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I N   S E N A T E

May 14, 2010

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Introduced by Sen. THOMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to eyewitness identification procedures; and to repeal section 60.30 of such law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. The criminal procedure law is amended by adding a new  
2     section 60.17 to read as follows:

3     S 60.17 RULES OF EVIDENCE; EXPERT TESTIMONY IN CERTAIN IDENTIFICATION  
4     CASES.

5     IN ANY CRIMINAL PROCEEDING IN WHICH EYEWITNESS IDENTIFICATION TESTIMO-  
6     NY IS INTRODUCED, OR IN OTHER CASES WHERE THE INTERESTS OF JUSTICE SO  
7     REQUIRE, THE COURT MAY ADMIT EXPERT TESTIMONY REGARDING RELEVANT ASPECTS  
8     OF IDENTIFICATION PROCEDURES, INCLUDING BUT NOT LIMITED TO FACTORS THAT  
9     AFFECT THE RELIABILITY AND ACCURACY OF EYEWITNESS IDENTIFICATION.

10    S 2. The criminal procedure law is amended by adding a new article 80  
11    to read as follows:

12                                 ARTICLE 80

13                                 IDENTIFICATION PROCEDURES

14    SECTION 80.10 IDENTIFICATION PROCEDURES; DEFINITIONS.

15                 80.20 IDENTIFICATION PROCEDURES; GENERALLY.

16                 80.30 IDENTIFICATION PROCEDURES; EVIDENTIARY MATTERS.

17                 80.40 IDENTIFICATION PROCEDURES; PROFESSIONAL TRAINING.

18    S 80.10 IDENTIFICATION PROCEDURES; DEFINITIONS.

19    AS USED IN THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING  
20    MEANINGS:

21    1. "ADMINISTRATOR" MEANS THE PERSON CONDUCTING THE PHOTO OR LIVE LINE-  
22    UP.

23    2. "SUSPECT" MEANS THE PERSON BELIEVED BY LAW ENFORCEMENT TO BE THE  
24    POSSIBLE PERPETRATOR OF THE CRIME.

25    3. "BLIND" MEANS THE ADMINISTRATOR DOES NOT KNOW THE IDENTITY OF THE  
26    SUSPECT.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 4. "BLINDED" MEANS THE ADMINISTRATOR MAY KNOW WHO THE SUSPECT IS, BUT  
2 DOES NOT KNOW WHICH LINEUP MEMBER IS BEING VIEWED BY THE EYEWITNESS.

3 5. "EYEWITNESS" MEANS A PERSON WHO OBSERVES ANOTHER PERSON AT OR NEAR  
4 THE SCENE OF AN OFFENSE OR UPON SOME OTHER OCCASION RELEVANT TO THE  
5 CASE.

6 6. "FILLER" MEANS EITHER A PERSON OR A PHOTOGRAPH OF A PERSON WHO IS  
7 NOT SUSPECTED OF AN OFFENSE AND IS INCLUDED IN AN IDENTIFICATION PROCE-  
8 DURE.

9 7. "IDENTIFICATION PROCEDURE" MEANS A LIVE LINEUP, A PHOTO LINEUP, OR  
10 A SHOWUP.

11 8. "LIVE LINEUP" MEANS AN IDENTIFICATION PROCEDURE IN WHICH A GROUP OF  
12 PERSONS, INCLUDING THE SUSPECTED PERPETRATOR OF AN OFFENSE AND OTHER  
13 PERSONS NOT SUSPECTED OF THE OFFENSE, IS DISPLAYED TO AN EYEWITNESS FOR  
14 THE PURPOSE OF DETERMINING WHETHER THE EYEWITNESS IDENTIFIES THE SUSPECT  
15 AS THE PERPETRATOR.

16 9. "PHOTO LINEUP" MEANS AN IDENTIFICATION PROCEDURE IN WHICH AN ARRAY  
17 OF PHOTOGRAPHS, INCLUDING A PHOTOGRAPH OF THE SUSPECTED PERPETRATOR OF  
18 AN OFFENSE AND ADDITIONAL PHOTOGRAPHS OF OTHER PERSONS NOT SUSPECTED OF  
19 THE OFFENSE, IS DISPLAYED TO AN EYEWITNESS EITHER IN HARD COPY FORM OR  
20 VIA COMPUTER FOR THE PURPOSE OF DETERMINING WHETHER THE EYEWITNESS IDEN-  
21 TIFIES THE SUSPECT AS THE PERPETRATOR.

