

5875--A

2015-2016 Regular Sessions

I N   S E N A T E

June 9, 2015

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Introduced by Sens. NOZZOLIO, GALLIVAN -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the criminal procedure law, the family court act and the executive law, in relation to statements of those accused of crimes and eyewitness identifications, to enhance criminal investigations and prosecutions and to promote confidence in the criminal justice system of this state

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

1     Section 1. Section 60.45 of the criminal procedure law is amended by  
2     adding a new subdivision 3 to read as follows:  
3     3. (A) WHERE A PERSON IS SUBJECT TO CUSTODIAL INTERROGATION BY A  
4     PUBLIC SERVANT AT A DETENTION FACILITY, THE ENTIRE CUSTODIAL INTERRO-  
5     GATION, INCLUDING THE GIVING OF ANY REQUIRED ADVICE OF THE RIGHTS OF THE  
6     INDIVIDUAL BEING QUESTIONED, AND THE WAIVER OF ANY RIGHTS BY THE INDI-  
7     VIDUAL, SHALL BE RECORDED BY AN APPROPRIATE VIDEO RECORDING DEVICE IF  
8     THE INTERROGATION INVOLVES A CLASS A-1 FELONY, EXCEPT ONE DEFINED IN  
9     ARTICLE TWO HUNDRED TWENTY OF THE PENAL LAW; FELONY OFFENSES DEFINED IN  
10    SECTION 130.95 AND 130.96 OF THE PENAL LAW; OR A FELONY OFFENSE DEFINED  
11    IN ARTICLE ONE HUNDRED TWENTY-FIVE OR ONE HUNDRED THIRTY OF SUCH LAW  
12    THAT IS DEFINED AS A CLASS B VIOLENT FELONY OFFENSE IN SECTION 70.02 OF  
13    THE PENAL LAW. FOR PURPOSES OF THIS PARAGRAPH, THE TERM "DETENTION  
14    FACILITY" SHALL MEAN A POLICE STATION, CORRECTIONAL FACILITY, HOLDING  
15    FACILITY FOR PRISONERS, PROSECUTOR'S OFFICE OR OTHER FACILITY WHERE  
16    PERSONS ARE HELD IN DETENTION IN CONNECTION WITH CRIMINAL CHARGES THAT  
17    HAVE BEEN OR MAY BE FILED AGAINST THEM.  
18    (B) NO CONFESSION, ADMISSION OR OTHER STATEMENT SHALL BE SUBJECT TO A  
19    MOTION TO SUPPRESS PURSUANT TO SUBDIVISION THREE OF SECTION 710.20 OF  
20    THIS CHAPTER BASED SOLELY UPON THE FAILURE TO VIDEO RECORD SUCH INTERRO-

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

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GATION IN A DETENTION FACILITY AS DEFINED IN PARAGRAPH (A) OF THIS SUBDIVISION. HOWEVER, WHERE THE PEOPLE OFFER INTO EVIDENCE A CONFESSION, ADMISSION OR OTHER STATEMENT MADE BY A PERSON IN CUSTODY WITH RESPECT TO HIS OR HER PARTICIPATION OR LACK OF PARTICIPATION IN AN OFFENSE SPECIFIED IN PARAGRAPH (A) OF THIS SUBDIVISION, THAT HAS NOT BEEN VIDEO RECORDED, THE COURT SHALL CONSIDER THE FAILURE TO RECORD AS A FACTOR, BUT NOT AS THE SOLE FACTOR, IN ACCORDANCE WITH PARAGRAPH (C) OF THIS SUBDIVISION IN DETERMINING WHETHER SUCH CONFESSION, ADMISSION OR OTHER STATEMENT SHALL BE ADMISSIBLE.

