

4215

2009-2010 Regular Sessions

I N A S S E M B L Y

February 2, 2009

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

AN ACT to amend the criminal procedure law and the family court act, in relation to the conduct of police line-ups

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 240.41 to read as follows:
3 S 240.41 DISCOVERY; POLICE LINE-UPS.
4 1. DEFINITIONS.
5 (A) "LIVE POLICE LINE-UP" OR "LIVE LINE-UP" MEANS ANY DISPLAY TO A
6 WITNESS FOR PURPOSES OF IDENTIFICATION OF ANY SUSPECT OR OTHER PERSON
7 WHERE SUCH SUSPECT OR OTHER PERSON IS ACTUALLY PRESENT.
8 (B) "PHOTO POLICE LINE-UP" OR "PHOTO LINE-UP" MEANS ANY DISPLAY TO A
9 WITNESS FOR PURPOSES OF IDENTIFICATION OF ANY PHOTOGRAPH OR OTHER GRAPH-
10 IC LIKENESS OF A SUSPECT OR OTHER PERSON.
11 (C) "PHOTO FILLER" MEANS ANY PHOTOGRAPH OR GRAPHIC LIKENESS OF A
12 PERSON USED IN A PHOTO LINE-UP WHO IS NEITHER THE SUSPECT NOR ANY INVESTIGATOR ASSIGNED TO THE CASE.
13 (D) "LIVE FILLER" MEANS A PERSON WHO PARTICIPATES IN A LIVE LINE-UP
14 WHO IS NEITHER THE SUSPECT NOR ANY INVESTIGATOR ASSIGNED TO THE CASE.
15 2. PRIOR TO THE CONDUCT OF A LIVE LINE-UP OR PHOTO LINE-UP, EACH
16 WITNESS SHALL BE INFORMED OF THE FOLLOWING, IN PLAIN LANGUAGE, IN
17 SUBSTANTIALLY THE FOLLOWING FORM:
18 (A) YOU ARE NOT REQUIRED TO IDENTIFY ANY PERSON SHOWN TO YOU.
19 (B) IT IS POSSIBLE THAT NONE OF THE PERSONS ABOUT TO BE SHOWN TO YOU
20 WERE INVOLVED IN THE CRIME.
21 (C) EXPERIENCE HAS SHOWN THAT EYE-WITNESS IDENTIFICATIONS ARE SOME-
22 TIMES INACCURATE.
23 3. PERSONS CONDUCTING PHOTO LINE-UPS OR LIVE LINE-UPS, OR BOTH, SHALL
24 OBTAIN FROM EACH WITNESS A WRITTEN, SIGNED, AND DATED AFFIRMATION OF
25

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

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1 UNDERSTANDING AS TO THE PROVISIONS OF SUBDIVISION TWO OF THIS SECTION,
2 AND SUCH AFFIRMATION SHALL BE ENTERED INTO THE RECORD OF IDENTIFICATION
3 PROCEEDINGS PURSUANT TO SUBDIVISION NINE OF THIS SECTION.

4 4. THE COMPOSITION OF A PHOTO LINE-UP OR LIVE LINE-UP SHALL BE SUCH
5 THAT THE SUSPECT OR OTHER PERSON DOES NOT UNDULY STAND OUT.

6 5. PERSONS COMPOSING A PHOTO LINE-UP SHALL:

7 (A) INCLUDE ONLY ONE PHOTO OF THE SUSPECT IN EACH IDENTIFICATION
8 PROCEDURE;

9 (B) PRESENT PHOTOS TO A WITNESS SEQUENTIALLY, ONE AT A TIME, SUCH THAT
10 ONLY ONE PHOTO IS VISIBLE TO THE WITNESS AT ANY ONE TIME;

11 (C) SELECT PHOTO FILLERS THAT GENERALLY FIT THE WITNESS'S DESCRIPTION
12 OF THE PERPETRATOR OR OTHER PERSON; OR, WHERE A WITNESS'S DESCRIPTION OF
13 A PERPETRATOR OR OTHER PERSON IS LIMITED OR INADEQUATE, OR DIFFERS
14 SIGNIFICANTLY FROM THE APPEARANCE OF THE SUSPECT OR OTHER PERSON, SELECT
15 PHOTO FILLERS THAT GENERALLY RESEMBLE THE SUSPECT OR OTHER PERSON;

