



## Eyewitness Identification Reform Act Extended to Show-Ups

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Effective December 1, [S.L. 2015-212](#) extends the Eyewitness Identification Reform Act, G.S. 15A-284.52, to cover show-ups. But the bill leaves the status of photographic show-ups in doubt and contains a strange provision regarding law enforcement officers as eyewitnesses. This post unpacks the new law.

**Prior law: show-ups not covered.** Originally enacted in 2007, the Act established procedures for “live lineup[s]” and “photo lineup[s],” procedures that involve the display of multiple people or photographs to an eyewitness. Show-ups involve the display of a single person or photograph to an eyewitness, so they weren’t covered by the Act. The court of appeals so ruled in *State v. Rawls*, 207 N.C. App. 415 (2010).

**New law: show-ups covered.** The amended Act will apply to show-ups, defined as “[a] procedure in which an eyewitness is presented with a single live suspect for the purpose of determining whether the eyewitness is able to identify the perpetrator of a crime.”

**Rules for show-ups.** The rules for show-ups are not the same as those for lineups. The basic rules are:

- *Show-ups are allowed only under limited circumstances.* Show-ups are permitted only “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.” This provision seems to be based on the due process case law that finds show-ups to be unnecessarily suggestive except when there is some urgency that makes one preferable to a lineup. However, I am confused by the reference to the perpetrator changing his or her appearance. That may be evidence of guilt but why would it support using a suggestive identification procedure?
- *Only live show-ups are allowed (?).* The law states that “[a] show?up shall only be performed using a live suspect and shall not be conducted with a photograph.” That seems clear enough at first glance, but on closer inspection I am not sure of its meaning. The statutory definition of a show-up involves a “single live suspect,” so arguably it is merely a tautology to say that show-ups “shall only be performed using a live suspect.” In other words, I am not sure whether single-photograph identifications are prohibited by the act or are simply not covered by the Act, in which case they would be permitted subject only to due process constraints regarding suggestiveness. The legislature’s intent may have been the latter but the exclusion of photographic show-ups from the definition makes the former the more literal reading.
- *An officer must photograph the suspect.* The law requires that an officer “photograph a suspect at the time and place of the show?up to preserve a record of the appearance of the suspect at the time of the show?up procedure.” In some cases, this may conflict with G.S. 15A-502, which generally allows the photographing of a suspect “for law enforcement records” only after arrest. If a show-up is conducted with a suspect who has been detained but not yet arrested, G.S. 15A-284.52 seems to require the taking of a photograph that is prohibited by G.S. 15A-502. I am inclined to think that the new law effectively creates an exception to the old one.
- *The Criminal Justice Standards Commission shall create a policy.* The statute tasks the Commission with developing a policy for conducting show-ups that “shall apply to all law enforcement agencies” and that will

provide standard instructions for eyewitnesses and address confidence statements by witnesses and training for officers.

**Weird exception?** The legislation contains a subsection that provides: “Nothing in this section shall be construed to require a law enforcement officer while acting in his or her official capacity to be required to participate in a show?up as an eyewitness.” I’m not sure what to make of that. After all, nothing in the Act requires *anyone* to participate as a witness in any type of identification proceeding. If anyone knows the purpose or intended effect of that provision, I’d like to hear about it.

**Remedies for violations.** Finally, the remedies available for violations of the show-up rules are the same as those available for violations of the lineup rules. Identification procedures that are unconstitutionally suggestive generally must be suppressed. When an officer conducts a procedure that is not unconstitutional but that violates of the Act’s requirements, remedies include (1) possible suppression under G.S. 15A-974, the statutory exclusionary rule, and (2) admission of evidence of noncompliance, along with an instruction that the jury may consider such evidence in determining the reliability of any identification, under G.S. 15A-284.52(d).