

8157--B

2015-2016 Regular Sessions

I N A S S E M B L Y

June 10, 2015

Introduced by M. of A. LENTOL, O'DONNELL, SEPULVEDA, QUART, WRIGHT -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- 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) WHEN A PERSON IS SUBJECT TO INTERROGATION BY A PUBLIC SERVANT
4 AT A DETENTION FACILITY, AND THE PUBLIC SERVANT IS AWARE OR HAS REASON
5 TO SUSPECT THAT THE PERSON INTERROGATED COMMITTED A CRIME UNDER INVESTI-
6 GATION BY SUCH PUBLIC SERVANT OR A LAW ENFORCEMENT ENTITY ASSOCIATED
7 WITH SUCH PUBLIC SERVANT, THE ENTIRE INTERROGATION, INCLUDING THE GIVING
8 OF ANY REQUIRED ADVICE OF THE RIGHTS OF THE INDIVIDUAL BEING QUESTIONED,
9 AND THE WAIVER OF ANY RIGHTS BY THE INDIVIDUAL, SHALL BE RECORDED BY AN
10 APPROPRIATE VIDEO RECORDING DEVICE, IF THE INTERROGATION INVOLVES A
11 CLASS A-1 FELONY OR A VIOLENT FELONY OFFENSE AS DEFINED IN SECTION 70.02
12 OF THE PENAL LAW. THE INTERROGATION SHALL BE RECORDED IN A MANNER SUCH
13 THAT THE PERSONS IN THE RECORDING ARE SHOWN AND THE SPEECH IS INTELLIGI-
14 BLE. SUCH RECORDING MAY ALSO BE CONDUCTED OUTSIDE OF A DETENTION FACIL-
15 ITY. FOR PURPOSES OF THIS PARAGRAPH, THE TERM "DETENTION FACILITY"
16 SHALL MEAN A POLICE STATION, CORRECTIONAL FACILITY, HOLDING FACILITY FOR
17 PRISONERS, PROSECUTOR'S OFFICE OR OTHER FACILITY WHERE PERSONS ARE HELD

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

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1 IN DETENTION IN CONNECTION WITH CRIMINAL CHARGES THAT HAVE BEEN OR MAY
2 BE FILED AGAINST THEM.

3 (B) NO CONFESSION, ADMISSION OR OTHER STATEMENT SHALL BE SUBJECT TO A
4 MOTION TO SUPPRESS PURSUANT TO SUBDIVISION THREE OF SECTION 710.20 OF
5 THIS CHAPTER BASED SOLELY UPON THE FAILURE TO VIDEO RECORD SUCH INTERRO-
6 GATION IN A DETENTION FACILITY AS DEFINED IN PARAGRAPH (A) OF THIS
7 SUBDIVISION. HOWEVER, WHEN THE PEOPLE OFFER INTO EVIDENCE AGAINST A
8 DEFENDANT A CONFESSION, ADMISSION OR OTHER STATEMENT MADE BY A PERSON
9 WITH RESPECT TO AN ALLEGED OFFENSE SPECIFIED IN PARAGRAPH (A) OF THIS
10 SUBDIVISION THAT HAS NOT BEEN VIDEO RECORDED, THE COURT SHALL CONSIDER
11 THE FAILURE TO RECORD AS A FACTOR, IN ACCORDANCE WITH PARAGRAPH (C) OF
12 THIS SUBDIVISION, IN DETERMINING WHETHER SUCH CONFESSION, ADMISSION OR
13 OTHER STATEMENT SHALL BE ADMISSIBLE.

