

6800--A

2013-2014 Regular Sessions

I N   A S S E M B L Y

April 18, 2013

---

Introduced by M. of A. LENTOL -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the criminal procedure law, the executive law and the family court act, in relation to identifications by witnesses and the video recording of interrogations

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 OF THIS  
8     SECTION may be 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, WHERE  
16    THE OBSERVATION IS MADE PURSUANT TO AN IDENTIFICATION PROCEDURE AS  
17    DEFINED IN THIS SECTION, A PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED  
18    OR VIDEO RECORDED REPRODUCTION OF A PERSON whom he OR SHE recognized as  
19    the same person whom he OR SHE had observed on the first or incriminat-  
20    ing occasion; and

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

LBD08982-03-3

1 (iii) He OR SHE is unable at the proceeding to state, on the basis of  
2 present recollection, whether or not the defendant is the person in  
3 question; and

4 (b) It is established that the defendant is in fact the person whom  
5 the witness observed and recognized OR WHOSE PICTORIAL, PHOTOGRAPHIC,  
6 ELECTRONIC, FILMED OR VIDEO RECORDED REPRODUCTION THE WITNESS OBSERVED  
7 AND RECOGNIZED on the second occasion. Such fact may be established by  
8 testimony of another person or persons to whom the witness promptly  
9 declared his OR HER recognition on such occasion AND BY SUCH PICTORIAL,  
10 PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEO RECORDED REPRODUCTION.

11 (C) FOR PURPOSES OF THIS SECTION, AN "IDENTIFICATION PROCEDURE" IS ONE  
12 IN WHICH THE WITNESS IDENTIFIES A PERSON IN AN ARRAY OF PICTORIAL,  
13 PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEO RECORDED REPRODUCTIONS UNDER  
14 CIRCUMSTANCES WHERE: (I) AT THE TIME THE IDENTIFICATION IS MADE, THE  
15 PUBLIC SERVANT ADMINISTERING SUCH PROCEDURE DOES NOT KNOW WHICH PERSON  
16 IN THE ARRAY IS THE ACCUSED PERSON OR, (II) IF, AT SUCH TIME, IT IS  
17 IMPRACTICABLE FOR THE PUBLIC SERVANT NOT TO KNOW WHO THE ACCUSED PERSON  
18 IS, THE PUBLIC SERVANT DOES NOT KNOW WHERE THE ACCUSED PERSON IS IN THE  
19 ARRAY VIEWED BY THE WITNESS.

20 2. Under circumstances prescribed in subdivision one OF THIS SECTION,  
21 such witness may testify at the criminal proceeding that the person whom  
22 he OR SHE observed and recognized OR WHOSE PICTORIAL, PHOTOGRAPHIC,  
23 ELECTRONIC, FILMED OR VIDEO RECORDED REPRODUCTION HE OR SHE OBSERVED AND  
24 RECOGNIZED on the second occasion is the same person whom he OR SHE  
25 observed on the first or incriminating occasion. Such testimony,  
26 together with the evidence that the defendant is in fact the person whom  
27 the witness observed and recognized OR WHOSE PICTORIAL, PHOTOGRAPHIC,  
28 ELECTRONIC, FILMED OR VIDEO RECORDED REPRODUCTION HE OR SHE OBSERVED AND  
29 RECOGNIZED on the second occasion, constitutes evidence in chief.