(C) NOTWITHSTANDING THE REQUIREMENT OF PARAGRAPH (A) OF THIS SUBDIVISION, UPON A SHOWING OF GOOD CAUSE BY THE PROSECUTOR, THE CUSTODIAL INTERROGATION NEED NOT BE RECORDED. GOOD CAUSE SHALL INCLUDE, BUT NOT BE LIMITED TO:

(I) IF ELECTRONIC RECORDING EQUIPMENT MALFUNCTIONS.

(II) IF ELECTRONIC RECORDING EQUIPMENT IS NOT AVAILABLE BECAUSE IT WAS OTHERWISE BEING USED.

(III) IF STATEMENTS ARE MADE IN RESPONSE TO QUESTIONS THAT ARE ROUTINELY ASKED DURING ARREST PROCESSING.

(IV) IF THE STATEMENT IS SPONTANEOUSLY MADE BY THE SUSPECT AND NOT IN RESPONSE TO POLICE QUESTIONING.

(V) IF THE STATEMENT IS MADE DURING AN INTERROGATION THAT IS CONDUCTED WHEN THE INTERVIEWER IS UNAWARE THAT A QUALIFYING OFFENSE HAS OCCURRED.

(VI) IF THE STATEMENT IS MADE AT A LOCATION OTHER THAN THE "INTERVIEW ROOM" BECAUSE THE SUSPECT CANNOT BE BROUGHT TO SUCH ROOM, E.G., THE SUSPECT IS IN A HOSPITAL OR THE SUSPECT IS OUT OF STATE AND THAT STATE IS NOT GOVERNED BY A LAW REQUIRING THE RECORDATION OF AN INTERROGATION.

(VII) IF THE STATEMENT IS MADE AFTER A SUSPECT HAS REFUSED TO PARTICIPATE IN THE INTERROGATION IF IT IS RECORDED, AND APPROPRIATE EFFORT TO DOCUMENT SUCH REFUSAL IS MADE.

(VIII) IF SUCH STATEMENT IS NOT RECORDED AS A RESULT OF AN INADVERTENT ERROR OR OVERSIGHT, NOT THE RESULT OF ANY INTENTIONAL CONDUCT BY LAW ENFORCEMENT PERSONNEL.

(IX) IF IT IS LAW ENFORCEMENT'S REASONABLE BELIEF THAT SUCH RECORDING WOULD JEOPARDIZE THE SAFETY OF ANY PERSON OR REVEAL THE IDENTITY OF A CONFIDENTIAL INFORMANT.

(X) IF SUCH STATEMENT IS MADE AT A LOCATION NOT EQUIPPED WITH A VIDEO RECORDING DEVICE AND THE REASON FOR USING THAT LOCATION IS NOT TO SUBVERT THE INTENT OF THE LAW. FOR PURPOSES OF THIS SECTION, THE TERM "LOCATION" SHALL INCLUDE THOSE LOCATIONS SPECIFIED IN PARAGRAPH (B) OF SUBDIVISION FOUR OF SECTION 305.2 OF THE FAMILY COURT ACT.

(D) IN THE EVENT THE COURT FINDS THAT THE PEOPLE HAVE NOT SHOWN GOOD CAUSE FOR THE NON-RECORDING OF THE CONFESSION, ADMISSION, OR OTHER STATEMENT, BUT DETERMINES THAT A NON-RECORDED CONFESSION, ADMISSION OR OTHER STATEMENT IS NEVERTHELESS ADMISSIBLE BECAUSE IT WAS VOLUNTARILY MADE THEN, UPON REQUEST OF THE DEFENDANT, THE COURT MUST INSTRUCT THE JURY THAT THE PEOPLE'S FAILURE TO RECORD THE DEFENDANT'S CONFESSION, ADMISSION OR OTHER STATEMENT AS REQUIRED BY THIS SECTION MAY BE WEIGHED AS A FACTOR, BUT NOT AS THE SOLE FACTOR, IN DETERMINING WHETHER SUCH CONFESSION, ADMISSION OR OTHER STATEMENT WAS VOLUNTARILY MADE, OR WAS MADE AT ALL.