16 (D) IF MULTIPLE PHOTOS OF A SUSPECT OR OTHER PERSON ARE AVAILABLE,
17 SELECT A PHOTO THAT RESEMBLES THE SUSPECT'S OR OTHER PERSON'S
18 DESCRIPTION OR APPEARANCE AT THE TIME OF THE INCIDENT;

19 (E) INCLUDE A MINIMUM OF FIVE PHOTO FILLERS PER IDENTIFICATION PROCE-
20 DURE;

21 (F) WHEN CONDUCTING MORE THAN ONE PHOTO LINE-UP IN A CASE INVOLVING
22 MULTIPLE WITNESSES, PRESENT THE SUSPECT'S OR OTHER PERSON'S PHOTO IN A
23 DIFFERENT SEQUENCE IN EACH SUBSEQUENT PHOTO LINE-UP;

24 (G) NOT REUSE PHOTO FILLERS WHEN PRESENTING THE SAME WITNESS SUCCE-
25 SIVE PHOTO LINE-UPS OF DIFFERENT SUSPECTS OR OTHER PERSONS;

26 (H) ENSURE THROUGHOUT THE IDENTIFICATION PROCEDURE THAT NO INFORMATION
27 CONCERNING A SUSPECT'S OR OTHER PERSON'S PREVIOUS ARRESTS OR VIOLATIONS
28 IS VISIBLE TO THE WITNESS;

29 (I) VIEW THE PHOTO ARRAY PRIOR TO THE IDENTIFICATION PROCEDURE TO
30 ENSURE THAT THE SUSPECT OR OTHER PERSON DOES NOT UNDULY STAND OUT;

31 (J) PRESERVE THE PRESENTATION ORDER OF THE PHOTO ARRAY AND PRESERVE
32 THE PHOTOS IN THEIR ORIGINAL CONDITION FOR EVIDENTIARY PURPOSES.

33 6. PERSONS COMPOSING A LIVE LINE-UP SHALL:

34 (A) INCLUDE ONLY ONE SUSPECT OR OTHER PERSON PER IDENTIFICATION PROCE-
35 DURE;

36 (B) SELECT LIVE FILLERS WHO GENERALLY FIT THE WITNESS'S DESCRIPTION OF
37 THE PERPETRATOR OR OTHER PERSON; OR, WHERE A WITNESS'S DESCRIPTION OF A
38 PERPETRATOR OR OTHER PERSON IS LIMITED OR INADEQUATE, OR DIFFERS SIGNIF-
39 ICANTLY FROM THE APPEARANCE OF THE SUSPECT OR OTHER PERSON, SELECT LIVE
40 FILLERS THAT, TO THE EXTENT POSSIBLE, RESEMBLE THE SUSPECT OR OTHER
41 PERSON IN SIGNIFICANT FEATURES;

42 (C) WHEN CONDUCTING MORE THAN ONE LIVE LINE-UP IN A CASE INVOLVING
43 MULTIPLE WITNESSES, PLACE THE SUSPECT OR OTHER PERSON IN A DIFFERENT
44 SEQUENCE IN EACH SUBSEQUENT LIVE LINE-UP;

45 (D) INCLUDE A MINIMUM OF FOUR LIVE FILLERS PER IDENTIFICATION PROCE-
46 DURE;

47 (E) NOT USE LIVE FILLERS SHOWN TO THE SAME WITNESS IN A PREVIOUS IDEN-
48 TIFICATION PROCEDURE;

49 (F) ENSURE THROUGHOUT THE IDENTIFICATION PROCEDURE THAT NO INFORMATION
50 CONCERNING A SUSPECT'S OR OTHER PERSON'S PREVIOUS ARRESTS OR VIOLATIONS
51 IS VISIBLE TO THE WITNESS;

52 (G) VIEW THE COMPOSITION OF THE LIVE LINE-UP PRIOR TO THE IDENTIFICA-
53 TION PROCEDURE TO ENSURE THAT THE SUSPECT OR OTHER PERSON DOES NOT UNDULY
54 STAND OUT;

(H) RECORD THE ORDER OF EACH INDIVIDUAL IN THE LINE-UP AND ENTER SUCH ORDER IN THE RECORD OF IDENTIFICATION PROCEEDINGS PURSUANT TO SUBDIVISION NINE OF THIS SECTION.