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

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

34 In any criminal proceeding in which the defendant's commission of an  
35 offense is in issue, a witness who testifies that (a) he OR SHE observed  
36 the person claimed by the people to be the defendant either at the time  
37 and place of the commission of the offense or upon some other occasion  
38 relevant to the case, and (b) on the basis of present recollection, the  
39 defendant is the person in question and (c) on a subsequent occasion he  
40 OR SHE observed the defendant, OR A PICTORIAL, PHOTOGRAPHIC, ELECTRONIC,  
41 FILMED OR VIDEO RECORDED REPRODUCTION OF THE DEFENDANT, under circum-  
42 stances consistent with such rights as an accused person may derive  
43 under the constitution of this state or of the United States AND PURSU-  
44 ANT TO AN IDENTIFICATION PROCEDURE SET FORTH IN PARAGRAPH (C) OF SUBDI-  
45 VISION ONE OF SECTION 60.25 OF THIS ARTICLE, and then also recognized  
46 him OR HER OR THE PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEO  
47 RECORDED REPRODUCTION OF HIM OR HER as the same person whom he OR SHE  
48 had observed on the first or incriminating occasion, may, in addition to  
49 making an identification of the defendant at the criminal proceeding on  
50 the basis of present recollection as the person whom he OR SHE observed  
51 on the first or incriminating occasion, also describe his OR HER previ-  
52 ous recognition of the defendant and testify that the person whom he OR  
53 SHE observed OR WHOSE PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR  
54 VIDEO RECORDED REPRODUCTION HE OR SHE OBSERVED on such second occasion  
55 is the same person whom he OR SHE had observed on the first or incrimi-  
56 nating occasion. Such testimony AND SUCH PICTORIAL, PHOTOGRAPHIC, ELEC-

1 TRONIC, FILMED OR VIDEO RECORDED REPRODUCTION constitutes evidence in  
2 chief.

3 S 3. Subdivision 6 of section 710.20 of the criminal procedure law, as  
4 amended by chapter 8 of the laws of 1976 and as renumbered by chapter  
5 481 of the laws of 1983, is amended to read as follows:

6 6. Consists of potential testimony regarding an observation of the  
7 defendant either at the time or place of the commission of the offense  
8 or upon some other occasion relevant to the case, which potential testi-  
9 mony would not be admissible upon the prospective trial of such charge  
10 owing to an improperly made previous identification of the defendant OR  
11 A PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEO RECORDED REPROD-  
12 UCTION OF THE DEFENDANT by the prospective witness.

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

16 1. Whenever the people intend to offer at a trial (a) evidence of a  
17 statement made by a defendant to a public servant, which statement if  
18 involuntarily made would render the evidence thereof suppressible upon  
19 motion pursuant to subdivision three of section 710.20 OF THIS ARTICLE,  
20 or (b) testimony regarding an observation of the defendant either at the  
21 time or place of the commission of the offense or upon some other occa-  
22 sion relevant to the case, to be given by a witness who has previously  
23 identified him OR HER OR A PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED  
24 OR VIDEO RECORDED REPRODUCTION OF HIM OR HER as such, they must serve  
25 upon the defendant a notice of such intention, specifying the evidence  
26 intended to be offered.

27 S 5. Section 840 of the executive law is amended by adding a new  
28 subdivision 5 to read as follows:

29 5. (A) THE COUNCIL SHALL, IN ADDITION, IN CONSULTATION WITH SCIENTIFIC  
30 EXPERTS IN EYEWITNESS MEMORY RESEARCH AND THE CRIMINAL JUSTICE COMMUNI-  
31 TY, DEVELOP AND, FOLLOWING A PERIOD OF PUBLIC COMMENT, MAINTAIN AND  
32 DISSEMINATE TO ALL POLICE AND PROSECUTORIAL AGENCIES IN THE STATE A  
33 MODEL POLICY FOR THE PERSONNEL OF SUCH AGENCIES INVOLVED IN CRIMINAL  
34 INVESTIGATIONS THAT EMBODIES CURRENT BEST PRACTICES FOR CONDUCTING  
35 PHOTOGRAPHIC AND LIVE LINEUPS. THESE BEST PRACTICES MUST BE CONSISTENT  
36 WITH RECOMMENDATIONS INCORPORATED IN "BEST PRACTICES FOR THE ADMINIS-  
37 TRATION OF IDENTIFICATION PROCEDURES" PUBLISHED IN TWO THOUSAND ELEVEN  
38 BY THE JUSTICE TASK FORCE ESTABLISHED BY THE CHIEF JUDGE OF THE STATE IN  
39 MAY, TWO THOUSAND NINE, AND MUST INCLUDE BUT NEED NOT BE LIMITED TO  
40 THOSE PRACTICES DESCRIBED THEREIN AS "I. INSTRUCTIONS TO WITNESS," "II.  
41 WITNESS CONFIDENCE STATEMENTS," "III. DOCUMENTATION OF IDENTIFICATION  
42 PROCEDURES," AND "V. LIVE LINEUPS." FOR PURPOSES OF THIS SUBDIVISION,  
43 THE "CRIMINAL JUSTICE COMMUNITY" SHALL INCLUDE POLICE AND PROSECUTORIAL  
44 AGENCIES OF THE STATE AND REPRESENTATIVES OF THE CRIMINAL DEFENSE BAR.

