

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL

54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO CRIMINAL PROCEDURE; ENACTING THE ACCURATE EYEWITNESS IDENTIFICATION ACT; 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] SHORT TITLE.--This act may be cited as the "Accurate Eyewitness Identification Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the Accurate Eyewitness Identification 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

underscoring material = new
~~[bracketed material] = delete~~

1 viewed by the eyewitness;

2 D. "eyewitness" means a person who observes another
3 person at or near the scene of an offense;

4 E. "filler" means either a person or a photograph
5 of a person who is not suspected of an offense and is included
6 in an identification procedure;

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

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

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

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

1 SECTION 3. ~~[NEW MATERIAL]~~ EYEWITNESS IDENTIFICATION

2 PROCEDURES.--

3 A. Not later than January 1, 2020, a criminal
4 justice entity conducting eyewitness identification procedures
5 shall adopt written policies for using an eyewitness to
6 identify a suspect upon viewing the suspect in person in a live
7 lineup or showup or upon viewing a representation of the
8 suspect in a photo lineup.

9 B. Each governmental entity in New Mexico that
10 administers eyewitness identification procedures shall provide
11 a copy of its written policies to the secretary of public
12 safety no later than February 1, 2020.

13 C. A law enforcement agency shall biennially review
14 policies adopted pursuant to this section.

15 D. In developing and revising policies pursuant to
16 this section, a law enforcement agency shall consider those
17 practices shown by reliable evidence to enhance the accuracy of
18 identification procedures. Each governmental entity in New
19 Mexico that administers eyewitness identification procedures
20 shall submit its updated written policies to the secretary of
21 public safety no later than February 1 of each odd-numbered
22 year.

23 E. A law enforcement agency shall consider
24 including in policies adopted pursuant to this section
25 practices to enhance the objectivity and reliability of

.211506.1

1 eyewitness identifications and to minimize the possibility of
2 mistaken identifications, including the following:

3 (1) having a blind or blinded administrator
4 perform the live lineup or photo lineup;

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

7 (3) composing the lineup so that the fillers
8 generally resemble the eyewitness's description of the
9 perpetrator so that the suspect does not unduly stand out from
10 the fillers;

11 (4) using the appropriate number of fillers in
12 a live lineup and a photo lineup;

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

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

21 (7) having the administrator seek and document
22 a clear statement from the eyewitness, at the time of the
23 identification and in the eyewitness's own words, as to the
24 eyewitness's confidence level that the person identified is the
25 person who committed the crime;

.211506.1

underscored material = new
~~[bracketed material] = delete~~

1 (8) minimizing factors at any point in time
2 that influence an eyewitness to identify a suspect or affect
3 the eyewitness's confidence level in identifying a suspect,
4 including verbal or nonverbal statements by or reactions from
5 the administrator;

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

7 (10) adopting relevant practices shown to
8 enhance the reliability of an eyewitness participating in a
9 showup procedure, such as:

10 (a) identifying the circumstances under
11 which a showup is warranted;

12 (b) transporting the eyewitness to a
13 neutral, non-law enforcement location where the detained
14 suspect is being held;

15 (c) removing the suspect from the law
16 enforcement squad car;

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

19 (e) administering the showup procedure
20 close in time to the commission of the crime;

21 (11) video recording the entirety of the photo
22 lineup and live lineup and, where practicable, the showup
23 procedure; and

24 (12) preserving photographic documentation of
25 all live lineup and photo lineup members and showup suspects,

.211506.1

underscored material = new
[bracketed material] = delete

1 as well as all descriptions provided by the eyewitness of the
2 perpetrator.

3 F. All written departmental eyewitness
4 identification policies shall be made available to the public
5 upon request.

6 SECTION 4. [NEW MATERIAL] TRAINING OF LAW ENFORCEMENT
7 OFFICERS.--The secretary of public safety shall create,
8 administer and conduct training programs for law enforcement
9 officers and recruits on the methods and technical aspects of
10 the eyewitness identification practices and procedures shown by
11 reliable evidence to enhance the accuracy of eyewitness
12 evidence referenced in the Accurate Eyewitness Identification
13 Act.

14 SECTION 5. EFFECTIVE DATE.--The effective date of the
15 provisions of this act is July 1, 2019.