14 (C) NOTWITHSTANDING THE REQUIREMENT OF PARAGRAPH (A) OF THIS SUBDIVI-
15 SION, FOLLOWING A WRITTEN MOTION OF THE PROSECUTOR ASSERTING GOOD CAUSE
16 PURSUANT TO THIS PARAGRAPH, FILED WITHIN THE TIME PERIODS SPECIFIED IN
17 SECTION 710.30 OF THIS CHAPTER, AND AFTER AN OPPORTUNITY FOR A HEARING,
18 UPON CLEAR AND CONVINCING PROOF OF SUCH GOOD CAUSE, THE COURT MAY FIND
19 THAT SUCH INTERROGATION NEED NOT HAVE BEEN RECORDED. SUCH GOOD CAUSE MAY
20 INCLUDE THE FOLLOWING:

21 (I) THE VIDEO RECORDING EQUIPMENT MALFUNCTIONED WHILE THE RECORDING OF
22 THE INTERROGATION WAS ATTEMPTED.

23 (II) VIDEO RECORDING EQUIPMENT WAS NOT REASONABLY AVAILABLE BECAUSE IT
24 WAS BEING USED TO RECORD OTHER INTERROGATIONS IN ACCORDANCE WITH THIS
25 SECTION, AND NO SUCH INTERROGATION COULD REASONABLY HAVE BEEN DELAYED.

26 (III) THE STATEMENT WAS MADE IN RESPONSE TO PEDIGREE QUESTIONS THAT
27 ARE REASONABLY AND ROUTINELY ASKED DURING ARREST PROCESSING.

28 (IV) THE STATEMENT WAS MADE SPONTANEOUSLY BY THE INDIVIDUAL AND NOT IN
29 RESPONSE TO QUESTIONING BY A PUBLIC SERVANT.

30 (V) THE STATEMENT WAS MADE DURING AN INTERROGATION THAT WAS CONDUCTED
31 WHEN THE INTERVIEWER WAS UNAWARE AND HAD NO REASON TO SUSPECT THAT A
32 QUALIFYING OFFENSE MAY HAVE OCCURRED.

33 (VI) THE STATEMENT WAS MADE AFTER THE INDIVIDUAL VOLUNTARILY, AND
34 WITHOUT EXPRESS OR IMPLIED ENCOURAGEMENT BY A PUBLIC SERVANT, REFUSED TO
35 PARTICIPATE IN THE INTERROGATION IF RECORDED, AND THE CIRCUMSTANCES OF
36 THE REFUSAL WERE RECORDED OR, IF SUCH A RECORD OF THE REFUSAL WAS
37 REFUSED AS WELL, REASONABLY CONTEMPORANEOUS DOCUMENTATION OF THE CIRCUM-
38 STANCES OF THE REFUSAL WAS MADE.

39 (VII) IT WAS THE REASONABLE BELIEF OF THE APPROPRIATE LAW ENFORCEMENT
40 OFFICIAL OR OFFICIALS THAT A VIDEO RECORDING WOULD JEOPARDIZE THE SAFETY
41 OF A SPECIFIC PERSON OR PERSONS OR REVEAL THE IDENTITY OF ONE OR MORE
42 SPECIFIC CONFIDENTIAL INFORMANTS, AND REASONABLY CONTEMPORANEOUS
43 DOCUMENTATION OF THE CIRCUMSTANCES OF SUCH BELIEF WAS MADE.

44 (VIII) SUCH STATEMENT WAS MADE AT A LOCATION NOT EQUIPPED WITH AN
45 APPROPRIATE RECORDING DEVICE, IT WAS NOT REASONABLY POSSIBLE, UNDER THE
46 CIRCUMSTANCES, TO BRING EQUIPMENT TO SUCH LOCATION OR TRANSFER THE INDI-
47 VIDUAL TO A DETENTION FACILITY FOR INTERROGATION, AND THE REASON FOR
48 USING SUCH LOCATION WAS NOT TO SUBVERT THE INTENT OF THE LAW. FOR
49 PURPOSES OF THIS SECTION, THE TERM "LOCATION" SHALL INCLUDE THOSE
50 LOCATIONS SPECIFIED IN PARAGRAPH (B) OF SUBDIVISION FOUR OF SECTION
51 305.2 OF THE FAMILY COURT ACT.