22 10. "SHOWUP" MEANS AN IDENTIFICATION PROCEDURE IN WHICH AN EYEWITNESS  
23 IS PRESENTED WITH A SINGLE SUSPECT FOR THE PURPOSE OF DETERMINING WHETH-  
24 ER THE EYEWITNESS IDENTIFIES THIS INDIVIDUAL AS THE PERPETRATOR.  
25 S 80.20 IDENTIFICATION PROCEDURES; GENERALLY.

26 1. IF IDENTIFICATION PROCEDURES (A) HAVE BEEN CONDUCTED IN ACCORDANCE  
27 WITH THIS SECTION AND UNDER CIRCUMSTANCES CONSISTENT WITH SUCH RIGHTS AS  
28 AN ACCUSED PERSON MAY DERIVE UNDER THE CONSTITUTION OF THIS STATE OR OF  
29 THE UNITED STATES; AND (B) ARE PROPERLY DOCUMENTED IN ACCORDANCE WITH  
30 PARAGRAPHS (T), (U) AND (V) OF SUBDIVISION TWO OF THIS SECTION, TESTIMO-  
31 NY MAY BE GIVEN BY A WITNESS THAT HE OR SHE OBSERVED A PERSON OR PHOTO-  
32 GRAPH OF A PERSON ON AN OCCASION PRIOR TO HIS OR HER TESTIMONY WHOM HE  
33 OR SHE RECOGNIZES AS THE SAME PERSON WHOM HE OR SHE HAD OBSERVED ON THE  
34 FIRST OR INCRIMINATING OCCASION.

35 2. ANY CRIMINAL JUSTICE ENTITY CONDUCTING EYEWITNESS IDENTIFICATION  
36 PROCEDURES SHALL ADOPT SPECIFIC PROCEDURES FOR CONDUCTING PHOTO AND LIVE  
37 LINEUPS THAT COMPLY WITH THE FOLLOWING REQUIREMENTS:

38 (A) PRIOR TO A PHOTO OR LIVE LINEUP, LAW ENFORCEMENT SHALL RECORD AS  
39 COMPLETE A DESCRIPTION AS POSSIBLE OF THE PERPETRATOR PROVIDED BY THE  
40 EYEWITNESS, IN THE EYEWITNESS'S OWN WORDS. THIS STATEMENT SHALL ALSO  
41 INCLUDE INFORMATION REGARDING THE WITNESS'S DEGREE OF ATTENTION DURING  
42 THE INCIDENT AND THE WITNESS'S OPPORTUNITY TO VIEW THE PERPETRATOR, AS  
43 WELL AS THE CONDITIONS UNDER WHICH THE EYEWITNESS OBSERVED THE PERPETRA-  
44 TOR, INCLUDING LOCATION, TIME, DISTANCE, OBSTRUCTIONS, LIGHTING, WEATHER  
45 CONDITIONS AND OTHER IMPAIRMENTS, INCLUDING BUT NOT LIMITED TO ALCOHOL,  
46 DRUGS, STRESS AND VISUAL/AUDITORY DISABILITIES. THE EYEWITNESS ALSO  
47 SHALL BE ASKED IF HE OR SHE NEEDS GLASSES OR CONTACT LENSES AND WHETHER  
48 HE OR SHE WAS WEARING THEM AT THE TIME OF THE OFFENSE. THE ADMINISTRATOR  
49 SHALL NOTE WHETHER THE EYEWITNESS WAS WEARING GLASSES OR CONTACT LENSES  
50 AT THE TIME OF THE IDENTIFICATION PROCEDURES;

51 (B) UNLESS IMPRACTICABLE, A BLIND ADMINISTRATOR SHALL CONDUCT THE LIVE  
52 OR PHOTO LINEUP;

