

1334

2009-2010 Regular Sessions

I N S E N A T E

January 28, 2009

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

AN ACT to amend the criminal procedure law and the family court act, in relation to evidence of identification

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

1 Section 1. Section 60.25 of the criminal procedure law, subparagraph
2 (ii) of paragraph (a) of subdivision 1 as amended by chapter 479 of the
3 laws of 1977, is amended to read as follows:
4 S 60.25 Rules of evidence; identification by means of previous recogni-
5 tion, in absence of present identification.
6 1. In any criminal proceeding in which the defendant's commission of
7 an offense is in issue, testimony as provided in subdivision two may be
8 given by a witness when:
9 (a) Such witness testifies that:
10 (i) He OR SHE observed the person claimed by the people to be the
11 defendant either at the time and place of the commission of the offense
12 or upon some other occasion relevant to the case; and
13 (ii) On a subsequent occasion he OR SHE observed, under circumstances
14 consistent with such rights as an accused person may derive under the
15 constitution of this state or of the United States, a person OR A PICTO-
16 RIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEOTAPED REPRODUCTION OF A
17 PERSON whom he OR SHE recognized as the same person whom he OR SHE had
18 observed on the first or incriminating occasion; and
19 (iii) He OR SHE is unable at the proceeding to state, on the basis of
20 present recollection, whether or not the defendant is the person in
21 question; and
22 (b) It is established that the defendant is in fact the person whom
23 the witness observed and recognized OR WHOSE PICTORIAL, PHOTOGRAPHIC,
24 ELECTRONIC, FILMED OR VIDEOTAPED REPRODUCTION THE WITNESS OBSERVED AND
25 RECOGNIZED on the second occasion. Such fact may be established by

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

LBD03387-01-9

1 testimony of another person or persons to whom the witness promptly
2 declared his OR HER recognition on such occasion AND BY SUCH PICTORIAL,
3 PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEOTAPED REPRODUCTION.

4 2. Under circumstances prescribed in subdivision one, such witness may
5 testify at the criminal proceeding that the person whom he OR SHE
6 observed and recognized OR WHOSE PICTORIAL, PHOTOGRAPHIC, ELECTRONIC,
7 FILMED OR VIDEOTAPED REPRODUCTION HE OR SHE OBSERVED AND RECOGNIZED on
8 the second occasion is the same person whom he OR SHE observed on the
9 first or incriminating occasion. Such testimony, together with the
10 evidence that the defendant is in fact the person whom the witness
11 observed and recognized OR WHOSE PICTORIAL, PHOTOGRAPHIC, ELECTRONIC,
12 FILMED OR VIDEOTAPED REPRODUCTION HE OR SHE OBSERVED AND RECOGNIZED on
13 the second occasion, constitutes evidence in chief.

14 S 2. Section 60.30 of the criminal procedure law, as amended by chap-
15 ter 479 of the laws of 1977, is amended to read as follows:

16 S 60.30 Rules of evidence; identification by means of previous recogni-
17 tion, in addition to present identification.

18 In any criminal proceeding in which the defendant's commission of an
19 offense is in issue, a witness who testifies that (a) he OR SHE observed
20 the person claimed by the people to be the defendant either at the time
21 and place of the commission of the offense or upon some other occasion
22 relevant to the case, and (b) on the basis of present recollection, the
23 defendant is the person in question and (c) on a subsequent occasion he
24 OR SHE observed the defendant, OR A PICTORIAL, PHOTOGRAPHIC, ELECTRONIC,
25 FILMED OR VIDEOTAPED REPRODUCTION OF THE DEFENDANT, under circumstances
26 consistent with such rights as an accused person may derive under the
27 constitution of this state or of the United States, and then also recog-
28 nized him OR HER OR THE PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR
29 VIDEOTAPED REPRODUCTION OF HIM OR HER as the same person whom he OR SHE
30 had observed on the first or incriminating occasion, may, in addition to
31 making an identification of the defendant at the criminal proceeding on
32 the basis of present recollection as the person whom he OR SHE observed
33 on the first or incriminating occasion, also describe his OR HER previ-
34 ous recognition of the defendant and testify that the person whom he OR
35 SHE observed OR WHOSE PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR
36 VIDEOTAPED REPRODUCTION HE OR SHE OBSERVED on such second occasion is
37 the same person whom he OR SHE had observed on the first or incriminat-
38 ing occasion. Such testimony AND SUCH PICTORIAL, PHOTOGRAPHIC, ELEC-
39 TRONIC, FILMED OR VIDEOTAPED REPRODUCTION constitutes evidence in chief.

40 S 3. Subdivision 6 of section 710.20 of the criminal procedure law, as
41 amended by chapter 8 of the laws of 1976 and renumbered by chapter 481
42 of the laws of 1983, is amended to read as follows:

43 6. Consists of potential testimony regarding an observation of the
44 defendant either at the time or place of the commission of the offense
45 or upon some other occasion relevant to the case, which potential testi-
46 mony would not be admissible upon the prospective trial of such charge
47 owing to an improperly made previous identification of the defendant OR
48 A PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEOTAPED REPRODUCTION
49 OF THE DEFENDANT by the prospective witness.