52 (D) IN THE EVENT THAT AN INTERROGATION THAT QUALIFIED FOR RECORDING
53 UNDER PARAGRAPH (A) OF THIS SUBDIVISION WAS NOT RECORDED AND THE COURT
54 DETERMINES THAT THE NON-RECORDED, ALLEGED CONFESSION, ADMISSION OR OTHER
55 STATEMENT IS LAWFULLY ADMISSIBLE, THEN, UPON REQUEST OF THE DEFENDANT,
56 THE COURT MUST INSTRUCT THE JURY THAT THE LAW GENERALLY REQUIRES RECORD-

1 ING UNDER SUCH CIRCUMSTANCES AND THAT THE PEOPLE'S FAILURE TO RECORD THE
2 DEFENDANT'S ALLEGED CONFESSION, ADMISSION OR OTHER STATEMENT MAY BE
3 CONSIDERED IN ITS DELIBERATIONS, INCLUDING, BUT NOT LIMITED TO, IN
4 DETERMINING WHETHER SUCH ALLEGED CONFESSION, ADMISSION OR OTHER STATE-
5 MENT WAS VOLUNTARILY MADE, IS ACCURATE OR TRUTHFUL, OR WAS MADE AT ALL.
6 WHEN SO INSTRUCTING THE JURY, IF THE COURT HAS FOUND THAT GOOD CAUSE FOR
7 NON-RECORDING EXISTED IN ACCORDANCE WITH PARAGRAPH (C) OF THIS SUBDIVI-
8 SION, THE COURT, AT THE REQUEST OF THE PEOPLE, SHALL ADVISE THE JURY OF
9 THE FACTOR OR FACTORS SET FORTH IN PARAGRAPH (C) OF THIS SUBDIVISION
10 THAT THE COURT FOUND TO BE PROVED, WITHOUT DISCLOSING THE COURT'S FIND-
11 ING WITH RESPECT THERETO, AND ADVISE THE JURY THAT IT MAY MAKE AN INDE-
12 PENDENT DETERMINATION CONCERNING WHAT WEIGHT, IF ANY, TO GIVE TO THE
13 FAILURE TO RECORD.

14 (E) VIDEO RECORDING AS REQUIRED BY THIS SECTION SHALL BE CONDUCTED IN
15 ACCORDANCE WITH STANDARDS CONSISTENT WITH THIS SUBDIVISION ESTABLISHED
16 IN REGULATIONS BY THE DIVISION OF CRIMINAL JUSTICE SERVICES.

17 S 2. Subdivision 8 of section 305.2 of the family court act, as
18 amended by chapter 398 of the laws of 1983, is amended and a new subdi-
19 vision 5-a is added to read as follows:

20 5-A. WHEN AT ANY TIME A CHILD IS SUBJECT TO INTERROGATION BY A PUBLIC
21 SERVANT AT A FACILITY DESIGNATED BY THE CHIEF ADMINISTRATOR OF THE
22 COURTS AS A SUITABLE PLACE FOR THE QUESTIONING OF JUVENILES PURSUANT TO
23 SUBDIVISION FOUR OF THIS SECTION, AND THE PUBLIC SERVANT IS AWARE OR HAS
24 REASON TO SUSPECT THAT THE CHILD INTERROGATED COMMITTED AN ACT THAT
25 WOULD BE A CRIME IF COMMITTED BY AN ADULT AND WHICH IS UNDER INVESTI-
26 GATION BY SUCH PUBLIC SERVANT OR A LAW ENFORCEMENT ENTITY ASSOCIATED
27 WITH SUCH PUBLIC SERVANT, THE ENTIRE INTERROGATION, INCLUDING THE GIVING
28 OF ANY REQUIRED NOTICE TO THE CHILD AS TO HIS OR HER RIGHTS AND HIS OR
29 HER WAIVER OF ANY RIGHTS, SHALL BE VIDEO RECORDED AND GOVERNED IN
30 ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION THREE OF SECTION 60.45 OF
31 THE CRIMINAL PROCEDURE LAW. THE INTERROGATION SHALL BE RECORDED IN A
32 MANNER SUCH THAT THE PERSONS IN THE RECORDING ARE SHOWN AND THE SPEECH
33 IS INTELLIGIBLE. A COPY OF THE RECORDING SHALL BE SUBJECT TO DISCOVERY
34 PURSUANT TO SECTION 331.2 OF THIS ARTICLE. THIS SUBDIVISION SHALL NOT
35 APPLY TO A STATEMENT MADE TO THE PROBATION SERVICE, IN ACCORDANCE WITH
36 SUBDIVISION SEVEN OF SECTION 308.1 OF THIS PART, EXCEPT WHEN SUCH STATE-
37 MENT MAY BE ADMISSIBLE UNDER SUCH SUBDIVISION SEVEN OF SECTION 308.1.