53 (C) WHEN IT IS IMPRACTICABLE FOR A BLIND ADMINISTRATOR TO CONDUCT THE  
54 EYEWITNESS IDENTIFICATION PROCEDURE, THE INVESTIGATOR SHALL STATE IN  
55 WRITING THE REASON THEREFOR, AND SHALL CONDUCT THE LINEUP BLINDED;

(D) THE EYEWITNESS SHALL BE INSTRUCTED, WITHOUT OTHER EYEWITNESSES PRESENT, PRIOR TO ANY LIVE OR PHOTO LINEUP THAT:

(I) THE PERPETRATOR MAY OR MAY NOT BE AMONG THE PERSONS IN THE IDENTIFICATION PROCEDURE;

(II) THE ADMINISTRATOR DOES NOT KNOW WHO THE PERPETRATOR IS;

(III) THE EYEWITNESS SHOULD NOT FEEL COMPELLED TO MAKE AN IDENTIFICATION;

(IV) THE INVESTIGATION WILL CONTINUE WHETHER OR NOT AN IDENTIFICATION IS MADE;

(V) THE PROCEDURE REQUIRES THE ADMINISTRATOR TO ASK THE EYEWITNESS TO STATE, IN HIS OR HER OWN WORDS, HOW CERTAIN HE OR SHE IS OF ANY IDENTIFICATION; AND

(VI) THE EYEWITNESS IS NOT TO DISCUSS THE IDENTIFICATION PROCEDURE OR ITS RESULTS WITH OTHER EYEWITNESSES INVOLVED IN THE CASE AND SHOULD NOT SPEAK WITH THE MEDIA;

(E) UNLESS IMPRACTICABLE, THE PHOTOGRAPH OF THE SUSPECT USED IN A PHOTO LINEUP SHALL BE CONTEMPORARY AND SHALL RESEMBLE HIS OR HER APPEARANCE AT THE TIME OF THE OFFENSE. WHEN IT IS IMPRACTICABLE, THE INVESTIGATOR SHALL STATE IN WRITING THE REASON THEREFOR;

(F) IN A PHOTO LINEUP, THERE SHALL BE NO CHARACTERISTICS OF THE PHOTOGRAPHS THEMSELVES OR THE BACKGROUND CONTEXT IN WHICH THEY ARE PLACED WHICH SHALL MAKE ANY OF THE PHOTOGRAPHS UNDULY STAND OUT;

(G) A PHOTO OR LIVE LINEUP SHALL BE COMPOSED SO THAT THE FILLERS GENERALLY RESEMBLE THE EYEWITNESS'S DESCRIPTION OF THE PERPETRATOR, WHILE ENSURING THAT THE SUSPECT DOES NOT UNDULY STAND OUT FROM THE FILLERS;

(H) IN A PHOTO OR LIVE LINEUP, FILLERS SHALL POSSESS THE FOLLOWING CHARACTERISTICS:

(I) ALL FILLERS SELECTED SHALL RESEMBLE THE EYEWITNESS'S DESCRIPTION OF THE PERPETRATOR IN SIGNIFICANT FEATURES INCLUDING, BUT NOT LIMITED TO FACE, WEIGHT, BUILD AND SKIN TONE, AND INCLUDING ANY UNIQUE OR UNUSUAL FEATURES INCLUDING, BUT NOT LIMITED TO ANY SCARS OR TATTOOS; IF THE SUSPECT DOES NOT RESEMBLE THE EYEWITNESS'S DESCRIPTION OF THE PERPETRATOR IN SIGNIFICANT FEATURES, THE FILLERS SELECTED SHALL RESEMBLE THE SUSPECT IN SIGNIFICANT FEATURES;

(II) AT LEAST FIVE FILLERS SHALL BE INCLUDED IN A PHOTO LINEUP, IN ADDITION TO THE SUSPECT;