(E) VIDEO RECORDING AS REQUIRED BY THIS SECTION SHALL BE CONDUCTED IN ACCORDANCE WITH STANDARDS ESTABLISHED BY RULE OF THE DIVISION OF CRIMINAL JUSTICE SERVICES.

S 2. Subdivision 3 of section 344.2 of the family court act is renumbered subdivision 4 and a new subdivision 3 is added to read as follows:

1 3. WHERE A RESPONDENT IS SUBJECT TO CUSTODIAL INTERROGATION BY A  
2 PUBLIC SERVANT AT A FACILITY SPECIFIED IN SUBDIVISION FOUR OF SECTION  
3 305.2 OF THIS ARTICLE, THE ENTIRE CUSTODIAL INTERROGATION, INCLUDING THE  
4 GIVING OF ANY REQUIRED ADVICE OF THE RIGHTS OF THE INDIVIDUAL BEING  
5 QUESTIONED, AND THE WAIVER OF ANY RIGHTS BY THE INDIVIDUAL, SHALL BE  
6 RECORDED AND GOVERNED IN ACCORDANCE WITH THE PROVISIONS OF PARAGRAPHS  
7 (A), (B), (C), (D) AND (E) OF SUBDIVISION THREE OF SECTION 60.45 OF THE  
8 CRIMINAL PROCEDURE LAW.

9 S 3. Section 60.25 of the criminal procedure law, subparagraph (ii) of  
10 paragraph (a) of subdivision 1 as amended by chapter 479 of the laws of  
11 1977, is amended to read as follows:

12 S 60.25 Rules of evidence; identification by means of previous recogni-  
13 tion, in absence of present identification.

14 1. In any criminal proceeding in which the defendant's commission of  
15 an offense is in issue, testimony as provided in subdivision two may be  
16 given by a witness when:

17 (a) Such witness testifies that:

18 (i) He OR SHE observed the person claimed by the people to be the  
19 defendant either at the time and place of the commission of the offense  
20 or upon some other occasion relevant to the case; and

21 (ii) On a subsequent occasion he OR SHE observed, under circumstances  
22 consistent with such rights as an accused person may derive under the  
23 constitution of this state or of the United States, a person OR, WHERE  
24 THE OBSERVATION IS MADE PURSUANT TO A BLIND OR BLINDED PROCEDURE AS  
25 DEFINED IN PARAGRAPH (C) OF THIS SUBDIVISION, A PICTORIAL, PHOTOGRAPHIC,  
26 ELECTRONIC, FILMED OR VIDEO RECORDED REPRODUCTION OF A PERSON whom he OR  
27 SHE recognized as the same person whom he OR SHE had observed on the  
28 first or incriminating occasion; and

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

32 (b) It is established that the defendant is in fact the person whom  
33 the witness observed and recognized OR WHOSE PICTORIAL, PHOTOGRAPHIC,  
34 ELECTRONIC, FILMED OR VIDEO RECORDED REPRODUCTION THE WITNESS OBSERVED  
35 AND RECOGNIZED on the second occasion. Such fact may be established by  
36 testimony of another person or persons to whom the witness promptly  
37 declared his OR HER recognition on such occasion AND BY SUCH PICTORIAL,  
38 PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEO RECORDED REPRODUCTION.