38 8. In determining the suitability of questioning and determining the
39 reasonable period of time for questioning such a child, the child's age,
40 the presence or absence of his OR HER parents or other persons legally
41 responsible for his OR HER care [and], notification pursuant to subdivi-
42 sion three AND, WHERE THE CHILD HAS BEEN INTERROGATED AT A FACILITY
43 DESIGNATED BY THE CHIEF ADMINISTRATOR OF THE COURTS AS A SUITABLE PLACE
44 FOR THE QUESTIONING OF JUVENILES, WHETHER THE INTERROGATION WAS IN
45 COMPLIANCE WITH THE VIDEO-RECORDING AND DISCLOSURE REQUIREMENTS OF
46 SUBDIVISION FIVE-A OF THIS SECTION shall be included among relevant
47 considerations.

48 S 3. Subdivision 3 of section 344.2 of the family court act is renum-
49 bered subdivision 4 and a new subdivision 3 is added to read as follows:

50 3. WHEN AT ANY TIME A CHILD IS SUBJECT TO INTERROGATION BY A PUBLIC
51 SERVANT AT A FACILITY DESIGNATED BY THE CHIEF ADMINISTRATOR OF THE
52 COURTS AS A SUITABLE PLACE FOR THE QUESTIONING OF JUVENILES PURSUANT TO
53 SUBDIVISION FOUR OF SECTION 305.2 OF THIS ARTICLE, AND THE PUBLIC SERV-
54 ANT IS AWARE OR HAS REASON TO SUSPECT THAT THE CHILD INTERROGATED
55 COMMITTED AN ACT THAT WOULD CONSTITUTE A CRIME IF COMMITTED BY AN ADULT
56 AND WHICH IS UNDER INVESTIGATION BY SUCH PUBLIC SERVANT OR A LAW

1 ENFORCEMENT ENTITY ASSOCIATED WITH SUCH PUBLIC SERVANT, THE ENTIRE
2 INTERROGATION, INCLUDING THE GIVING OF ANY REQUIRED NOTICE TO THE CHILD
3 AS TO HIS OR HER RIGHTS AND HIS OR HER WAIVER OF ANY RIGHTS, SHALL BE
4 VIDEO RECORDED AND GOVERNED IN ACCORDANCE WITH THE PROVISIONS OF SUBDI-
5 VISION THREE OF SECTION 60.45 OF THE CRIMINAL PROCEDURE LAW. THE INTER-
6 ROGATION SHALL BE RECORDED IN A MANNER SUCH THAT THE PERSONS IN THE
7 RECORDING ARE SHOWN AND THE SPEECH IS INTELLIGIBLE. A COPY OF THE
8 RECORDING SHALL BE SUBJECT TO DISCOVERY PURSUANT TO SECTION 331.2 OF
9 THIS ARTICLE. THIS SUBDIVISION SHALL NOT APPLY TO A STATEMENT MADE TO
10 THE PROBATION SERVICE, IN ACCORDANCE WITH SUBDIVISION SEVEN OF SECTION
11 308.1 OF THIS ARTICLE, EXCEPT WHEN SUCH STATEMENT MAY BE ADMISSIBLE
12 UNDER SUCH SUBDIVISION SEVEN OF SECTION 308.1.