7. PERSONS CONDUCTING A PHOTO LINE-UP SHALL:

(A) PROVIDE THE FOLLOWING VIEWING INSTRUCTIONS TO THE WITNESS IN PLAIN LANGUAGE, IN SUBSTANTIALLY THE FOLLOWING FORM, PRIOR TO SHOWING THE PHOTO ARRAY: (I) INDIVIDUAL PHOTOGRAPHS SHALL BE VIEWED SEQUENTIALLY, ONE AT A TIME; (II) THE PHOTOS ARE IN RANDOM ORDER; (III) TAKE AS MUCH TIME AS NEEDED FOR MAKING A DECISION ABOUT EACH PHOTO BEFORE MOVING ON TO THE NEXT; (IV) CONSISTENT WITH DEPARTMENTAL OR JURISDICTIONAL PROCEDURES, ALL PHOTOS WILL BE SHOWN EVEN IF AN IDENTIFICATION IS MADE PRIOR TO VIEWING ALL PHOTOS, OR; THE PROCEDURE WILL BE STOPPED AT THE POINT OF AN IDENTIFICATION; (V) YOU MAY NOT RETURN TO A PREVIOUSLY VIEWED PHOTO;

(B) CONFIRM THAT THE WITNESS UNDERSTANDS THE NATURE OF THE SEQUENTIAL PROCEDURE;

(C) PRESENT EACH PHOTO TO THE WITNESS SEQUENTIALLY, REMOVING THOSE PREVIOUSLY VIEWED BEFORE PRESENTING THE NEXT;

(D) ENSURE THAT THE WITNESS DOES NOT WRITE OR MARK ON ANY MATERIALS THAT MAY BE USED IN SUBSEQUENT IDENTIFICATION PROCEDURES;

(E) ENSURE THAT NO MATERIALS INDICATING PREVIOUS IDENTIFICATION RESULTS ARE VISIBLE TO THE WITNESS;

(F) PRIOR TO OBTAINING THE WITNESS'S STATEMENT OF CERTAINTY, NOT REPORT TO THE WITNESS ANY INFORMATION REGARDING AN INDIVIDUAL AFFIRMATIVELY IDENTIFIED BY THE WITNESS;

(G) AVOID SAYING, GESTURING, OR IMPLYING ANYTHING TO THE WITNESS THAT MAY INFLUENCE THE WITNESS'S SELECTION;

(H) PREPARE A RECORD OF IDENTIFICATION PROCEDURES PURSUANT TO SUBDIVISION NINE OF THIS SECTION, INCLUDING, BUT NOT LIMITED TO: DETAILED RESULTS OF THE IDENTIFICATION PROCEDURE, SOURCES OF PHOTOS USED, NAMES OF ALL PERSONS PRESENT AT THE PHOTO LINE-UP, AND THE DATE AND TIME OF THE IDENTIFICATION PROCEDURE;

(I) INSTRUCT THE WITNESS NOT TO DISCUSS THE IDENTIFICATION PROCEDURE OR RESULTS WITH OTHER WITNESSES INVOLVED IN THE CASE AND DISCOURAGE THE WITNESS FROM DISCUSSING THE RESULTS WITH ANY OTHER PERSONS, INCLUDING THE MEDIA.

8. PERSONS CONDUCTING A LIVE LINE-UP SHALL:

(A) PROVIDE THE FOLLOWING VIEWING INSTRUCTIONS TO THE WITNESS IN PLAIN LANGUAGE, IN SUBSTANTIALLY THE FOLLOWING FORM, PRIOR TO THE LIVE LINE-UP: (I) INDIVIDUALS WILL BE VIEWED SEQUENTIALLY, ONE AT A TIME; (II) INDIVIDUALS ARE IN RANDOM ORDER; (III) TAKE AS MUCH TIME AS NEEDED FOR MAKING A DECISION ABOUT EACH INDIVIDUAL BEFORE MOVING TO THE NEXT; (IV) CONSISTENT WITH DEPARTMENTAL OR JURISDICTIONAL PROCEDURES, ALL INDIVIDUALS WILL BE PRESENTED EVEN IF AN IDENTIFICATION IS MADE, OR; THE PROCEDURE WILL BE STOPPED AT THE POINT OF AN IDENTIFICATION;