45 (B) EACH POLICE AND PROSECUTORIAL AGENCY IN THE STATE SHALL ADOPT  
46 WRITTEN POLICIES RELATING TO THE CONDUCT OF PHOTOGRAPHIC AND LIVE LINE-  
47 UPS THAT CONFORM WITH THE MODEL POLICY PRESCRIBED BY PARAGRAPH (A) OF  
48 THIS SUBDIVISION.

49 S 6. Section 343.3 of the family court act, as added by chapter 920  
50 of the laws of 1982, is amended to read as follows:

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

56 (a) such witness testifies that:

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

4 (ii) on a subsequent occasion he OR SHE observed, under circumstances  
5 consistent with such rights as an accused person may derive under the  
6 constitution of this state or of the United States, a person OR, WHERE  
7 THE OBSERVATION IS MADE PURSUANT TO AN IDENTIFICATION PROCEDURE AS  
8 DEFINED IN PARAGRAPH (C) OF SUBDIVISION ONE OF SECTION 60.25 OF THE  
9 CRIMINAL PROCEDURE LAW, A PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR  
10 VIDEO RECORDED REPRODUCTION OF A PERSON whom he OR SHE recognized as the  
11 same person whom he OR SHE had observed on the first incriminating occa-  
12 sion; and

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

16 (b) it is established that the respondent is in fact the person whom  
17 the witness observed and recognized OR WHOSE PICTORIAL, PHOTOGRAPHIC,  
18 ELECTRONIC, FILMED OR VIDEO RECORDED REPRODUCTION THE WITNESS OBSERVED  
19 AND RECOGNIZED on the second occasion. Such fact may be established by  
20 testimony of another person or persons to whom the witness promptly  
21 declared his OR HER recognition on such occasion AND BY SUCH PICTORIAL,  
22 PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEO RECORDED REPRODUCTION.

23 2. Under circumstances prescribed in subdivision one, such witness may  
24 testify at the proceeding that the person whom he OR SHE observed and  
25 recognized OR WHOSE PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEO  
26 RECORDED REPRODUCTION HE OR SHE OBSERVED AND RECOGNIZED on the second  
27 occasion is the same person whom he OR SHE observed on the first or  
28 incriminating occasion. Such testimony, together with the evidence that  
29 the respondent is in fact the person whom the witness observed and  
30 recognized OR WHOSE PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEO  
31 RECORDED REPRODUCTION HE OR SHE OBSERVED AND RECOGNIZED on the second  
32 occasion, constitutes evidence in chief.

33 S 7. Section 343.4 of the family court act, as added by chapter 920 of  
34 the laws of 1982, is amended to read as follows:

35 S 343.4. Rules of evidence; identification by means of previous recog-  
36 nition, in addition to present identification. In any juvenile delin-  
37 quency proceeding in which the respondent's commission of a crime is in  
38 issue, a witness who testifies that: (a) he OR SHE observed the person  
39 claimed by the presentment agency to be the respondent either at the  
40 time and place of the commission of the crime or upon some other occa-  
41 sion relevant to the case, and (b) on the basis of present recollection,  
42 the respondent is the person in question, and (c) on a subsequent occa-  
43 sion he OR SHE observed the respondent, OR A PICTORIAL, PHOTOGRAPHIC,  
44 ELECTRONIC, FILMED OR VIDEO RECORDED REPRODUCTION OF THE RESPONDENT  
45 under circumstances consistent with such rights as an accused person may  
46 derive under the constitution of this state or of the United States AND  
47 PURSUANT TO AN IDENTIFICATION PROCEDURE SET FORTH IN PARAGRAPH (C) OF  
48 SUBDIVISION ONE OF SECTION 60.25 OF THE CRIMINAL PROCEDURE LAW, and then  
49 also recognized him OR HER OR THE PICTORIAL, PHOTOGRAPHIC, ELECTRONIC,  
50 FILMED OR VIDEO RECORDED REPRODUCTION OF HIM OR HER as the same person  
51 whom he OR SHE had observed on the first or incriminating occasion, may,  
52 in addition to making an identification of the respondent at the delin-  
53 quency proceeding on the basis of present recollection as the person  
54 whom he OR SHE observed on the first or incriminating occasion, also  
55 describe his OR HER previous recognition of the respondent and testify  
56 that the person whom he OR SHE observed OR WHOSE PICTORIAL, PHOTOGRAPH-