(III) AT LEAST FOUR FILLERS SHALL BE INCLUDED IN A LIVE LINEUP, IN ADDITION TO THE SUSPECT; AND

(IV) IF THE EYEWITNESS HAS PREVIOUSLY VIEWED A PHOTO LINEUP OR LIVE LINEUP IN CONNECTION WITH THE IDENTIFICATION OF ANOTHER PERSON SUSPECTED OF INVOLVEMENT IN THE OFFENSE, THE FILLERS IN THE LINEUP IN WHICH THE INSTANT SUSPECT PARTICIPATES SHALL BE DIFFERENT FROM THE FILLERS USED IN ANY PRIOR LINEUPS;

(I) IF THERE ARE MULTIPLE EYEWITNESSES:

(I) EACH EYEWITNESS SHALL VIEW PHOTO OR LIVE LINEUPS SEPARATELY;

(II) THE SUSPECT SHALL BE PLACED IN A DIFFERENT POSITION IN THE LIVE LINEUP AND/OR PHOTO LINEUP FOR EACH EYEWITNESS; AND

(III) THE EYEWITNESSES SHALL NOT BE PERMITTED TO COMMUNICATE WITH EACH OTHER UNTIL ALL IDENTIFICATION PROCEDURES HAVE BEEN COMPLETED;

(J) IN AN IDENTIFICATION PROCEDURE, NO WRITINGS OR INFORMATION CONCERNING THE INSTANT OR ANY PREVIOUS ARREST, INDICTMENT OR CONVICTION OF THE SUSPECT SHALL BE VISIBLE OR MADE KNOWN TO THE EYEWITNESS;

(K) IN A LIVE LINEUP, ANY IDENTIFYING ACTIONS, SUCH AS SPEECH, GESTURES OR OTHER MOVEMENTS, SHALL BE PERFORMED BY ALL LINEUP PARTICIPANTS;

1 (L) IN A LIVE LINEUP, ALL LINEUP PARTICIPANTS MUST BE OUT OF VIEW OF  
2 THE EYEWITNESS PRIOR TO THE IDENTIFICATION PROCEDURE;

3 (M) WHEN THERE ARE MULTIPLE SUSPECTS, EACH IDENTIFICATION PROCEDURE  
4 SHALL INCLUDE ONLY ONE SUSPECT;

5 (N) NOTHING SHALL BE SAID TO THE EYEWITNESS REGARDING THE SUSPECT'S  
6 POSITION IN THE PHOTO OR LIVE LINEUP;

7 (O) NOTHING SHALL BE SAID TO THE EYEWITNESS THAT MIGHT INFLUENCE THE  
8 EYEWITNESS'S IDENTIFICATION OF ANY PARTICULAR LINEUP MEMBER;

9 (P) IF THE EYEWITNESS MAKES AN IDENTIFICATION, THE ADMINISTRATOR SHALL  
10 SEEK AND DOCUMENT A CLEAR STATEMENT FROM THE EYEWITNESS, AT THE TIME OF  
11 THE IDENTIFICATION AND IN THE EYEWITNESS'S OWN WORDS, AS TO THE EYEWIT-  
12 NESS'S CONFIDENCE LEVEL THAT THE PERSON IDENTIFIED IN A GIVEN IDENTIFI-  
13 CATION PROCEDURE IS THE PERPETRATOR;

14 (Q) IF THE EYEWITNESS IDENTIFIES A PERSON AS THE PERPETRATOR, THE  
15 EYEWITNESS SHALL NOT BE PROVIDED ANY INFORMATION CONCERNING SUCH PERSON  
16 BEFORE THE ADMINISTRATOR OBTAINS THE EYEWITNESS'S CONFIDENCE STATEMENT  
17 ABOUT THE SELECTION;

18 (R) A RECORD OF THE IDENTIFICATION PROCEDURE SHALL BE MADE THAT  
19 INCLUDES ALL IDENTIFICATION AND NON-IDENTIFICATION RESULTS OBTAINED  
20 DURING THE IDENTIFICATION PROCEDURES, SIGNED BY THE EYEWITNESSES;

21 (S) EFFORTS SHALL BE MADE TO PERFORM A LIVE OR PHOTO LINEUP INSTEAD OF  
22 A SHOWUP. IN ADDITION:

23 (I) SHOWUPS SHALL ONLY BE PERFORMED USING A LIVE SUSPECT AND IN  
24 EXIGENT CIRCUMSTANCES THAT REQUIRE THE IMMEDIATE DISPLAY OF A SUSPECT TO  
25 AN EYEWITNESS;