50 S 4. Subdivision 1 of section 710.30 of the criminal procedure law, as
51 separately amended by chapters 8 and 194 of the laws of 1976, is amended
52 to read as follows:

53 1. Whenever the people intend to offer at a trial (a) evidence of a
54 statement made by a defendant to a public servant, which statement if
55 involuntarily made would render the evidence thereof suppressible upon
56 motion pursuant to subdivision three of section 710.20, or (b) testimony

1 regarding an observation of the defendant either at the time or place of
2 the commission of the offense or upon some other occasion relevant to
3 the case, to be given by a witness who has previously identified him OR
4 HER OR A PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEOTAPED
5 REPRODUCTION OF HIM OR HER as such, they must serve upon the defendant a
6 notice of such intention, specifying the evidence intended to be
7 offered.

8 S 5. Sections 343.3 and 343.4 of the family court act, as added by
9 chapter 920 of the laws of 1982, are amended to read as follows:

10 S 343.3. Rules of evidence; identification by means of previous recog-
11 nition in absence of present identification. 1. In any juvenile delin-
12 quency proceeding in which the respondent's commission of a crime is in
13 issue, testimony as provided in subdivision two may be given by a
14 witness when:

15 (a) such witness testifies that:

16 (i) he OR SHE observed the person claimed by the presentment agency to
17 be the respondent either at the time and place of the commission of the
18 crime or upon some other occasion relevant to the case; and

19 (ii) on a subsequent occasion he OR SHE observed, under circumstances
20 consistent with such rights as an accused person may derive under the
21 constitution of this state or of the United States, a person OR A PICTO-
22 RIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEOTAPED REPRODUCTION OF A
23 PERSON whom he OR SHE recognized as the same person whom he OR SHE had
24 observed on the first incriminating occasion; and

25 (iii) he OR SHE is unable at the proceeding to state, on the basis of
26 present recollection, whether or not the respondent is the person in
27 question; and

28 (b) it is established that the respondent is in fact the person whom
29 the witness observed and recognized OR WHOSE PICTORIAL, PHOTOGRAPHIC,
30 ELECTRONIC, FILMED OR VIDEOTAPED REPRODUCTION THE WITNESS OBSERVED AND
31 RECOGNIZED on the second occasion. Such fact may be established by
32 testimony of another person or persons to whom the witness promptly
33 declared his OR HER recognition on such occasion AND BY SUCH PICTORIAL,
34 PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEOTAPED REPRODUCTION.

35 2. Under circumstances prescribed in subdivision one, such witness may
36 testify at the proceeding that the person whom he OR SHE observed and
37 recognized OR WHOSE PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDE-
38 OTAPED REPRODUCTION HE OR SHE OBSERVED AND RECOGNIZED on the second
39 occasion is the same person whom he OR SHE observed on the first or
40 incriminating occasion. Such testimony, together with the evidence that
41 the respondent is in fact the person whom the witness observed and
42 recognized OR WHOSE PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDE-
43 OTAPED REPRODUCTION HE OR SHE OBSERVED AND RECOGNIZED on the second
44 occasion, constitutes evidence in chief.

45 S 343.4. Rules of evidence; identification by means of previous recog-
46 nition, in addition to present identification. In any juvenile delin-
47 quency proceeding in which the respondent's commission of a crime is in
48 issue, a witness who testifies that: (a) he OR SHE observed the person
49 claimed by the presentment agency to be the respondent either at the
50 time and place of the commission of the crime or upon some other occa-
51 sion relevant to the case, and (b) on the basis of present recollection,
52 the respondent is the person in question, and (c) on a subsequent occa-
53 sion he OR SHE observed the respondent, OR A PICTORIAL, PHOTOGRAPHIC,
54 ELECTRONIC, FILMED OR VIDEOTAPED REPRODUCTION OF THE RESPONDENT under
55 circumstances consistent with such rights as an accused person may
56 derive under the constitution of this state or of the United States, and

1 then also recognized him OR HER OR THE PICTORIAL, PHOTOGRAPHIC, ELEC-
2 TRONIC, FILMED OR VIDEOTAPED REPRODUCTION OF HIM OR HER as the same
3 person whom he OR SHE had observed on the first or incriminating occa-
4 sion, may, in addition to making an identification of the respondent at
5 the delinquency proceeding on the basis of present recollection as the
6 person whom he OR SHE observed on the first or incriminating occasion,
7 also describe his OR HER previous recognition of the respondent and
8 testify that the person whom he OR SHE observed OR WHOSE PICTORIAL,
9 PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEOTAPED REPRODUCTION HE OR SHE
10 OBSERVED on such second occasion is the same person whom he OR SHE had
11 observed on the first or incriminating occasion. Such testimony AND SUCH
12 PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEOTAPED REPRODUCTION
13 constitutes evidence in chief.

14 S 6. This act shall take effect on the first of November next succeed-
15 ing the date on which it shall have become a law.