1 IC, ELECTRONIC, FILMED OR VIDEO RECORDED REPRODUCTION HE OR SHE OBSERVED  
2 on such second occasion is the same person whom he OR SHE had observed  
3 on the first or incriminating occasion. Such testimony AND SUCH PICTORI-  
4 AL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEO RECORDED REPRODUCTION  
5 constitutes evidence in chief.

6 S 8. Section 60.45 of the criminal procedure law is amended by adding  
7 a new subdivision 3 to read as follows:

8 3. (A) WHERE A DEFENDANT IS SUBJECT TO CUSTODIAL INTERROGATION BY A  
9 PUBLIC SERVANT AT A DETENTION FACILITY, THE ENTIRE CUSTODIAL INTERRO-  
10 GATION, INCLUDING THE GIVING OF ANY REQUIRED ADVICE TO THE DEFENDANT AS  
11 TO HIS OR HER RIGHTS AND DEFENDANT'S WAIVER OF ANY RIGHTS SHALL BE VIDEO  
12 RECORDED, BY VIDEOTAPE OR OTHER APPROPRIATE VIDEO RECORDING DEVICE IF  
13 THE CUSTODIAL INTERROGATION INVOLVES: A CLASS A-1 FELONY EXCEPT ONE  
14 DEFINED IN ARTICLE TWO HUNDRED TWENTY OF THE PENAL LAW; OR A FELONY  
15 OFFENSE DEFINED IN ARTICLE ONE HUNDRED TWENTY-FIVE OR ARTICLE ONE  
16 HUNDRED THIRTY OF SUCH LAW THAT IS DEFINED AS A CLASS B VIOLENT FELONY  
17 OFFENSE IN SECTION 70.02 OF SUCH LAW. FOR PURPOSES OF THIS SUBDIVISION,  
18 THE TERM "PUBLIC SERVANT" SHALL HAVE THE MEANING PROVIDED IN SECTION  
19 10.00 OF THE PENAL LAW AND A "DETENTION FACILITY" SHALL MEAN A POLICE  
20 STATION, CORRECTIONAL FACILITY, HOLDING FACILITY FOR PRISONERS,  
21 PROSECUTOR'S OFFICE OR OTHER FACILITY WHERE PERSONS ARE HELD IN  
22 DETENTION IN CONNECTION WITH CRIMINAL CHARGES THAT HAVE BEEN OR MAY BE  
23 FILED AGAINST THEM.