(B) CONFIRM THAT THE WITNESS UNDERSTANDS THE NATURE OF THE SEQUENTIAL PROCEDURE;

(C) ENSURE THAT ALL LIVE LINE-UP PARTICIPANTS, OTHER THAN THE INDIVIDUAL BEING VIEWED, ARE OUT OF THE VIEW OF THE WITNESS;

(D) PRESENT INDIVIDUALS IN THE LIVE LINE-UP SEPARATELY AND IN SEQUENTIAL ORDER;

(E) AVOID SAYING, GESTURING, OR IMPLYING ANYTHING TO THE WITNESS THAT MAY INFLUENCE THE WITNESS'S SELECTION;

(F) INSTRUCT THE LIVE FILLERS TO AVOID SAYING, GESTURING, OR IMPLYING ANYTHING TO THE WITNESS THAT MAY SUGGEST THE POSITION OR IDENTITY OF THE SUSPECT OR OTHER PERSON;

(G) PRIOR TO OBTAINING THE WITNESS'S STATEMENT OF CERTAINTY, NOT REPORT TO THE WITNESS ANY INFORMATION REGARDING AN INDIVIDUAL AFFIRMATIVELY IDENTIFIED BY THE WITNESS;

(H) IF POSSIBLE, DOCUMENT THE LINE-UP PARTICIPANTS BY PHOTOGRAPHS OR VIDEO, INDIVIDUALLY OR IN A GROUP, IN A QUALITY THAT REPRESENTS THE GROUP CLEARLY AND FAIRLY, AND ENTER SAME IN THE RECORD OF IDENTIFICATION PROCEEDINGS;

(I) PREPARE A RECORD OF IDENTIFICATION PROCEDURES PURSUANT TO SUBDIVISION NINE OF THIS SECTION, INCLUDING, BUT NOT LIMITED TO: DETAILED RESULTS OF THE IDENTIFICATION PROCEDURE, NAMES OF ALL PERSONS PRESENT AT THE LIVE LINE-UP, AND THE DATE AND TIME OF THE IDENTIFICATION PROCEDURE;

(J) INSTRUCT THE WITNESS NOT TO DISCUSS THE IDENTIFICATION PROCEDURE OR RESULTS WITH OTHER WITNESSES INVOLVED IN THE CASE AND DISCOURAGE THE WITNESS FROM DISCUSSING THE RESULTS WITH ANY OTHER PERSONS, INCLUDING THE MEDIA;

(K) ENSURE THAT THE WITNESS DOES NOT WRITE OR MARK ON ANY MATERIALS THAT MAY BE USED IN SUBSEQUENT IDENTIFICATION PROCEDURES;

(L) ENSURE THAT NO MATERIALS INDICATING PREVIOUS IDENTIFICATION RESULTS ARE VISIBLE TO THE WITNESS.

9. PERSONS CONDUCTING A PHOTO LINE-UP OR LIVE LINE-UP SHALL PREPARE A COMPLETE AND ACCURATE DOCUMENTARY RECORD OF EACH PROCEEDING, SIGNED AND DATED BY THE WITNESS, INCLUDING, BUT NOT LIMITED TO, IDENTIFICATION OR NON-IDENTIFICATION RESULTS AND ANY OTHER REQUIRED INFORMATION PURSUANT TO STATUTORY AND JURISDICTIONAL REQUIREMENTS.

10. IF AN AFFIRMATIVE IDENTIFICATION IS MADE IN A PHOTO LINE-UP OR A LIVE LINE-UP PROCEDURE, THE WITNESS SHALL SIGN AND DATE A STATEMENT OF CERTAINTY, CONSISTENT WITH JURISDICTIONAL PROCEDURES. SUCH STATEMENT OF CERTAINTY SHALL INCLUDE, BUT MAY NOT BE LIMITED TO, A GENERAL STATEMENT IN THE WITNESS'S WORDS OF HOW CERTAIN HE OR SHE IS IN REGARD TO THE AFFIRMATIVE IDENTIFICATION.