13 S 4. Section 60.25 of the criminal procedure law, subparagraph (ii) of
14 paragraph (a) of subdivision 1 as amended by chapter 479 of the laws of
15 1977, is amended to read as follows:

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

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

21 (a) Such witness testifies that:

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

25 (ii) On a subsequent occasion he OR SHE observed, 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, a person OR, WHERE
28 THE OBSERVATION IS MADE PURSUANT TO A BLIND PROCEDURE AS DEFINED IN
29 PARAGRAPH (C) OF THIS SUBDIVISION, A PICTORIAL, PHOTOGRAPHIC, ELECTRON-
30 IC, FILMED OR VIDEO RECORDED REPRODUCTION OF A PERSON whom he OR SHE
31 recognized as the same person whom he OR SHE had observed on the first
32 or incriminating occasion; and

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

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

43 (C) (I) FOR PURPOSES OF THIS SECTION, A "BLIND PROCEDURE" IS ONE IN
44 WHICH THE WITNESS IDENTIFIES A PERSON IN AN ARRAY OF PICTORIAL, PHOTO-
45 GRAPHIC, ELECTRONIC, FILMED OR VIDEO RECORDED REPRODUCTIONS UNDER
46 CIRCUMSTANCES THAT COMPLY WITH THE APPLICABLE PROVISIONS OF SECTION
47 60.80 OF THE CRIMINAL PROCEDURE LAW AND THE PROTOCOLS PROMULGATED IN
48 ACCORDANCE WITH SUBDIVISION TWENTY-ONE OF SECTION EIGHT HUNDRED THIRTY-
49 SEVEN OF THE EXECUTIVE LAW AND WHERE, AT THE TIME THE IDENTIFICATION IS
50 MADE, EACH PUBLIC SERVANT ADMINISTERING SUCH PROCEDURE AND WITH WHOM THE
51 WITNESS COMMUNICATES WITH RESPECT TO THE CONDUCTING OF SUCH PROCEDURE
52 DOES NOT KNOW WHICH PERSON IN THE ARRAY IS THE SUSPECT.

53 (II) THE FAILURE OF A PUBLIC SERVANT TO FOLLOW SUCH A PROCEDURE SHALL
54 RESULT IN THE PRECLUSION OF TESTIMONY REGARDING THE IDENTIFICATION
55 PROCEDURE AS EVIDENCE IN CHIEF, BUT SHALL NOT, IN AND OF ITSELF, CONSTI-
56 TUTE A LEGAL BASIS TO SUPPRESS EVIDENCE IN RESPONSE TO A MOTION MADE

PURSUANT TO SUBDIVISION SIX OF SECTION 710.20 OF THIS CHAPTER. THIS PARAGRAPH, IN AND OF ITSELF, NEITHER LIMITS NOR EXPANDS SUBDIVISION SIX OF SECTION 710.20 OF THIS CHAPTER.

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

S 5. Section 60.30 of the criminal procedure law, as amended by chapter 479 of the laws of 1977, is amended to read as follows:

S 60.30 Rules of evidence; identification by means of previous recognition, in addition to present identification.

