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BILL

**52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

INTRODUCED BY

DISCUSSION DRAFT

FOR THE CRIMINAL JUSTICE REFORM SUBCOMMITTEE

AN ACT

RELATING TO CRIMINAL PROCEDURE; PROVIDING FOR PROCEDURES TO  
ENHANCE THE ACCURACY OF EYEWITNESS IDENTIFICATIONS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. [NEW MATERIAL] DEFINITIONS.--As used in this  
act:

- A. "administrator" means a person conducting a  
photo lineup or live lineup;
- B. "blind" means the administrator does not know  
the identity of the suspect;
- C. "blinded" means the administrator may know who  
the suspect is but does not know which lineup member is being  
viewed by the eyewitness;
- D. "eyewitness" means a person who observes another  
person at or near the scene of an offense;

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1 E. "filler" means either a person or a photograph  
2 of a person who is not suspected of an offense and is included  
3 in an identification procedure;

4 F. "live lineup" means an identification procedure  
5 in which a group of persons, including the suspected  
6 perpetrator of an offense and other persons not suspected of  
7 the offense, is displayed to an eyewitness for the purpose of  
8 determining whether the eyewitness identifies the suspect as  
9 the perpetrator;

10 G. "photo lineup" means an identification procedure  
11 in which an array of photographs, including a photograph of the  
12 suspected perpetrator of an offense and additional photographs  
13 of other persons not suspected of the offense, is displayed to  
14 an eyewitness either in hard copy form or via computer for the  
15 purpose of determining whether the eyewitness identifies the  
16 suspect as the perpetrator;

17 H. "showup" means an identification procedure in  
18 which an eyewitness is presented with a single suspect for the  
19 purpose of determining whether the eyewitness identifies this  
20 individual as the perpetrator; and

21 I. "suspect" means a person believed by law  
22 enforcement to be the possible perpetrator of the crime.

23 SECTION 2. [NEW MATERIAL] EYEWITNESS IDENTIFICATION  
24 PROCEDURES.--

25 A. Not later than January 1, 2016, every law

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1 enforcement agency conducting eyewitness identification  
2 procedures shall adopt written policies for using an eyewitness  
3 to identify a suspect upon viewing the suspect in person in a  
4 live lineup or showup or upon viewing a representation of the  
5 suspect in a photo lineup.

6 B. A law enforcement agency shall biennially review  
7 policies adopted pursuant to this section.

8 C. In developing and revising policies pursuant to  
9 this section, a law enforcement agency shall consider those  
10 practices shown by reliable evidence to enhance the accuracy of  
11 identification procedures.

12 D. A law enforcement agency shall consider  
13 including in policies adopted pursuant to this section  
14 practices to enhance the objectivity and reliability of  
15 eyewitness identifications and to minimize the possibility of  
16 mistaken identifications, including the following:

17 (1) having a blind or blinded administrator  
18 perform the live lineup or photo lineup;

19 (2) providing the eyewitness with instructions  
20 that minimize the likelihood of an inaccurate identification;

21 (3) composing the lineup so that the fillers  
22 generally resemble the eyewitness's description of the  
23 perpetrator so that the suspect does not unduly stand out from  
24 the fillers;

25 (4) using the appropriate number of fillers in

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1 a live lineup and a photo lineup;

2 (5) ensuring, when practicable, that a  
3 photograph of the suspect used in a photo lineup is  
4 contemporary and resembles the suspect's appearance at the time  
5 of the offense;

6 (6) presenting separate photo lineups and live  
7 lineups when there are multiple eyewitnesses, ensuring that the  
8 same suspect is placed in a different position for each  
9 identification procedure;

10 (7) having the administrator seek and document  
11 a clear statement from the eyewitness, at the time of the  
12 identification and in the eyewitness's own words, as to the  
13 eyewitness's confidence level that the person identified is the  
14 person who committed the crime;

15 (8) minimizing factors at any point in time  
16 that influence an eyewitness to identify a suspect or affect  
17 the eyewitness's confidence level in identifying a suspect,  
18 including verbal or nonverbal statements by or reactions from  
19 the administrator;

20 (9) presenting lineup members one at a time;

21 (10) adopting relevant practices shown to  
22 enhance the reliability of an eyewitness participating in a  
23 showup procedure, such as:

24 (a) identifying the circumstances under  
25 which a showup is warranted;

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1 (b) transporting the eyewitness to a  
2 neutral, non-law enforcement location where the detained  
3 suspect is being held;

4 (c) removing the suspect from the law  
5 enforcement squad car;

6 (d) removing restraints from the suspect  
7 when the suspect is being observed by the eyewitness; and

8 (e) administering the showup procedure  
9 close in time to the commission of the crime;

10 (11) video recording the entirety of the photo  
11 lineup and live lineup and, where practicable, the showup  
12 procedure; and

13 (12) preserving photographic documentation of  
14 all live lineup and photo lineup members and showup suspects,  
15 as well as all descriptions provided by the eyewitness of the  
16 perpetrator.

17 E. All written departmental eyewitness  
18 identification policies shall be made available to the public  
19 upon request.

20 SECTION 3. [NEW MATERIAL] TRAINING OF LAW ENFORCEMENT  
21 OFFICERS.--The secretary of public safety shall create,  
22 administer and conduct training programs for law enforcement  
23 officers and recruits on the methods and technical aspects of  
24 the eyewitness identification practices and procedures shown by  
25 reliable evidence to enhance the accuracy of eyewitness

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1 evidence referenced in this act.

2 SECTION 4. EFFECTIVE DATE.--The effective date of the  
3 provisions of this act is July 1, 2015.

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