39 (C) FOR PURPOSES OF THIS SECTION, A "BLIND OR BLINDED PROCEDURE" IS  
40 ONE IN WHICH THE WITNESS IDENTIFIES A PERSON IN AN ARRAY OF PICTORIAL,  
41 PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEO RECORDED REPRODUCTIONS UNDER  
42 CIRCUMSTANCES WHERE, AT THE TIME THE IDENTIFICATION IS MADE, THE PUBLIC  
43 SERVANT ADMINISTERING SUCH PROCEDURE: (I) DOES NOT KNOW WHICH PERSON IN  
44 THE ARRAY IS THE SUSPECT, OR (II) DOES NOT KNOW WHERE THE SUSPECT IS IN  
45 THE ARRAY VIEWED BY THE WITNESS. THE FAILURE OF A PUBLIC SERVANT TO  
46 FOLLOW SUCH A PROCEDURE SHALL BE ASSESSED SOLELY FOR PURPOSES OF THIS  
47 ARTICLE AND SHALL RESULT IN THE PRECLUSION OF TESTIMONY REGARDING THE  
48 IDENTIFICATION PROCEDURE AS EVIDENCE IN CHIEF, BUT SHALL NOT CONSTITUTE  
49 A LEGAL BASIS TO SUPPRESS EVIDENCE MADE PURSUANT TO SUBDIVISION SIX OF  
50 SECTION 710.20 OF THIS CHAPTER. THIS ARTICLE NEITHER LIMITS NOR EXPANDS  
51 SUBDIVISION SIX OF SECTION 710.20 OF THIS CHAPTER.

52 2. Under circumstances prescribed in subdivision one OF THIS SECTION,  
53 such witness may testify at the criminal proceeding that the person whom  
54 he OR SHE observed and recognized OR WHOSE PICTORIAL, PHOTOGRAPHIC,  
55 ELECTRONIC, FILMED OR VIDEO RECORDED REPRODUCTION HE OR SHE OBSERVED AND  
56 RECOGNIZED on the second occasion is the same person whom he OR SHE

1 observed on the first or incriminating occasion. Such testimony,  
2 together with the evidence that the defendant is in fact the person whom  
3 the witness observed and recognized OR WHOSE PICTORIAL, PHOTOGRAPHIC,  
4 ELECTRONIC, FILMED OR VIDEO RECORDED REPRODUCTION HE OR SHE OBSERVED AND  
5 RECOGNIZED on the second occasion, constitutes evidence in chief.

6 S 4. Section 60.30 of the criminal procedure law, as amended by chap-  
7 ter 479 of the laws of 1977, is amended to read as follows:

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

10 In any criminal proceeding in which the defendant's commission of an  
11 offense is in issue, a witness who testifies that (a) he OR SHE observed  
12 the person claimed by the people to be the defendant either at the time  
13 and place of the commission of the offense or upon some other occasion  
14 relevant to the case, and (b) on the basis of present recollection, the  
15 defendant is the person in question and (c) on a subsequent occasion he  
16 OR SHE observed the defendant, OR WHERE THE OBSERVATION IS MADE PURSUANT  
17 TO A BLIND OR BLINDED PROCEDURE, AS DEFINED IN THE CLOSING PARAGRAPH OF  
18 SUBDIVISION ONE OF SECTION 60.25 OF THIS ARTICLE, A PICTORIAL, PHOTO-  
19 GRAPHIC, ELECTRONIC, FILMED OR VIDEO RECORDED REPRODUCTION OF THE  
20 DEFENDANT, under circumstances consistent with such rights as an accused  
21 person may derive under the constitution of this state or of the United  
22 States, and then also recognized him OR HER OR THE PICTORIAL, PHOTO-  
23 GRAPHIC, ELECTRONIC, FILMED OR VIDEO RECORDED REPRODUCTION OF HIM OR HER  
24 as the same person whom he OR SHE had observed on the first or incrimi-  
25 nating occasion, may, in addition to making an identification of the  
26 defendant at the criminal proceeding on the basis of present recol-  
27 lection as the person whom he OR SHE observed on the first or incrimi-  
28 nating occasion, also describe his OR HER previous recognition of the  
29 defendant and testify that the person whom he OR SHE observed OR WHOSE  
30 PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEO RECORDED REPROD-  
31 UCTION HE OR SHE OBSERVED on such second occasion is the same person  
32 whom he OR SHE had observed on the first or incriminating occasion.  
33 Such testimony AND SUCH PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR  
34 VIDEO RECORDED REPRODUCTION constitutes evidence in chief.