26 (II) IN THE EVENT OF THE ADMINISTRATION OF A SHOWUP PROCEDURE:

27 (A) A FULL AND DETAILED DESCRIPTION OF THE PERPETRATOR SHALL BE  
28 PROVIDED BY THE EYEWITNESS BEFORE THE EYEWITNESS OBSERVES THE SUSPECT.  
29 THIS STATEMENT SHALL ALSO INCLUDE INFORMATION REGARDING THE WITNESS'S  
30 DEGREE OF ATTENTION DURING THE INCIDENT AND THE WITNESS'S OPPORTUNITY TO  
31 VIEW THE PERPETRATOR, AS WELL AS THE CONDITIONS UNDER WHICH THE EYEWIT-  
32 NESS OBSERVED THE PERPETRATOR INCLUDING LOCATION, TIME, DISTANCE,  
33 OBSTRUCTIONS, LIGHTING, WEATHER CONDITIONS AND OTHER IMPAIRMENTS,  
34 INCLUDING BUT NOT LIMITED TO ALCOHOL, DRUGS, STRESS AND VISUAL/AUDITORY  
35 DISABILITIES. THE EYEWITNESS SHALL ALSO BE ASKED IF HE OR SHE NEEDS  
36 GLASSES OR CONTACT LENSES AND WHETHER HE OR SHE WAS WEARING THEM AT THE  
37 TIME OF THE OFFENSE. THE ADMINISTRATOR SHALL NOTE WHETHER THE EYEWITNESS  
38 WAS WEARING GLASSES OR CONTACT LENSES AT THE TIME OF THE IDENTIFICATION  
39 PROCEDURE.

40 (B) THE EYEWITNESS SHALL BE TRANSPORTED TO A NEUTRAL, NON-LAW ENFORCE-  
41 MENT LOCATION WHERE THE SUSPECT IS BEING DETAINED FOR THE PURPOSES OF A  
42 SHOWUP PROCEDURE.

43 (C) EYEWITNESSES SHALL BE PROVIDED WITH INSTRUCTIONS PRIOR TO THE  
44 SHOWUP, INCLUDING THAT:

45 (1) THE PERPETRATOR MAY OR MAY NOT BE THE PERSON THAT IS PRESENTED TO  
46 THE EYEWITNESS;

47 (2) THE EYEWITNESS SHOULD NOT FEEL COMPELLED TO MAKE AN IDENTIFICA-  
48 TION;

49 (3) THE INVESTIGATION WILL CONTINUE WHETHER OR NOT AN IDENTIFICATION  
50 IS MADE;

51 (4) THE PROCEDURE REQUIRES THE ADMINISTRATOR TO ASK THE EYEWITNESS TO  
52 STATE, IN HIS OR HER OWN WORDS, HOW CERTAIN HE OR SHE IS OF ANY IDEN-  
53 TIFICATION; AND

54 (5) THE EYEWITNESS IS NOT TO DISCUSS THE IDENTIFICATION PROCEDURE OR  
55 ITS RESULTS WITH OTHER EYEWITNESSES INVOLVED IN THE CASE AND SHOULD NOT  
56 SPEAK WITH THE MEDIA.

(D) MEASURES SHALL BE TAKEN BY INVESTIGATORS AT THE SHOWUP, INCLUDING THE ADMINISTRATOR OF THE SHOWUP, TO REDUCE POTENTIALLY DAMAGING OR PREJUDICIAL INFERENCES THAT MAY BE DRAWN BY THE EYEWITNESS, INCLUDING:

(1) REFRAINING FROM SUGGESTING, THROUGH STATEMENTS OR NON-VERBAL CONDUCT, THAT THE SUSPECT IS OR MAY BE THE PERPETRATOR OF THE CRIME;

(2) REMOVING THE SUSPECT FROM A SQUAD CAR; AND

(3) WHEN PRACTICABLE, REMOVING HANDCUFFS FROM THE SUSPECT.

