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48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

John T. L. Grubescic

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;

underscored material = new
[bracketed material] = delete

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. Only an administrator shall be present with an
13 eyewitness during a lineup procedure as set forth in this
14 section. No other person shall be in a position to be seen or
15 heard by the eyewitness during the lineup procedure as set
16 forth in this section.

17 B. The administrator shall:

18 (1) not know who among the members is a
19 suspect; or

20 (2) use a procedure whereby the administrator
21 does not know which member is being shown to the eyewitness
22 during the lineup.

23 C. Prior to being shown a lineup, and as close in
24 time to the incident as possible, an eyewitness shall give, in
25 the eyewitness's own words, a written description of the

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1 subject and a written description of the circumstances under
2 which the subject was seen by the eyewitness, including the
3 time of day, the length of time the subject was seen, the
4 distance from the eyewitness to the subject and the lighting
5 conditions.

6 D. Prior to a lineup, an eyewitness shall be
7 instructed that:

8 (1) the eyewitness should not feel compelled
9 to make an identification;

10 (2) the subject may not be among the members
11 of the lineup; and

12 (3) an identification, or a lack of
13 identification, will not end the investigation.

14 E. A lineup of persons rather than of photographs
15 shall be conducted if feasible. No more than one suspect shall
16 be included in a lineup.

17 F. A live lineup shall consist of at least six
18 persons.

19 G. A photo lineup shall consist of at least ten
20 photographs. No more than one photograph of the suspect shall
21 be included in the photo lineup.

22 H. Members of a lineup shall be shown sequentially
23 and not simultaneously so that an eyewitness views only one
24 member at a time and expresses an opinion as to that member
25 before seeing the next member. The eyewitness shall be shown

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1 all the members included in the lineup even if an
2 identification has been made before all members have been
3 viewed by the eyewitness.

4 I. A member of a lineup shall generally fit the
5 description of the subject, and no member shall unduly stand
6 out from other members of the lineup.

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

12 K. Immediately after a lineup, an eyewitness shall
13 complete a form describing the eyewitness's reactions to the
14 lineup procedure, any identification made by the eyewitness and
15 the degree of confidence felt by the eyewitness in making an
16 identification. No information or suggestion concerning the
17 correctness of the identification shall be communicated to the
18 eyewitness.

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

- 21 (1) all of the members in the lineup;
22 (2) all of the persons present during the
23 lineup procedure;
24 (3) any remarks or actions made during the
25 lineup procedure;

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- 1 (4) any reactions by the eyewitness; and
2 (5) the eyewitness giving a description
3 pursuant to Subsection C of this section and completing the
4 form pursuant to Subsection K of this section.

5 Section 4. IDENTIFICATION OUTSIDE A LINEUP.--

6 A. A suspect may not be shown to an eyewitness
7 outside a lineup procedure for the purpose of identification
8 unless:

9 (1) the suspect is shown within one hour after
10 the subject was seen by the eyewitness;

11 (2) initial information pursuant to Subsection
12 C of Section 3 of the Reliable Eyewitness Identification Act is
13 obtained from the eyewitness;

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

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

18 (5) it is not feasible to conduct a lineup
19 procedure.

20 B. All requirements for identification outside a
21 lineup procedure as set forth in this section shall be
22 documented and preserved.

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

25 A. the date, time and location of the lineup

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1 procedure;

2 B. the names of all persons present during the
3 lineup procedure;

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

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

8 E. identification and nonidentification results
9 obtained during the procedure and signed by the eyewitness;

10 F. the information provided by the eyewitness
11 pursuant to Subsections C and K of Section 3 of the Reliable
12 Eyewitness Identification Act; and

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

15 Section 6. EFFECTIVE DATE.--The effective date of the
16 provisions of this act is July 1, 2007.