In any criminal proceeding in which the defendant's commission of an offense is in issue, a witness who testifies that (a) he OR SHE observed the person claimed by the people to be the defendant either at the time and place of the commission of the offense or upon some other occasion relevant to the case, and (b) on the basis of present recollection, the defendant is the person in question and (c) on a subsequent occasion he OR SHE observed the defendant, OR WHERE THE OBSERVATION IS MADE PURSUANT TO A BLIND PROCEDURE, AS DEFINED IN PARAGRAPH (C) OF SUBDIVISION ONE OF SECTION 60.25 OF THIS ARTICLE, A PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEO RECORDED REPRODUCTION OF THE DEFENDANT, under circumstances consistent with such rights as an accused person may derive under the constitution of this state or of the United States, and then also recognized him OR HER OR THE PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEO RECORDED REPRODUCTION OF HIM OR HER as the same person whom he OR SHE had observed on the first or incriminating occasion, may, in addition to making an identification of the defendant at the criminal proceeding on the basis of present recollection as the person whom he OR SHE observed on the first or incriminating occasion, also describe his OR HER previous recognition of the defendant and testify that the person whom he OR SHE observed OR WHOSE PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEO RECORDED REPRODUCTION HE OR SHE OBSERVED on such second occasion is the same person whom he OR SHE had observed on the first or incriminating occasion. Such testimony AND SUCH PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEO RECORDED REPRODUCTION constitutes evidence in chief.

S 6. The criminal procedure law is amended by adding a new section 60.80 to read as follows:

S 60.80 EYEWITNESS IDENTIFICATION PROCEDURES.

IN ANY ARRAY AND ANY LIVE LINEUP IDENTIFICATION PROCEDURE CONDUCTED BY A PUBLIC SERVANT, THE FOLLOWING PROCEDURES SHALL BE FOLLOWED:

1. THE IDENTIFICATION PROCEDURE SHALL BE CONDUCTED AS A "BLIND PROCEDURE" AS DEFINED IN SUBPARAGRAPH (I) OF PARAGRAPH (C) OF SUBDIVISION ONE OF SECTION 60.25 OF THIS ARTICLE.

2. PRIOR TO ANY SUCH IDENTIFICATION PROCEDURE, THE EYEWITNESS SHALL BE INSTRUCTED THAT:

(A) THE PERPETRATOR MAY OR MAY NOT BE AMONG THE PERSONS IN THE IDENTIFICATION PROCEDURE;

(B) THE ADMINISTRATOR DOES NOT KNOW WHO THE PERPETRATOR IS;

1 (C) THE EYEWITNESS SHOULD NOT FEEL COMPELLED TO MAKE AN IDENTIFICA-
2 TION;

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

5 (E) THE PROCEDURE REQUIRES THE ADMINISTRATOR TO ASK AND THEN DOCUMENT
6 A STATEMENT, MADE IN THE WITNESS'S OWN WORDS, OF THE WITNESS'S LEVEL OF
7 CONFIDENCE IN THE ACCURACY OF ANY IDENTIFICATION.

8 3. (A) UNLESS IMPRACTICABLE, THE PHOTOGRAPH OF THE SUSPECT USED IN A
9 PHOTO ARRAY SHALL BE CONTEMPORARY AND RESEMBLE THE SUSPECT'S APPEARANCE
10 AT THE TIME OF THE OFFENSE. WHEN SUCH IS IMPRACTICABLE, THE INVESTIGATOR
11 SHALL DOCUMENT, IN REASONABLY CONTEMPORANEOUS WRITTEN FORM, THE REASONS
12 THEREFOR.

13 (B) IN A PHOTO ARRAY, THERE SHALL BE NO CHARACTERISTICS OF THE PHOTO-
14 GRAPHS THEMSELVES OR THE BACKGROUND ON WHICH THEY ARE PLACED THAT WOULD
15 MAKE ANY PHOTOGRAPH STAND OUT.

16 (C) A PHOTO ARRAY OR LIVE LINEUP SHALL BE COMPOSED SO THAT THE FILLERS
17 GENERALLY RESEMBLE THE EYEWITNESS'S DESCRIPTION OF THE PERPETRATOR,
18 WHILE ENSURING THAT THE SUSPECT DOES NOT STAND OUT FROM THE FILLERS.