11. NONCOMPLIANCE WITH THE PROVISIONS OF THIS SECTION SHALL NOT ALONE BE GROUNDS FOR THE SUPPRESSION OF EVIDENCE.

S 2. The family court act is amended by adding a new section 331.8 to read as follows:

S 331.8. DISCOVERY; POLICE LINE-UPS. 1. DEFINITIONS.

(A) "LIVE POLICE LINE-UP" OR "LIVE LINE-UP" MEANS ANY DISPLAY TO A WITNESS FOR PURPOSES OF IDENTIFICATION OF ANY SUSPECT OR OTHER PERSON WHERE SUCH SUSPECT OR OTHER PERSON IS ACTUALLY PRESENT.

(B) "PHOTO POLICE LINE-UP" OR "PHOTO LINE-UP" MEANS ANY DISPLAY TO A WITNESS FOR PURPOSES OF IDENTIFICATION OF ANY PHOTOGRAPH OR OTHER GRAPHIC LIKENESS OF A SUSPECT OR OTHER PERSON.

(C) "PHOTO FILLER" MEANS ANY PHOTOGRAPH OR GRAPHIC LIKENESS OF A PERSON USED IN A PHOTO LINE-UP WHO IS NEITHER THE SUSPECT NOR ANY INVESTIGATOR ASSIGNED TO THE CASE.

(D) "LIVE FILLER" MEANS A PERSON WHO PARTICIPATES IN A LIVE LINE-UP WHO IS NEITHER THE SUSPECT NOR ANY INVESTIGATOR ASSIGNED TO THE CASE.

2. PRIOR TO THE CONDUCT OF A LIVE LINE-UP OR PHOTO LINE-UP, EACH WITNESS SHALL BE INFORMED OF THE FOLLOWING, IN PLAIN LANGUAGE, IN SUBSTANTIALLY THE FOLLOWING FORM:

(A) YOU ARE NOT REQUIRED TO IDENTIFY ANY PERSON SHOWN TO YOU.

(B) IT IS POSSIBLE THAT NONE OF THE PERSONS ABOUT TO BE SHOWN TO YOU WERE INVOLVED IN THE CRIME.

(C) EXPERIENCE HAS SHOWN THAT EYE-WITNESS IDENTIFICATIONS ARE SOMETIMES INACCURATE.

3. PERSONS CONDUCTING PHOTO LINE-UPS OR LIVE LINE-UPS, OR BOTH, SHALL OBTAIN FROM EACH WITNESS A WRITTEN, SIGNED, AND DATED AFFIRMATION OF

1 UNDERSTANDING AS TO THE PROVISIONS OF SUBDIVISION TWO OF THIS SECTION,
2 AND SUCH AFFIRMATION SHALL BE ENTERED INTO THE RECORD OF IDENTIFICATION
3 PROCEEDINGS PURSUANT TO SUBDIVISION NINE OF THIS SECTION.

4 4. THE COMPOSITION OF A PHOTO LINE-UP OR LIVE LINE-UP SHALL BE SUCH
5 THAT THE SUSPECT OR OTHER PERSON DOES NOT UNDULY STAND OUT.

6 5. PERSONS COMPOSING A PHOTO LINE-UP SHALL:

7 (A) INCLUDE ONLY ONE PHOTO OF THE SUSPECT OR OTHER PERSON IN EACH
8 IDENTIFICATION PROCEDURE;

9 (B) PRESENT PHOTOS TO A WITNESS SEQUENTIALLY, ONE AT A TIME, SUCH THAT
10 ONLY ONE PHOTO IS VISIBLE TO THE WITNESS AT ANY ONE TIME;

11 (C) SELECT PHOTO FILLERS THAT GENERALLY FIT THE WITNESS'S DESCRIPTION
12 OF THE PERPETRATOR OR OTHER PERSON; OR, WHERE A WITNESS'S DESCRIPTION OF
13 A PERPETRATOR OR OTHER PERSON IS LIMITED OR INADEQUATE, OR DIFFERS
14 SIGNIFICANTLY FROM THE APPEARANCE OF THE SUSPECT OR OTHER PERSON, SELECT
15 PHOTO FILLERS THAT GENERALLY RESEMBLE THE SUSPECT OR OTHER PERSON;

16 (D) IF MULTIPLE PHOTOS OF A SUSPECT OR OTHER PERSON ARE AVAILABLE,
17 SELECT A PHOTO THAT RESEMBLES THE SUSPECT'S OR OTHER PERSON'S
18 DESCRIPTION OR APPEARANCE AT THE TIME OF THE INCIDENT;

