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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. 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;

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

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

G. "photo lineup" means an identification

1 procedure in which an array of photographs, including a
2 photograph of the suspected perpetrator of an offense and
3 additional photographs of other persons not suspected of the
4 offense, is displayed to an eyewitness either in hard copy
5 form or via computer for the purpose of determining whether
6 the eyewitness identifies the suspect as the perpetrator;

7 H. "showup" means an identification procedure in
8 which an eyewitness is presented with a single suspect for
9 the purpose of determining whether the eyewitness identifies
10 this individual as the perpetrator; and

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

13 SECTION 2. EYEWITNESS IDENTIFICATION PROCEDURES.--

14 A. Not later than January 1, 2014, every law
15 enforcement agency conducting eyewitness identification
16 procedures shall adopt written policies for using an
17 eyewitness to identify a suspect upon viewing the suspect in
18 person in a live lineup or showup or upon viewing a
19 representation of the suspect in a photo lineup.

20 B. A law enforcement agency shall biennially
21 review policies adopted pursuant to this section.

22 C. In developing and revising policies pursuant to
23 this section, a law enforcement agency shall consider those
24 practices shown by reliable evidence to enhance the accuracy
25 of identification procedures.

1 D. A law enforcement agency shall consider
2 including in policies adopted pursuant to this section
3 practices to enhance the objectivity and reliability of
4 eyewitness identifications and to minimize the possibility of
5 mistaken identifications, including the following:

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

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

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

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

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

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

25 (7) having the administrator seek and

1 document a clear statement from the eyewitness, at the time
2 of the identification and in the eyewitness's own words, as
3 to the eyewitness's confidence level that the person
4 identified is the person who committed the crime;

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

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

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

14 (a) identifying the circumstances under
15 which a showup is warranted;

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

19 (c) removing the suspect from the law
20 enforcement squad car;

21 (d) removing restraints from the
22 suspect when the suspect is being observed by the eyewitness;
23 and

24 (e) administering the showup procedure
25 close in time to the commission of the crime;

1 (11) video recording the entirety of the
2 photo lineup and live lineup and, where practicable, the
3 showup procedure; and

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

8 E. All written departmental eyewitness
9 identification policies shall be made available to the public
10 upon request.

11 SECTION 3. TRAINING OF LAW ENFORCEMENT OFFICERS.--The
12 secretary of public safety shall create, administer and
13 conduct training programs for law enforcement officers and
14 recruits on the methods and technical aspects of the
15 eyewitness identification practices and procedures shown by
16 reliable evidence to enhance the accuracy of eyewitness
17 evidence referenced in this act.

18 SECTION 4. EFFECTIVE DATE.--The effective date of the
19 provisions of this act is July 1, 2013. _____

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