35 S 5. Subdivision 6 of section 710.20 of the criminal procedure law, as  
36 amended by chapter 8 of the laws of 1976 and as renumbered by chapter  
37 481 of the laws of 1983, is amended to read as follows:

38 6. Consists of potential testimony regarding an observation of the  
39 defendant either at the time or place of the commission of the offense  
40 or upon some other occasion relevant to the case, which potential testi-  
41 mony would not be admissible upon the prospective trial of such charge  
42 owing to an improperly made previous identification of the defendant OR  
43 OF A PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEO RECORDED  
44 REPRODUCTION OF THE DEFENDANT by the prospective witness. A CLAIM THAT  
45 THE PREVIOUS IDENTIFICATION OF THE DEFENDANT OR OF A PICTORIAL, PHOTO-  
46 GRAPHIC, ELECTRONIC, FILMED OR VIDEO RECORDED REPRODUCTION OF THE  
47 DEFENDANT BY A PROSPECTIVE WITNESS DID NOT COMPLY WITH PARAGRAPH (C) OF  
48 SUBDIVISION ONE OF SECTION 60.25 OF THIS CHAPTER OR WITH THE PROTOCOL  
49 PROMULGATED IN ACCORDANCE WITH SUBDIVISION TWENTY OF SECTION EIGHT  
50 HUNDRED THIRTY-SEVEN OF THE EXECUTIVE LAW SHALL NOT CONSTITUTE A LEGAL  
51 BASIS TO SUPPRESS EVIDENCE PURSUANT TO THIS SUBDIVISION. A CLAIM THAT A  
52 PUBLIC SERVANT FAILED TO COMPLY WITH PARAGRAPH (C) OF SUBDIVISION ONE OF  
53 SECTION 60.25 OF THIS CHAPTER OR OF SUBDIVISION TWENTY OF SECTION EIGHT  
54 HUNDRED THIRTY-SEVEN OF THE EXECUTIVE LAW SHALL NEITHER EXPAND NOR LIMIT  
55 THE RIGHTS AN ACCUSED PERSON MAY DERIVE UNDER THE CONSTITUTION OF THIS  
56 STATE OR OF THE UNITED STATES.

1 S 6. Subdivision 1 of section 710.30 of the criminal procedure law, as  
2 separately amended by chapters 8 and 194 of the laws of 1976, is amended  
3 to read as follows:

4 1. Whenever the people intend to offer at a trial (a) evidence of a  
5 statement made by a defendant to a public servant, which statement if  
6 involuntarily made would render the evidence thereof suppressible upon  
7 motion pursuant to subdivision three of section 710.20, or (b) testimony  
8 regarding an observation of the defendant either at the time or place of  
9 the commission of the offense or upon some other occasion relevant to  
10 the case, to be given by a witness who has previously identified him OR  
11 HER OR A PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEO RECORDED  
12 REPRODUCTION OF HIM OR HER as such, they must serve upon the defendant a  
13 notice of such intention, specifying the evidence intended to be  
14 offered.

15 S 7. Section 343.3 of the family court act, as added by chapter 920 of  
16 the laws of 1982, is amended to read as follows:

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

22 (a) such witness testifies that:

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

26 (ii) on a subsequent occasion he OR SHE observed, under circumstances  
27 consistent with such rights as an accused person may derive under the  
28 constitution of this state or of the United States, a person, OR, WHERE  
29 THE OBSERVATION IS MADE PURSUANT TO A BLIND OR BLINDED PROCEDURE AS  
30 DEFINED HEREIN, A PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEO  
31 RECORDED REPRODUCTION OF A PERSON whom he OR SHE recognized as the same  
32 person whom he OR SHE had observed on the first incriminating occasion;  
33 and

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

37 (b) it is established that the respondent is in fact the person whom  
38 the witness observed and recognized OR WHOSE PICTORIAL, PHOTOGRAPHIC,  
39 ELECTRONIC, FILMED OR VIDEO RECORDED REPRODUCTION THE WITNESS OBSERVED  
40 AND RECOGNIZED on the second occasion. Such fact may be established by  
41 testimony of another person or persons to whom the witness promptly  
42 declared his OR HER recognition on such occasion AND BY SUCH PICTORIAL,  
43 PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEO RECORDED REPRODUCTION.

