,” which means a complaint that the restraint
6 of a person’s liberty was improper or unjust, or violated the
7 person’s civil liberties.
- 8 (iii) “Improper entry,” which means a complaint that the entry
9 into a building or onto property was improper or that excessive
10 force was used against property to gain entrance into a building
11 or onto property.
- 12 (iv) “Improper search,” which means a complaint that the search
13 of a person or property was improper.
- 14 (v) “Other criminal violation,” which means a complaint
15 regarding the commission of an illegal act not otherwise specified.
- 16 (vi) “Differential treatment,” which means a complaint that the
17 taking, failure to take, or method of police action was predicated
18 upon irrelevant factors, including, but not limited to, race,
19 appearance, age, or sex.
- 20 (vii) “Demeanor,” which means a complaint that the personnel’s
21 bearing, gestures, language, or other characteristics or actions were
22 inappropriate.
- 23 (viii) “Other rule violation,” which means a complaint for
24 conduct that violates agency rules, but that is not encompassed in
25 a category specified in clauses (i) to (vii), inclusive.
- 26 (C) The statistics required to be reported pursuant to this
27 paragraph shall indicate, within each category of complaint
28 identified in subparagraph (B), the number of complaints within
29 each of the following disposition categories:
- 30 (i) “Sustained,” which means that the investigation disclosed
31 sufficient evidence to prove the truth of the allegation in the
32 complaint by a preponderance of the evidence.
- 33 (ii) “Exonerated,” which means that the investigation clearly
34 established that the actions of the personnel that formed the basis
35 of the complaint are not a violation of law or agency policy.
- 36 (iii) “Not sustained,” which means that the investigation failed
37 to disclose sufficient evidence to clearly prove or disprove the
38 allegation in the complaint.
- 39 (iv) “Unfounded,” which means that the investigation clearly
40 established that the allegation is not true.

1 ~~(D) The statistics required to be reported pursuant to this~~
2 ~~paragraph shall be reported for each individual law enforcement~~
3 ~~agency.~~

4 ~~(6) The total number of felony and misdemeanor convictions~~
5 ~~incurred by peace officers for conduct occurring either on- or~~
6 ~~off-duty.~~

7 ~~(b) It shall be the duty of the department to give adequate~~
8 ~~interpretation of the statistics and so to present the information~~
9 ~~that it may be of value in guiding the policies of the Legislature~~
10 ~~and of those in charge of the apprehension, prosecution, and~~
11 ~~treatment of the criminals and delinquents, or concerned with the~~
12 ~~prevention of crime and delinquency. The report shall also include~~
13 ~~statistics which are comparable with national uniform criminal~~
14 ~~statistics published by federal bureaus or departments heretofore~~
15 ~~mentioned.~~

16 ~~SEC. 3. Section 13012.5 of the Penal Code is amended to read:~~

17 ~~13012.5. (a) The annual report published by the department~~
18 ~~under Section 13010 shall, in regard to the contents required by~~
19 ~~subdivision (d) of Section 13012, include the following statewide~~
20 ~~information:~~

21 ~~(1) The annual number of fitness hearings held in the juvenile~~
22 ~~courts under Section 707 of the Welfare and Institutions Code,~~
23 ~~and the outcomes of those hearings including orders to remand to~~
24 ~~adult criminal court, cross-referenced with information about the~~
25 ~~age, gender, ethnicity, and offense of the minors whose cases are~~
26 ~~the subject of those fitness hearings.~~

27 ~~(2) The annual number of minors whose cases are filed directly~~
28 ~~in adult criminal court under Sections 602.5 and 707 of the Welfare~~
29 ~~and Institutions Code, cross-referenced with information about the~~
30 ~~age, gender, ethnicity, and offense of the minors whose cases are~~
31 ~~filed directly to the adult criminal court.~~

32 ~~(3) The outcomes of cases involving minors who are prosecuted~~
33 ~~in adult criminal courts, regardless of how adult court jurisdiction~~
34 ~~was initiated, including whether the minor was acquitted or~~
35 ~~convicted, or whether the case was dismissed and returned to~~
36 ~~juvenile court, including sentencing outcomes, cross-referenced~~
37 ~~with the age, gender, ethnicity, and offense of the minors subject~~
38 ~~to these court actions.~~

39 ~~(b) The department's annual report published under Section~~
40 ~~13010 shall include the information described in paragraph (4) of~~

1 ~~subdivision (a) of Section 13012, as further delineated by this~~
2 ~~section, beginning with the report due on July 1, 2003, for the~~
3 ~~preceding calendar year.~~

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