24 (B) WHERE THE PEOPLE OFFER INTO EVIDENCE A CONFESSION, ADMISSION OR  
25 OTHER STATEMENT MADE BY A DEFENDANT IN CUSTODY WITH RESPECT TO HIS OR  
26 HER PARTICIPATION OR LACK OF PARTICIPATION IN AN OFFENSE SPECIFIED IN  
27 PARAGRAPH (A) OF THIS SUBDIVISION THAT HAS NOT BEEN VIDEO RECORDED AS  
28 REQUIRED BY SUCH PARAGRAPH, THE COURT SHALL CONSIDER THE FAILURE TO  
29 COMPLY WITH THIS REQUIREMENT AS A FACTOR IN DETERMINING WHETHER SUCH  
30 CONFESSION, ADMISSION OR OTHER STATEMENT SHALL BE ADMISSIBLE UNLESS THE  
31 PEOPLE SHOW GOOD CAUSE FOR SUCH FAILURE, WHICH SHALL INCLUDE, BUT NOT BE  
32 LIMITED TO: (I) MALFUNCTION OF THE VIDEO RECORDING EQUIPMENT OR OTHER  
33 INADVERTENT ERROR THAT PREVENTS OR INTERRUPTS THE VIDEO RECORDING, (II)  
34 UNAVAILABILITY OF SUCH EQUIPMENT BECAUSE IT WAS OTHERWISE BEING USED,  
35 (III) THE DEFENDANT'S REFUSAL TO MAKE A CONFESSION, ADMISSION OR OTHER  
36 STATEMENT IF IT IS VIDEO RECORDED OR HIS OR HER REQUEST THAT IT NOT BE  
37 VIDEO RECORDED (AND SUCH REFUSAL OR REQUEST IS IN WRITING SIGNED BY THE  
38 DEFENDANT, UNLESS THE DEFENDANT DECLINES TO DO SO), (IV) THE PEOPLE'S  
39 REASONABLE BELIEF THAT SUCH VIDEO RECORDING WOULD JEOPARDIZE THE SAFETY  
40 OF ANY PERSON OR REVEAL THE IDENTITY OF A CONFIDENTIAL INFORMANT, OR (V)  
41 THE PUBLIC SERVANT OR SERVANTS HAVING CUSTODY OF THE DEFENDANT REASON-  
42 ABLY BELIEVED, AT THE TIME THE DEFENDANT MADE THE CONFESSION, ADMISSION  
43 OR OTHER STATEMENT, THAT SUCH CONFESSION, ADMISSION OR OTHER STATEMENT  
44 WOULD NOT RELATE TO DEFENDANT'S PARTICIPATION OR LACK OF PARTICIPATION  
45 IN AN OFFENSE SPECIFIED IN PARAGRAPH (A) OF THIS SUBDIVISION.

46 (C) VIDEO RECORDING AS REQUIRED BY THIS SUBDIVISION SHALL BE CONDUCTED  
47 IN ACCORDANCE WITH STANDARDS ESTABLISHED BY RULE OF THE DIVISION OF  
48 CRIMINAL JUSTICE SERVICES.

49 S 9. Section 710.70 of the criminal procedure law is amended by adding  
50 a new subdivision 4 to read as follows:

51 4. IN THE EVENT THAT THE COURT DETERMINES THAT A CONFESSION, ADMISSION  
52 OR OTHER STATEMENT SHALL BE ADMISSIBLE, NOTWITHSTANDING THE PEOPLE'S  
53 FAILURE TO SHOW GOOD CAUSE PURSUANT TO SUBDIVISION THREE OF SECTION  
54 60.45 OF THIS CHAPTER FOR FAILING TO VIDEO RECORD IT, THE COURT, IN ITS  
55 CHARGE TO THE JURY AND UPON REQUEST OF THE DEFENDANT, MUST INSTRUCT THE  
56 JURY THAT THE PEOPLE'S FAILURE TO RECORD THE DEFENDANT'S CONFESSION,

1 ADMISSION OR OTHER STATEMENT AS REQUIRED BY SECTION 60.45 OF THIS CHAP-  
2 TER SHOULD BE WEIGHED AS A FACTOR IN DETERMINING WHETHER SUCH  
3 CONFESSION, ADMISSION OTHER STATEMENT WAS VOLUNTARILY MADE OR WAS MADE  
4 AT ALL.

5 S 10. Subdivision 3 of section 344.2 of the family court act is  
6 renumbered subdivision 4 and a new subdivision 3 is added to read as  
7 follows:

8 3. (A) WHERE A RESPONDENT IS SUBJECT TO CUSTODIAL INTERROGATION BY A  
9 PUBLIC SERVANT AT A FACILITY SPECIFIED IN SUBDIVISION FOUR OF SECTION  
10 305.2 OF THIS ARTICLE, THE ENTIRE CUSTODIAL INTERROGATION, INCLUDING THE  
11 GIVING OF ANY REQUIRED ADVICE TO THE RESPONDENT AS TO HIS OR HER RIGHTS  
12 AND RESPONDENT'S WAIVER OF ANY RIGHTS SHALL BE VIDEO RECORDED, BY VIDE-  
13 OTAPE OR OTHER APPROPRIATE VIDEO RECORDING DEVICE IF THE CUSTODIAL  
14 INTERROGATION INVOLVES: A CLASS A-1 FELONY EXCEPT ONE DEFINED IN ARTI-  
15 CLE TWO HUNDRED TWENTY OF THE PENAL LAW; OR A FELONY OFFENSE DEFINED IN  
16 ARTICLE ONE HUNDRED TWENTY-FIVE OR ARTICLE ONE HUNDRED THIRTY OF SUCH  
17 LAW THAT IS DEFINED AS A CLASS B VIOLENT FELONY OFFENSE IN SECTION 70.02  
18 OF SUCH LAW. FOR PURPOSES OF THIS SUBDIVISION, THE TERM "PUBLIC SERVANT"  
19 SHALL HAVE THE MEANING PROVIDED IN SECTION 10.00 OF THE PENAL LAW.