19 (E) INCLUDE A MINIMUM OF FIVE PHOTO FILLERS PER IDENTIFICATION PROCE-
20 DURE;

21 (F) WHEN CONDUCTING MORE THAN ONE PHOTO LINE-UP IN A CASE INVOLVING
22 MULTIPLE WITNESSES, PRESENT THE SUSPECT'S OR OTHER PERSON'S PHOTO IN A
23 DIFFERENT SEQUENCE IN EACH SUBSEQUENT PHOTO LINE-UP;

24 (G) NOT REUSE PHOTO FILLERS WHEN PRESENTING THE SAME WITNESS SUCCE-
25 SIVE PHOTO LINE-UPS OF DIFFERENT SUSPECTS OR OTHER PERSONS;

26 (H) ENSURE THROUGHOUT THE IDENTIFICATION PROCEDURE THAT NO INFORMATION
27 CONCERNING A SUSPECT'S OR OTHER PERSON'S PREVIOUS ARRESTS OR VIOLATIONS
28 IS VISIBLE TO THE WITNESS;

29 (I) VIEW THE PHOTO ARRAY PRIOR TO THE IDENTIFICATION PROCEDURE TO
30 ENSURE THAT THE SUSPECT OR OTHER PERSON DOES NOT UNDULY STAND OUT;

31 (J) PRESERVE THE PRESENTATION ORDER OF THE PHOTO ARRAY AND PRESERVE
32 THE PHOTOS IN THEIR ORIGINAL CONDITION FOR EVIDENTIARY PURPOSES.

33 6. PERSONS COMPOSING A LIVE LINE-UP SHALL:

34 (A) INCLUDE ONLY ONE SUSPECT OR OTHER PERSON PER IDENTIFICATION PROCE-
35 DURE;

36 (B) SELECT LIVE FILLERS WHO GENERALLY FIT THE WITNESS'S DESCRIPTION OF
37 THE PERPETRATOR OR OTHER PERSON; OR, WHERE A WITNESS'S DESCRIPTION OF A
38 PERPETRATOR OR OTHER PERSON IS LIMITED OR INADEQUATE, OR DIFFERS SIGNIF-
39 ICANTLY FROM THE APPEARANCE OF THE SUSPECT OR OTHER PERSON, SELECT LIVE
40 FILLERS THAT, TO THE EXTENT POSSIBLE, RESEMBLE THE SUSPECT OR OTHER
41 PERSON IN SIGNIFICANT FEATURES;

42 (C) WHEN CONDUCTING MORE THAN ONE LIVE LINE-UP IN A CASE INVOLVING
43 MULTIPLE WITNESSES, PLACE THE SUSPECT OR OTHER PERSON IN A DIFFERENT
44 SEQUENCE IN EACH SUBSEQUENT LIVE LINE-UP;

45 (D) INCLUDE A MINIMUM OF FOUR LIVE FILLERS PER IDENTIFICATION PROCE-
46 DURE;

47 (E) NOT USE LIVE FILLERS SHOWN TO THE SAME WITNESS IN A PREVIOUS IDEN-
48 TIFICATION PROCEDURE;

49 (F) ENSURE THROUGHOUT THE IDENTIFICATION PROCEDURE THAT NO INFORMATION
50 CONCERNING A SUSPECT'S OR OTHER PERSON'S PREVIOUS ARRESTS OR VIOLATIONS
51 IS VISIBLE TO THE WITNESS;

52 (G) VIEW THE COMPOSITION OF THE LIVE LINE-UP PRIOR TO THE IDENTIFICA-
53 TION PROCEDURE TO ENSURE THAT THE SUSPECT DOES NOT UNDULY STAND OUT;

54 (H) RECORD THE ORDER OF EACH INDIVIDUAL IN THE LINE-UP AND ENTER SUCH
55 ORDER IN THE RECORD OF IDENTIFICATION PROCEEDINGS PURSUANT TO SUBDIVI-
56 SION NINE OF THIS SECTION.

