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

7842--A

Cal. No. 722

I N S E N A T E

May 14, 2010

Introduced by Sen. THOMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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:

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

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

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

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

ARTICLE 80

IDENTIFICATION PROCEDURES

SECTION 80.10 IDENTIFICATION PROCEDURES; DEFINITIONS.
80.20 IDENTIFICATION PROCEDURES; GENERALLY.
80.30 IDENTIFICATION PROCEDURES; EVIDENTIARY MATTERS.
80.40 IDENTIFICATION PROCEDURES; PROFESSIONAL TRAINING.

S 80.10 IDENTIFICATION PROCEDURES; DEFINITIONS.

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

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

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

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

LBD17224-02-0

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

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

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

6. "FILLER" MEANS EITHER A PERSON OR A PHOTOGRAPH OF A PERSON WHO IS NOT SUSPECTED OF AN OFFENSE AND IS INCLUDED IN AN IDENTIFICATION PROCEDURE.

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

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

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

10. "SHOWUP" MEANS AN IDENTIFICATION PROCEDURE IN WHICH AN EYEWITNESS IS PRESENTED WITH A SINGLE SUSPECT FOR THE PURPOSE OF DETERMINING WHETHER THE EYEWITNESS IDENTIFIES THIS INDIVIDUAL AS THE PERPETRATOR.

S 80.20 IDENTIFICATION PROCEDURES; GENERALLY.

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

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

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

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

(C) WHEN IT IS IMPRACTICABLE FOR A BLIND ADMINISTRATOR TO CONDUCT THE EYEWITNESS IDENTIFICATION PROCEDURE, THE INVESTIGATOR SHALL STATE IN 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 TO THE EXTENT POSSIBLE 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;

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

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

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

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

(P) 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;

(Q) 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;

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

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

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

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

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

(B) THE EYEWITNESS SHALL BE TRANSPORTED TO A NEUTRAL, NON-LAW ENFORCEMENT LOCATION WHERE THE SUSPECT IS BEING DETAINED FOR THE PURPOSES OF A SHOWUP PROCEDURE;

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

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

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

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

(4) 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

(5) 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;

(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 DEFENDANT

MAY MOVE TO SUPPRESS EYEWITNESS IDENTIFICATION EVIDENCE PURSUANT TO ARTICLE SEVEN HUNDRED TEN OF THIS CHAPTER.

2. COURTS SHALL CONSIDER EVIDENCE OF A FAILURE TO COMPLY WITH ANY OF THE PROVISIONS OF SECTION 80.20 OF THIS ARTICLE WHEN ADJUDICATING MOTIONS TO SUPPRESS EYEWITNESS IDENTIFICATION EVIDENCE.

3. IN THE EVENT THE COURT MAKES A FINDING OF FACT TO SUPPRESS EYEWITNESS IDENTIFICATION EVIDENCE DUE TO A SUBSTANTIAL NON-COMPLIANCE WITH THE PROVISIONS OF THIS ARTICLE, ALL EVIDENCE OF EYEWITNESS IDENTIFICATION SHALL BE EXCLUDED IN THE CRIMINAL ACTION PENDING AGAINST THE DEFENDANT.

4. IN THE EVENT THE COURT DOES NOT SUPPRESS EYEWITNESS IDENTIFICATION EVIDENCE BUT MAKES A FINDING OF FACT PURSUANT TO SUBDIVISIONS FOUR AND SIX OF SECTION 710.60 OF THIS CHAPTER THAT LAW ENFORCEMENT OFFICIALS OR PROSECUTING AGENCIES FAILED TO SUBSTANTIALLY COMPLY WITH THE PROVISIONS OF THIS ARTICLE, THE COURT SHALL INSTRUCT THE JURY THAT EYEWITNESS IDENTIFICATION PROCEDURE REQUIREMENTS AS SET FORTH IN THIS CHAPTER WERE DESIGNED TO REDUCE THE RISK OF MISIDENTIFICATION AND THE JURY MAY CONSIDER CREDIBLE EVIDENCE OF NON-COMPLIANCE WHEN ASSESSING THE RELIABILITY OF EYEWITNESS IDENTIFICATIONS.

5. IN THE EVENT THE COURT DOES NOT SUPPRESS EYEWITNESS IDENTIFICATION EVIDENCE BUT MAKES A FINDING OF FACT PURSUANT TO SUBDIVISIONS FOUR AND SIX OF SECTION 710.60 OF THIS CHAPTER AND FINDS THAT SUBSTANTIAL NON-COMPLIANCE WITH THE PROVISIONS OF THIS ARTICLE HAVE UNDERMINED THE COURT'S CONFIDENCE IN THE RELIABILITY OF THE EYEWITNESS IDENTIFICATION, THE COURT SHALL ALSO INSTRUCT THE JURY THAT IT SHOULD VIEW THE IDENTIFICATION EVIDENCE WITH DISTRUST.

S 80.40 IDENTIFICATION PROCEDURES; PROFESSIONAL TRAINING.

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

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

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