20 (B) WHERE THE PRESENTMENT AGENCY OFFERS INTO EVIDENCE A CONFESSION,  
21 ADMISSION OR OTHER STATEMENT MADE BY A RESPONDENT IN CUSTODY WITH  
22 RESPECT TO HIS OR HER PARTICIPATION OR LACK OF PARTICIPATION IN AN  
23 OFFENSE SPECIFIED IN PARAGRAPH (A) OF THIS SUBDIVISION THAT HAS NOT BEEN  
24 VIDEO RECORDED AS REQUIRED BY SUCH PARAGRAPH, THE COURT SHALL CONSIDER  
25 THE FAILURE TO COMPLY WITH THIS REQUIREMENT AS A FACTOR IN DETERMINING  
26 WHETHER SUCH CONFESSION, ADMISSION OR OTHER STATEMENT SHALL BE ADMISSI-  
27 BLE UNLESS THE PRESENTMENT AGENCY SHOWS GOOD CAUSE FOR SUCH FAILURE,  
28 WHICH SHALL INCLUDE, BUT NOT BE LIMITED TO: (I) MALFUNCTION OF THE VIDEO  
29 RECORDING EQUIPMENT OR OTHER INADVERTENT ERROR THAT PREVENTS OR INTER-  
30 RUPTS THE VIDEO RECORDING, (II) UNAVAILABILITY OF SUCH EQUIPMENT BECAUSE  
31 IT WAS OTHERWISE BEING USED, (III) RESPONDENT'S REFUSAL TO MAKE A  
32 CONFESSION, ADMISSION OR OTHER STATEMENT IF IT IS VIDEO RECORDED OR HIS  
33 OR HER REQUEST THAT IT NOT BE VIDEO RECORDED (AND SUCH REFUSAL OR  
34 REQUEST IS IN WRITING SIGNED BY THE RESPONDENT, UNLESS THE RESPONDENT  
35 DECLINES TO DO SO), (IV) THE PRESENTMENT AGENCY'S REASONABLE BELIEF THAT  
36 SUCH VIDEO RECORDING WOULD JEOPARDIZE THE SAFETY OF ANY PERSON OR REVEAL  
37 THE IDENTITY OF A CONFIDENTIAL INFORMANT, OR (V) THE PUBLIC SERVANT OR  
38 SERVANTS HAVING CUSTODY OF THE RESPONDENT REASONABLY BELIEVED, AT THE  
39 TIME THE RESPONDENT MADE THE CONFESSION, ADMISSION OR OTHER STATEMENT,  
40 THAT SUCH CONFESSION, ADMISSION OR OTHER STATEMENT WOULD NOT RELATE TO  
41 RESPONDENT'S PARTICIPATION OR LACK OF PARTICIPATION IN AN OFFENSE SPECI-  
42 FIED IN PARAGRAPH (A) OF THIS SUBDIVISION.

43 (C) VIDEO RECORDING AS REQUIRED BY THIS SUBDIVISION SHALL BE CONDUCTED  
44 IN ACCORDANCE WITH STANDARDS ESTABLISHED BY RULE OF THE DIVISION OF  
45 CRIMINAL JUSTICE SERVICES.

46 S 11. This act shall take effect immediately; provided that the  
47 provisions of sections eight, nine and ten of this act shall take effect  
48 on the first of November in the year next succeeding the year in which  
49 this act shall have become a law; provided, further, sections eight,  
50 nine and ten of this act shall apply only to confessions, admissions or  
51 other statements made on or after the effective date of such sections.