7. PERSONS CONDUCTING A PHOTO LINE-UP SHALL:

(A) PROVIDE THE FOLLOWING VIEWING INSTRUCTIONS TO THE WITNESS IN PLAIN LANGUAGE IN SUBSTANTIALLY THE FOLLOWING FORM PRIOR TO SHOWING THE PHOTO ARRAY: (I) INDIVIDUAL PHOTOGRAPHS SHALL BE VIEWED SEQUENTIALLY, ONE AT A TIME; (II) THE PHOTOS ARE IN RANDOM ORDER; (III) TAKE AS MUCH TIME AS NEEDED FOR MAKING A DECISION ABOUT EACH PHOTO BEFORE MOVING ON TO THE NEXT; (IV) CONSISTENT WITH DEPARTMENTAL OR JURISDICTIONAL PROCEDURES, ALL PHOTOS WILL BE SHOWN EVEN IF AN IDENTIFICATION IS MADE PRIOR TO VIEWING ALL PHOTOS, OR; THE PROCEDURE WILL BE STOPPED AT THE POINT OF AN IDENTIFICATION; (V) YOU MAY NOT RETURN TO A PREVIOUSLY VIEWED PHOTO;

(B) CONFIRM THAT THE WITNESS UNDERSTANDS THE NATURE OF THE SEQUENTIAL PROCEDURE;

(C) PRESENT EACH PHOTO TO THE WITNESS SEQUENTIALLY, REMOVING THOSE PREVIOUSLY VIEWED BEFORE PRESENTING THE NEXT;

(D) ENSURE THAT THE WITNESS DOES NOT WRITE OR MARK ON ANY MATERIALS THAT MAY BE USED IN SUBSEQUENT IDENTIFICATION PROCEDURES;

(E) ENSURE THAT NO MATERIALS INDICATING PREVIOUS IDENTIFICATION RESULTS ARE VISIBLE TO THE WITNESS;

(F) PRIOR TO OBTAINING THE WITNESS'S STATEMENT OF CERTAINTY, NOT REPORT TO THE WITNESS ANY INFORMATION REGARDING AN INDIVIDUAL AFFIRMATIVELY IDENTIFIED BY THE WITNESS;

(G) AVOID SAYING, GESTURING, OR IMPLYING ANYTHING TO THE WITNESS THAT MAY INFLUENCE THE WITNESS'S SELECTION;

(H) PREPARE A RECORD OF IDENTIFICATION PROCEDURES PURSUANT TO SUBDIVISION NINE OF THIS SECTION, INCLUDING, BUT NOT LIMITED TO: DETAILED RESULTS OF THE IDENTIFICATION PROCEDURE, SOURCES OF PHOTOS USED, NAMES OF ALL PERSONS PRESENT AT THE PHOTO LINE-UP, AND THE DATE AND TIME OF THE IDENTIFICATION PROCEDURE;

(I) INSTRUCT THE WITNESS NOT TO DISCUSS THE IDENTIFICATION PROCEDURE OR RESULTS WITH OTHER WITNESSES INVOLVED IN THE CASE AND DISCOURAGE THE WITNESS FROM DISCUSSING THE RESULTS WITH ANY OTHER PERSONS, INCLUDING THE MEDIA.

8. PERSONS CONDUCTING A LIVE LINE-UP SHALL:

(A) PROVIDE THE FOLLOWING VIEWING INSTRUCTIONS TO THE WITNESS IN PLAIN LANGUAGE IN SUBSTANTIALLY THE FOLLOWING FORM PRIOR TO THE LIVE LINE-UP:

(I) INDIVIDUALS WILL BE VIEWED SEQUENTIALLY, ONE AT A TIME; (II) INDIVIDUALS ARE IN RANDOM ORDER; (III) TAKE AS MUCH TIME AS NEEDED FOR MAKING A DECISION ABOUT EACH INDIVIDUAL BEFORE MOVING TO THE NEXT; (IV) CONSISTENT WITH DEPARTMENTAL OR JURISDICTIONAL PROCEDURES, ALL INDIVIDUALS WILL BE PRESENTED EVEN IF AN IDENTIFICATION IS MADE, OR; THE PROCEDURE WILL BE STOPPED AT THE POINT OF AN IDENTIFICATION;

(B) CONFIRM THAT THE WITNESS UNDERSTANDS THE NATURE OF THE SEQUENTIAL PROCEDURE;