(E) IF THERE ARE MULTIPLE EYEWITNESSES, ONLY ONE EYEWITNESS AT A TIME SHALL PARTICIPATE IN THE SHOWUP PROCEDURE. ONLY ONE OF THE EYEWITNESSES SHALL BE PRESENT AT THE LOCATION OF THE SHOWUP PROCEDURE. IF A POSITIVE IDENTIFICATION IS MADE, AND AN ARREST IS JUSTIFIED, ADDITIONAL EYEWITNESSES SHALL BE SHOWN LIVE OR PHOTO LINEUPS;

(F) IF THERE ARE MULTIPLE SUSPECTS, THESE SUSPECTS SHALL BE SEPARATED AND SUBJECTED TO SEPARATE SHOWUP PROCEDURES; AND

(G) IF THE EYEWITNESS MAKES AN IDENTIFICATION, THE ADMINISTRATOR SHALL SEEK AND DOCUMENT A CLEAR STATEMENT FROM THE EYEWITNESS, AT THE TIME OF THE IDENTIFICATION AND IN THE EYEWITNESS'S OWN WORDS, AS TO THE EYEWITNESS'S CONFIDENCE LEVEL THAT THE PERSON IDENTIFIED IN A GIVEN IDENTIFICATION PROCEDURE IS THE PERPETRATOR. IF THE EYEWITNESS IDENTIFIES A PERSON AS THE PERPETRATOR, THE EYEWITNESS SHALL NOT BE PROVIDED ANY INFORMATION CONCERNING SUCH PERSON BEFORE THE ADMINISTRATOR OBTAINS THE EYEWITNESS'S CONFIDENCE STATEMENT ABOUT THE SELECTION;

(T) UNLESS IMPRACTICABLE, A VIDEO RECORD OF THE IDENTIFICATION PROCEDURE SHALL BE MADE THAT INCLUDES THE FOLLOWING INFORMATION:

(I) ALL IDENTIFICATION AND NON-IDENTIFICATION RESULTS OBTAINED DURING THE IDENTIFICATION PROCEDURES, SIGNED BY THE EYEWITNESSES, INCLUDING THE EYEWITNESSES' CONFIDENCE STATEMENTS;

(II) THE NAMES OF ALL PERSONS PRESENT AT THE IDENTIFICATION PROCEDURE;

(III) THE DATE AND TIME OF THE IDENTIFICATION PROCEDURE;

(IV) IN A PHOTO OR LIVE LINEUP, ANY EYEWITNESS IDENTIFICATIONS OF ANY FILLERS; AND

(V) IN A PHOTO OR LIVE LINEUP, THE NAMES OF THE LINEUP MEMBERS AND OTHER RELEVANT IDENTIFYING INFORMATION, AND THE SOURCES OF ALL PHOTOGRAPHS OR PERSONS USED IN THE LINEUP;

(U) IF A VIDEO RECORD OF THE IDENTIFICATION PROCEDURE IS IMPRACTICABLE, THE OFFICER CONDUCTING THE LINEUP SHALL DOCUMENT THE REASON THEREFOR, AND AN AUDIO RECORD OF THE IDENTIFICATION PROCEDURE SHALL BE MADE WHICH INCLUDES THE ITEMS SPECIFIED IN PARAGRAPH (T) OF THIS SUBDIVISION. THE AUDIO RECORD SHALL BE SUPPLEMENTED BY ALL OF THE PHOTOGRAPHS USED IN A PHOTO LINEUP, AND PHOTOGRAPHS OF ALL OF THE INDIVIDUALS USED IN A LIVE LINEUP OR SHOWUP; AND

(V) IF BOTH A VIDEO AND AUDIO RECORD OF THE IDENTIFICATION PROCEDURE ARE IMPRACTICABLE, THE OFFICER CONDUCTING THE LINEUP SHALL DOCUMENT IN WRITING THE REASON THEREFOR, AND A WRITTEN RECORD OF THE LINEUP SHALL BE MADE WHICH INCLUDES THE ITEMS SPECIFIED IN PARAGRAPH (T) OF THIS SUBDIVISION. THE WRITTEN RECORD SHALL BE SUPPLEMENTED BY ALL OF THE PHOTOGRAPHS USED IN A PHOTO LINEUP, AND PHOTOGRAPHS OF ALL OF THE INDIVIDUALS USED IN A LIVE LINEUP OR SHOWUP.