44 (C) FOR PURPOSES OF THIS SECTION, A "BLIND OR BLINDED PROCEDURE" IS  
45 ONE IN WHICH THE WITNESS IDENTIFIES A PERSON IN AN ARRAY OF PICTORIAL,  
46 PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEO RECORDED REPRODUCTIONS UNDER  
47 CIRCUMSTANCES WHERE, AT THE TIME THE IDENTIFICATION IS MADE, THE PUBLIC  
48 SERVANT ADMINISTERING SUCH PROCEDURE: (I) DOES NOT KNOW WHICH PERSON IN  
49 THE ARRAY IS THE SUSPECT, OR (II) DOES NOT KNOW WHERE THE SUSPECT IS IN  
50 THE ARRAY VIEWED BY THE WITNESS. THE FAILURE OF A PUBLIC SERVANT TO  
51 FOLLOW SUCH A PROCEDURE SHALL BE ASSESSED SOLELY FOR PURPOSES OF THIS  
52 ARTICLE AND SHALL RESULT IN THE PRECLUSION OF TESTIMONY REGARDING THE  
53 IDENTIFICATION PROCEDURE AS EVIDENCE IN CHIEF, BUT SHALL NOT CONSTITUTE  
54 A LEGAL BASIS TO SUPPRESS EVIDENCE MADE PURSUANT TO SUBDIVISION SIX OF  
55 SECTION 710.20 OF THE CRIMINAL PROCEDURE LAW. THIS ARTICLE NEITHER

1 LIMITS NOT EXPANDS SUBDIVISION SIX OF SECTION 710.20 OF THE CRIMINAL  
2 PROCEDURE LAW.

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

13 S 8. Section 343.4 of the family court act, as added by chapter 920 of  
14 the laws of 1982, is amended to read as follows:

15 S 343.4. Rules of evidence; identification by means of previous recog-  
16 nition, in addition to present identification. In any juvenile delin-  
17 quency proceeding in which the respondent's commission of a crime is in  
18 issue, a witness who testifies that: (a) he OR SHE observed the person  
19 claimed by the presentment agency to be the respondent either at the  
20 time and place of the commission of the crime or upon some other occa-  
21 sion relevant to the case, and (b) on the basis of present recollection,  
22 the respondent is the person in question, and (c) on a subsequent occa-  
23 sion he OR SHE observed the respondent, OR, WHERE THE OBSERVATION IS  
24 MADE PURSUANT TO A BLIND OR BLINDED PROCEDURE, A PICTORIAL, PHOTOGRAPH-  
25 IC, ELECTRONIC, FILMED OR VIDEO RECORDED REPRODUCTION OF THE RESPONDENT  
26 under circumstances consistent with such rights as an accused person may  
27 derive under the constitution of this state or of the United States, and  
28 then also recognized him OR HER OR THE PICTORIAL, PHOTOGRAPHIC, ELEC-  
29 TRONIC, FILMED OR VIDEO RECORDED REPRODUCTION OF HIM OR HER as the same  
30 person whom he OR SHE had observed on the first or incriminating occa-  
31 sion, may, in addition to making an identification of the respondent at  
32 the delinquency proceeding on the basis of present recollection as the  
33 person whom he OR SHE observed on the first or incriminating occasion,  
34 also describe his OR HER previous recognition of the respondent and  
35 testify that the person whom he OR SHE observed OR WHOSE PICTORIAL,  
36 PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEO RECORDED REPRODUCTION HE OR  
37 SHE OBSERVED on such second occasion is the same person whom he OR SHE  
38 had observed on the first or incriminating occasion. Such testimony AND  
39 SUCH PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEO RECORDED  
40 REPRODUCTION constitutes evidence in chief. FOR PURPOSES OF THIS  
41 SECTION, A "BLIND OR BLINDED PROCEDURE" SHALL BE AS DEFINED IN PARAGRAPH  
42 (C) OF SUBDIVISION ONE OF SECTION 343.3 OF THIS PART.