(C) ENSURE THAT ALL LIVE LINE-UP PARTICIPANTS, OTHER THAN THE INDIVIDUAL BEING VIEWED, ARE OUT OF THE VIEW OF THE WITNESS;

(D) PRESENT INDIVIDUALS IN THE LIVE LINE-UP SEPARATELY AND IN SEQUENTIAL ORDER;

(E) AVOID SAYING, GESTURING, OR IMPLYING ANYTHING TO THE WITNESS THAT MAY INFLUENCE THE WITNESS'S SELECTION;

(F) INSTRUCT THE LIVE FILLERS TO AVOID SAYING, GESTURING, OR IMPLYING ANYTHING TO THE WITNESS THAT MAY SUGGEST THE POSITION OR IDENTITY OF THE SUSPECT;

(G) PRIOR TO OBTAINING THE WITNESS'S STATEMENT OF CERTAINTY, NOT REPORT TO THE WITNESS ANY INFORMATION REGARDING AN INDIVIDUAL AFFIRMATIVELY IDENTIFIED BY THE WITNESS;

1 (H) IF POSSIBLE, DOCUMENT THE LINE-UP PARTICIPANTS BY PHOTOGRAPHS OR
2 VIDEO, INDIVIDUALLY OR IN A GROUP, IN A QUALITY THAT REPRESENTS THE
3 GROUP CLEARLY AND FAIRLY, AND ENTER SAME IN THE RECORD OF IDENTIFICATION
4 PROCEEDINGS;
5 (I) PREPARE A RECORD OF IDENTIFICATION PROCEDURES PURSUANT TO SUBDIVI-
6 SION NINE OF THIS SECTION, INCLUDING, BUT NOT LIMITED TO: DETAILED
7 RESULTS OF THE IDENTIFICATION PROCEDURE, NAMES OF ALL PERSONS PRESENT AT
8 THE LIVE LINE-UP, AND THE DATE AND TIME OF THE IDENTIFICATION PROCEDURE;
9 (J) INSTRUCT THE WITNESS TO NOT DISCUSS THE IDENTIFICATION PROCEDURE
10 OR RESULTS WITH OTHER WITNESSES INVOLVED IN THE CASE AND DISCOURAGE THE
11 WITNESS FROM DISCUSSING THE RESULTS WITH ANY OTHER PERSONS, INCLUDING
12 THE MEDIA;
13 (K) ENSURE THAT THE WITNESS DOES NOT WRITE OR MARK ON ANY MATERIALS
14 THAT MAY BE USED IN SUBSEQUENT IDENTIFICATION PROCEDURES;
15 (L) ENSURE THAT NO MATERIALS INDICATING PREVIOUS IDENTIFICATION
16 RESULTS ARE VISIBLE TO THE WITNESS.
17 9. PERSONS CONDUCTING A PHOTO LINE-UP OR LIVE LINE-UP SHALL PREPARE A
18 COMPLETE AND ACCURATE DOCUMENTARY RECORD OF EACH PROCEEDING, SIGNED AND
19 DATED BY THE WITNESS, INCLUDING, BUT NOT LIMITED TO, IDENTIFICATION OR
20 NON-IDENTIFICATION RESULTS AND ANY OTHER REQUIRED INFORMATION PURSUANT
21 TO STATUTORY AND JURISDICTIONAL REQUIREMENTS.
22 10. IF AN AFFIRMATIVE IDENTIFICATION IS MADE IN A PHOTO LINE-UP OR A
23 LIVE LINE-UP PROCEDURE, THE WITNESS SHALL SIGN AND DATE A STATEMENT OF
24 CERTAINTY, CONSISTENT WITH JURISDICTIONAL PROCEDURES. SUCH STATEMENT OF
25 CERTAINTY SHALL INCLUDE, BUT MAY NOT BE LIMITED TO, A GENERAL STATEMENT
26 IN THE WITNESS'S WORDS OF HOW CERTAIN HE OR SHE IS IN REGARD TO THE
27 AFFIRMATIVE IDENTIFICATION.
28 11. NONCOMPLIANCE WITH THE PROVISIONS OF THIS SECTION SHALL NOT ALONE
29 BE GROUNDS FOR THE SUPPRESSION OF EVIDENCE.
30 S 3. This act shall take effect on the one hundred eightieth day after
31 it shall have become a law.