19 (D) IF THERE ARE MULTIPLE EYEWITNESSES, EACH EYEWITNESS SHALL VIEW THE
20 PHOTO ARRAY OR LIVE LINEUP SEPARATELY, THE SUSPECT SHALL BE PLACED IN A
21 DIFFERENT POSITION IN THE LIVE LINEUP AND/OR PHOTO ARRAY FOR EACH
22 EYEWITNESS, AND THE EYEWITNESSES SHALL NOT BE PERMITTED TO COMMUNICATE
23 WITH EACH OTHER UNTIL ALL OF THE IDENTIFICATION PROCEDURES HAVE BEEN
24 COMPLETED.

25 4. (A) NOTHING SHALL BE SAID TO AN EYEWITNESS THAT MIGHT INFLUENCE HIS
26 OR HER IDENTIFICATION OF ANY PARTICULAR PERSON IN THE LIVE LINEUP OR
27 PHOTO ARRAY.

28 (B) IF THE EYEWITNESS IDENTIFIES A PERSON AS THE PERPETRATOR, THE
29 EYEWITNESS SHALL NOT BE PROVIDED ANY INFORMATION CONCERNING SUCH PERSON
30 BEFORE THE ADMINISTRATOR OBTAINS THE EYEWITNESS'S CONFIDENCE STATEMENT
31 ABOUT THE SELECTION.

32 5. (A) A RECORD OF THE IDENTIFICATION PROCEDURE SHALL BE MADE THAT
33 INCLUDES ALL IDENTIFICATION AND NON-IDENTIFICATION RESULTS OBTAINED
34 DURING THE IDENTIFICATION PROCEDURES.

35 (B) (I) A VIDEO RECORDING SHALL BE MADE OF THE ENTIRE IDENTIFICATION
36 PROCEDURE, INCLUDING BUT NOT LIMITED TO THE SETTING UP OF THE PROCEDURE
37 AND THE INSTRUCTIONS AND STATEMENTS OF WITNESSES AND THE STATEMENT OR
38 STATEMENTS MADE IN COMPLIANCE WITH PARAGRAPH (E) OF SUBDIVISION TWO OF
39 THIS SECTION.

40 (II) NOTWITHSTANDING THE REQUIREMENTS OF SUBPARAGRAPH (I) OF THIS
41 PARAGRAPH, FOLLOWING A WRITTEN MOTION OF THE PROSECUTOR, AND AFTER AN
42 OPPORTUNITY FOR A HEARING, THE COURT MAY FIND THAT A VIDEO RECORDING WAS
43 NOT REQUIRED IF THE PEOPLE SHOW BY CLEAR AND CONVINCING EVIDENCE THAT

44 (A) THE VIDEO RECORDING EQUIPMENT MALFUNCTIONED WHILE THE RECORDING OF
45 THE IDENTIFICATION PROCEDURE WAS ATTEMPTED; (B) VIDEO RECORDING EQUIP-
46 MENT WAS NOT REASONABLY AVAILABLE BECAUSE IT WAS BEING USED TO RECORD
47 OTHER IDENTIFICATION PROCEDURES IN ACCORDANCE WITH THIS SECTION, AND NO
48 SUCH IDENTIFICATION PROCEDURE COULD REASONABLY HAVE BEEN DELAYED; OR (C)
49 SUCH IDENTIFICATION PROCEDURE WAS MADE AT A LOCATION NOT EQUIPPED WITH
50 AN APPROPRIATE RECORDING DEVICE, IT WAS NOT REASONABLY POSSIBLE, UNDER
51 THE CIRCUMSTANCES, TO BRING EQUIPMENT TO SUCH LOCATION OR MOVE THE
52 PROCEDURE TO A LOCATION AT WHICH APPROPRIATE VIDEO RECORDING WAS AVAIL-
53 ABLE, AND THE REASON FOR USING THE LOCATION WAS NOT TO SUBVERT THE
54 INTENT OF THE LAW.