43 S 9. Section 837 of the executive law is amended by adding a new  
44 subdivision 20 to read as follows:

45 20. PROMULGATE A STANDARDIZED AND DETAILED WRITTEN PROTOCOL THAT IS  
46 GROUNDED IN EVIDENCE-BASED PRINCIPLES FOR THE ADMINISTRATION OF PHOTO-  
47 GRAPHIC ARRAY AND LIVE LINEUP IDENTIFICATION PROCEDURES FOR POLICE AGEN-  
48 CIES AND STANDARDIZED FORMS FOR USE BY SUCH AGENCIES IN THE REPORTING  
49 AND RECORDING OF SUCH IDENTIFICATION PROCEDURE. THE PROTOCOL SHALL  
50 ADDRESS THE FOLLOWING TOPICS:

51 (A) THE SELECTION OF PHOTOGRAPHIC ARRAY AND LIVE LINEUP FILLER PHOTO-  
52 GRAPHS OR PARTICIPANTS;

53 (B) INSTRUCTIONS GIVEN TO A WITNESS BEFORE CONDUCTING A PHOTOGRAPHIC  
54 ARRAY OR LIVE LINEUP IDENTIFICATION PROCEDURE;

55 (C) THE DOCUMENTATION AND PRESERVATION OF RESULTS OF A PHOTOGRAPHIC  
56 ARRAY OR LIVE LINEUP IDENTIFICATION PROCEDURE;

1 (D) PROCEDURES FOR ELICITING AND DOCUMENTING THE WITNESS'S CONFIDENCE  
2 IN HIS OR HER IDENTIFICATION FOLLOWING A PHOTOGRAPHIC ARRAY OR LIVE  
3 LINEUP IDENTIFICATION PROCEDURE, IN THE EVENT THAT AN IDENTIFICATION IS  
4 MADE; AND

5 (E) PROCEDURES FOR ADMINISTERING A PHOTOGRAPHIC ARRAY OR LIVE LINEUP  
6 IDENTIFICATION PROCEDURE IN A MANNER DESIGNED TO PREVENT OPPORTUNITIES  
7 TO INFLUENCE THE WITNESS.

8 S 10. Subdivision 4 of section 840 of the executive law is amended by  
9 adding a new paragraph (c) to read as follows:

10 (C) DISSEMINATE THE WRITTEN POLICIES AND PROCEDURES PROMULGATED IN  
11 ACCORDANCE WITH SUBDIVISION TWENTY OF SECTION EIGHT HUNDRED THIRTY-SEVEN  
12 OF THIS ARTICLE TO ALL POLICE DEPARTMENTS IN THIS STATE AND IMPLEMENT A  
13 TRAINING PROGRAM FOR ALL CURRENT AND NEW POLICE OFFICERS REGARDING THE  
14 POLICIES AND PROCEDURES ESTABLISHED PURSUANT TO SUCH SUBDIVISION.

15 S 11. This act shall take effect on the thirtieth day after it shall  
16 have become a law; provided, however, sections one and two of this act  
17 shall take effect June 1, 2017 and apply to confessions, admissions or  
18 statements made on or after such effective date; provided, further,  
19 sections three through ten of this act shall take effect November 1,  
20 2015.