S T A T E  O F  N E W  Y O R K

2939

2009-2010 Regular Sessions

I N  A S S E M B L Y

January 22, 2009

Introduced by M. of A. BENJAMIN -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to the use of live line-up identification procedures

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

Section 1. Section 60.30 of the criminal procedure law, as amended by chapter 479 of the laws of 1977, is amended to read as follows:

S 60.30 Rules of evidence; identification by means of previous recognition, in addition to present identification; PROHIBITION.

[In] 1. EXCEPT AS PROVIDED IN SUBDIVISION TWO OF THIS SECTION, IN any criminal proceeding in which the defendant's commission of an offense is in issue, a witness who testifies that (a) he observed the person claimed by the people to be the defendant either at the time and place of the commission of the offense or upon some other occasion relevant to the case, and (b) on the basis of present recollection, the defendant is the person in question and (c) on a subsequent occasion he observed the defendant, under circumstances consistent with such rights as an accused person may derive under the constitution of this state or of the United States, and then also recognized him as the same person whom he had observed on the first or incriminating occasion, may, in addition to making an identification of the defendant at the criminal proceeding on the basis of present recollection as the person whom he observed on the first or incriminating occasion, also describe his previous recognition of the defendant and testify that the person whom he observed on such second occasion is the same person whom he had observed on the first or incriminating occasion. Such testimony constitutes evidence in chief.

2. NOTWITHSTANDING ANY PROVISION OF LAW, RULE, REGULATION OR COMMON LAW PRACTICE TO THE CONTRARY, IN ANY CRIMINAL PROCEEDING IN WHICH THE DEFENDANT'S COMMISSION OF AN OFFENSE IS IN ISSUE, USE OF AN IDENTIFICATION PROCEDURE DESCRIBED IN PARAGRAPH (C) OF SUBDIVISION ONE OF THIS

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

LBD05579-01-9

SECTION THAT ALSO CONSTITUTES A PROCEDURE KNOWN AS A LIVE LINE-UP IDENTIFICATION PROCEDURE SHALL BE PROHIBITED.

S 2. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.