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HOUSE BILL 396

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Joseph Cervantes

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO LAW ENFORCEMENT; ENACTING THE RELIABLE EYEWITNESS IDENTIFICATION ACT; PROVIDING PROCEDURES FOR LINEUPS; REQUIRING EYEWITNESS STATEMENTS; REQUIRING THAT RECORDS BE KEPT OF LINEUP PROCEDURES.

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

Section 1. SHORT TITLE.--This act may be cited as the "Reliable Eyewitness Identification Act".

Section 2. DEFINITIONS.--As used in the Reliable Eyewitness Identification Act:

A. "administrator" means a person who conducts a lineup procedure;

B. "eyewitness" means a person whose identification of another person may be relevant in a criminal investigation or proceeding;

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1 C. "lineup" means a series of persons or
2 photographs shown to an eyewitness for the purpose of
3 determining whether the eyewitness can identify the subject;

4 D. "member" means a person or a photograph that is
5 included in a lineup;

6 E. "subject" means a person relevant to a criminal
7 investigation who was seen by an eyewitness and who is sought
8 to be identified through a lineup; and

9 F. "suspect" means a person who is believed to be
10 the subject.

11 Section 3. LINEUP PROCEDURE.--

12 A. Unless otherwise required by the age, disability
13 or language needs of the eyewitness, only an administrator
14 shall be present with an eyewitness during a lineup procedure
15 as provided in this section, except that a suspect's attorney
16 may be present during a lineup of persons. No other person
17 shall be in a position to be seen or heard by the eyewitness
18 during the lineup procedure.

19 B. The administrator shall:

20 (1) during a lineup of persons, not know who
21 among the members is a suspect; or

22 (2) during a lineup of photographs, use a
23 procedure whereby the administrator does not know which
24 photograph the eyewitness is viewing at any given time.

25 C. Prior to being shown a lineup, and as close in

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1 time to the incident as possible, an eyewitness shall give, in
2 the eyewitness's own words, a description of the subject and a
3 description of the circumstances under which the subject was
4 seen by the eyewitness, including the time of day, the length
5 of time the subject was seen, the distance from the eyewitness
6 to the subject and the lighting conditions. The description
7 may be recorded or transcribed or written by the eyewitness.

8 D. Prior to a lineup, an eyewitness shall be
9 instructed that:

10 (1) the eyewitness should not feel compelled
11 to make an identification;

12 (2) the subject may not be among the members
13 of the lineup;

14 (3) the eyewitness may take as much time as
15 the eyewitness wants to view lineup; and

16 (4) an identification, or a lack of
17 identification, will not end the investigation.

18 E. No more than one suspect shall be included in a
19 lineup.

20 F. A live lineup shall consist of at least six
21 persons.

22 G. A photo lineup shall consist of at least ten
23 photographs. No more than one photograph of the suspect shall
24 be included in the photo lineup.

25 H. Members of a lineup shall be shown sequentially

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1 so that an eyewitness views only one member at a time and
2 expresses an opinion as to that member before seeing the next
3 member. The eyewitness shall be shown all of the members
4 included in the lineup sequentially even if an identification
5 has been made before all of the members have been viewed by the
6 eyewitness.

7 I. A member of a lineup shall generally fit the
8 description of the subject, and no member shall unduly stand
9 out from other members of the lineup.

10 J. Except as provided in Section 4 of the Reliable
11 Eyewitness Identification Act, a suspect or a photograph of a
12 suspect shall not be presented to an eyewitness for the purpose
13 of identification unless the suspect or photograph is included
14 in a lineup.

15 K. Immediately after a lineup, an eyewitness shall
16 complete a form describing the eyewitness's reactions to the
17 lineup procedure, any identification made by the eyewitness and
18 the degree of confidence felt by the eyewitness in making an
19 identification. If an eyewitness is unable to complete the
20 form in writing, the eyewitness shall be recorded while orally
21 providing the information required by the form. No information
22 or suggestion concerning the correctness of the identification
23 shall be communicated to the eyewitness.

24 L. A complete audio and visual recording shall be
25 made of each lineup procedure and shall include:

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- 1 (1) all of the members in the lineup;
2 (2) all of the persons present during the
3 lineup procedure;
4 (3) any remarks or actions made during the
5 lineup procedure;
6 (4) any reactions by the eyewitness; and
7 (5) the eyewitness giving a description
8 pursuant to Subsection C of this section and completing the
9 form pursuant to Subsection K of this section.

10 M. An administrator shall comply with the
11 provisions of Subsection L of this section unless the
12 administrator has good cause and makes a contemporaneous
13 written or electronic record of the reasons for not complying.
14 Good cause includes:

- 15 (1) the recording equipment was not reasonably
16 available; or
17 (2) the recording equipment failed and
18 obtaining replacement equipment was not feasible.

19 Section 4. IDENTIFICATION OUTSIDE A LINEUP.--

20 A. A suspect may not be shown to an eyewitness
21 outside a lineup procedure for the purpose of identification
22 unless:

- 23 (1) the suspect is shown within three hours
24 after the subject was seen by the eyewitness;
25 (2) initial information pursuant to Subsection

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1 C of Section 3 of the Reliable Eyewitness Identification Act is
2 obtained from the eyewitness;

3 (3) the suspect fits the description of the
4 subject described by the witness;

5 (4) the suspect was found in close proximity
6 in time and place to the event seen by the eyewitness; and

7 (5) it is not feasible to conduct a lineup
8 procedure.

9 B. All requirements for identification outside a
10 lineup procedure as set forth in this section shall be
11 documented and preserved.

12 Section 5. PRESERVATION OF RECORD.--A record of a lineup
13 procedure shall be made that includes:

14 A. the date, time and location of the lineup
15 procedure;

16 B. the names of all persons present during the
17 lineup procedure;

18 C. the names of the members of the lineup and the
19 sequence in which the members were shown to the eyewitness;

20 D. copies of all photographs used in the lineup, if
21 any, and the sources of all photographs used;

22 E. identification and nonidentification results
23 obtained during the procedure and signed by the eyewitness;

24 F. the information provided by the eyewitness
25 pursuant to Subsections C and K of Section 3 of the Reliable

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1 Eyewitness Identification Act; and

2 G. the recording made pursuant to Subsection L of
3 Section 3 of the Reliable Eyewitness Identification Act.

4 Section 6. APPLICABILITY.--The provisions of the Reliable
5 Eyewitness Identification Act do not apply to lineup procedures
6 conducted outside of New Mexico and do not apply within a
7 correctional facility.

8 Section 7. EFFECTIVE DATE.--The effective date of the
9 provisions of this act is July 1, 2009.