

1 SENATE BILL 490

2 **51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

3 INTRODUCED BY

4 Cisco McSorley

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10 AN ACT

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

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

15 SECTION 1. LEGISLATIVE INTENT.--The legislature finds
16 that:

17 A. the goal of a police investigation is to
18 apprehend the person or persons responsible for the commission
19 of a crime;

20 B. mistaken eyewitness identification has
21 contributed to wrongful conviction in approximately
22 seventy-five percent of the nation's two hundred eighty-nine
23 exonerations;

24 C. over the past thirty years, a large body of
25 peer-reviewed, scientific research and practice has

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1 demonstrated that simple systemic changes in administering
2 eyewitness identification procedures can greatly improve the
3 accuracy of those identifications;

4 D. policies and procedures to improve the accuracy
5 of eyewitness identifications such as those recommended by the
6 United States national institute of justice, the American bar
7 association, the New Jersey office of the attorney general, the
8 Wisconsin office of the attorney general, the California
9 commission on the fair administration of justice and the North
10 Carolina actual innocence commission are readily available;

11 E. more accurate eyewitness identifications
12 increase the ability of police and prosecutors to convict the
13 guilty and protect the innocent;

14 F. the integrity of New Mexico's criminal justice
15 process is enhanced by adherence to best practices in evidence
16 gathering;

17 G. departmental eyewitness identification protocols
18 are worthy of consistency and clarity; and

19 H. New Mexico will benefit from the development of
20 standardized written policies, derived from best practices,
21 that improve the accuracy of eyewitness identifications.

22 SECTION 2. DEFINITIONS.--As used in this act:

23 A. "administrator" means a person conducting a
24 photo lineup or live lineup;

25 B. "blind" means the administrator does not know

1 the identity of the suspect;

2 C. "blinded" means the administrator may know who
3 the suspect is but does not know which lineup member is being
4 viewed by the eyewitness;

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

7 E. "filler" means either a person or a photograph
8 of a person who is not suspected of an offense and is included
9 in an identification procedure;

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

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

23 H. "showup" means an identification procedure in
24 which an eyewitness is presented with a single suspect for the
25 purpose of determining whether the eyewitness identifies this

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1 individual as the perpetrator; and

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

4 SECTION 3. EYEWITNESS IDENTIFICATION PROCEDURES.--

5 A. Not later than January 1, 2014, a criminal
6 justice entity conducting eyewitness identification procedures
7 shall adopt written policies for using an eyewitness to
8 identify a suspect upon viewing the suspect in person in a live
9 lineup or showup or upon viewing a representation of the
10 suspect in a photo lineup.

11 B. Each governmental entity in New Mexico that
12 administers eyewitness identification procedures shall provide
13 a copy of its written policies to the secretary of public
14 safety no later than February 1, 2014.

15 C. A law enforcement agency shall biennially review
16 policies adopted pursuant to this section.

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

25 E. A law enforcement agency shall consider

1 including in policies adopted pursuant to this section
2 practices to enhance the objectivity and reliability of
3 eyewitness identifications and to minimize the possibility of
4 mistaken identifications, including the following:

5 (1) having a blind or blinded administrator
6 perform the live lineup or photo lineup;

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

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

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

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

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

23 (7) having the administrator seek and document
24 a clear statement from the eyewitness, at the time of the
25 identification and in the eyewitness's own words, as to the

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1 eyewitness's confidence level that the person identified is the
2 person who committed the crime;

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

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

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

12 (a) identifying the circumstances under
13 which a showup is warranted;

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

17 (c) removing the suspect from the law
18 enforcement squad car;

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

21 (e) administering the showup procedure
22 close in time to the commission of the crime;

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

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1 (12) preserving photographic documentation of
2 all live lineup and photo lineup members and showup suspects,
3 as well as all descriptions provided by the eyewitness of the
4 perpetrator.

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

8 SECTION 4. TRAINING OF LAW ENFORCEMENT OFFICERS.--The
9 secretary of public safety shall create, administer and conduct
10 training programs for law enforcement officers and recruits on
11 the methods and technical aspects of the eyewitness
12 identification practices and procedures shown by reliable
13 evidence to enhance the accuracy of eyewitness evidence
14 referenced in this act.

15 SECTION 5. EFFECTIVE DATE.--The effective date of the
16 provisions of this act is July 1, 2013.