S 80.30 IDENTIFICATION PROCEDURES; EVIDENTIARY MATTERS.

FOR ANY PHOTO OR LIVE LINEUP, OR SHOWUP PROCEDURE THAT WAS ADMINISTERED AFTER THE DATE UPON WHICH THIS ARTICLE TOOK EFFECT:

1. IF LAW ENFORCEMENT OFFICIALS OR PROSECUTING AGENCIES DO NOT SUBSTANTIALLY COMPLY WITH THE PROVISIONS OF THIS ARTICLE, THE TRIAL COURT SHALL, ON MOTION OF THE DEFENDANT, CONDUCT A HEARING AS TO WHETHER AN IDENTIFICATION BY THE WITNESS OF THE DEFENDANT AT THE CRIMINAL PROCEEDING IS NEVERTHELESS SUFFICIENTLY RELIABLE.

1 2. EVIDENCE OF A FAILURE TO COMPLY WITH ANY OF THE PROVISIONS OF THIS  
2 ARTICLE SHALL BE CONSIDERED BY TRIAL COURTS IN ADJUDICATING MOTIONS TO  
3 SUPPRESS EYEWITNESS IDENTIFICATION.

4 3. EVIDENCE OF A FAILURE TO COMPLY WITH ANY OF THE PROVISIONS OF THIS  
5 ARTICLE SHALL BE ADMISSIBLE IN SUPPORT OF CLAIMS OF EYEWITNESS MISIDEN-  
6 TIFICATION AS LONG AS SUCH EVIDENCE IS OTHERWISE ADMISSIBLE.

7 4. IF LAW ENFORCEMENT OFFICIALS OR PROSECUTING AGENCIES FAIL TO COMPLY  
8 WITH ANY OF THE PROVISIONS OF THIS ARTICLE, THE TRIAL COURT SHALL  
9 INSTRUCT THE JURY THAT SUCH PROVISIONS WERE DESIGNED TO REDUCE THE RISK  
10 OF MISIDENTIFICATION AND THAT IT MAY CONSIDER CREDIBLE EVIDENCE OF  
11 NONCOMPLIANCE WHEN ASSESSING THE RELIABILITY OF EYEWITNESS IDENTIFICA-  
12 TIONS.

13 5. WHEN EVIDENCE OF A FAILURE TO COMPLY WITH ANY OF THE PROVISIONS OF  
14 THIS ARTICLE, OR OF ANY OTHER UNNECESSARILY SUGGESTIVE PROCEDURES, HAS  
15 BEEN PRESENTED AND HAS UNDERMINED THE COURT'S CONFIDENCE IN THE RELI-  
16 ABILITY OF THE EYEWITNESS IDENTIFICATION, THE COURT MAY INSTRUCT THE  
17 JURY THAT IT SHOULD VIEW THE IDENTIFICATION EVIDENCE WITH DISTRUST.  
18 S 80.40 IDENTIFICATION PROCEDURES; PROFESSIONAL TRAINING.

19 THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL CREATE, ADMINISTER AND  
20 CONDUCT TRAINING PROGRAMS FOR PROFESSIONALS INVOLVED IN LAW ENFORCEMENT,  
21 INCLUDING BUT NOT LIMITED TO POLICE AND OTHER LAW ENFORCEMENT OFFICIALS  
22 AND RECRUITS, PROSECUTORS, JUDGES AND DEFENSE COUNSEL, REGARDING THE  
23 METHODS, TECHNICAL ASPECTS AND SCIENTIFIC FINDINGS REGARDING THE BASIS  
24 OF THE EYEWITNESS IDENTIFICATION PRACTICES AND PROCEDURES REFERENCED IN  
25 THIS ARTICLE.

26 S 3. Section 60.30 of the criminal procedure law is REPEALED.

27 S 4. This act shall take effect on the one hundred eightieth day after  
28 it shall have become a law, and shall apply to all identification proce-  
29 dures that take place on or after such date.