(III) VIDEO RECORDING, AS REQUIRED BY THIS PARAGRAPH, SHALL BE CONDUCTED IN ACCORDANCE WITH STANDARDS CONSISTENT WITH THIS PARAGRAPH ESTABLISHED IN REGULATIONS BY THE DIVISION OF CRIMINAL JUSTICE SERVICES.

6. THE FOLLOWING DEFINITIONS SHALL APPLY TO THIS SECTION:

(A) "BLIND" MEANS AT THE TIME THE IDENTIFICATION IS MADE, EACH PUBLIC SERVANT ADMINISTERING THE IDENTIFICATION PROCEDURE AND WITH WHOM THE WITNESS COMMUNICATES DOES NOT KNOW WHICH PERSON IN THE ARRAY IS THE SUSPECT.

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

(C) "FILLER" MEANS EITHER A PERSON OR A PHOTOGRAPH OF A PERSON WHO IS NOT SUSPECTED OF THE OFFENSE UNDER INVESTIGATION AND IS INCLUDED IN AN IDENTIFICATION PROCEDURE.

(D) "IDENTIFICATION PROCEDURE" MEANS A LIVE LINEUP OR A PHOTO ARRAY.

(E) "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.

(F) "ARRAY" MEANS ANY PHOTOGRAPHIC ARRAY.

(G) "PHOTOGRAPHIC ARRAY" OR "PHOTO ARRAY" MEANS AN IDENTIFICATION PROCEDURE IN WHICH AN ARRAY OF PHOTOGRAPHS, INCLUDING A PHOTOGRAPH OF THE SUSPECTED PERPETRATOR OF AN OFFENSE AND 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.

S 7. Subdivision 6 of section 710.20 of the criminal procedure law, as amended by chapter 8 of the laws of 1976 and as renumbered by chapter 481 of the laws of 1983, is amended to read as follows:

6. Consists of potential testimony regarding an observation of the defendant either at the time or place of the commission of the offense or upon some other occasion relevant to the case, which potential testimony would not be admissible upon the prospective trial of such charge owing to an improperly made previous identification of the defendant OR IDENTIFICATION OF A PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEO RECORDED REPRODUCTION OF THE DEFENDANT by the prospective witness. A CLAIM THAT SUCH PREVIOUS IDENTIFICATION OF THE DEFENDANT OR IDENTIFICATION OF A PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED OR VIDEO RECORDED REPRODUCTION OF THE DEFENDANT BY A PROSPECTIVE WITNESS DID NOT COMPLY WITH PARAGRAPH (C) OF SUBDIVISION ONE OF SECTION 60.25 OR SECTION 60.80 OF THIS CHAPTER OR WITH THE PROTOCOLS PROMULGATED IN ACCORDANCE WITH SUBDIVISION TWENTY-ONE OF SECTION EIGHT HUNDRED THIRTY-SEVEN OF THE EXECUTIVE LAW SHALL NOT, IN AND OF ITSELF, CONSTITUTE A LEGAL BASIS TO SUPPRESS EVIDENCE IN RESPONSE TO A MOTION MADE PURSUANT TO THIS SUBDIVISION.

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

1. Whenever the people intend to offer at a trial (a) evidence of a statement made by a defendant to a public servant, which statement if involuntarily made would render the evidence thereof suppressible upon motion pursuant to subdivision three of section 710.20 OF THIS ARTICLE, or (b) testimony regarding an observation of the defendant either at the time or place of the commission of the offense or upon some other occasion relevant to the case, to be given by a witness who has previously

1 identified him OR HER OR A PICTORIAL, PHOTOGRAPHIC, ELECTRONIC, FILMED
2 OR VIDEO RECORDED REPRODUCTION OF HIM OR HER as such, they must serve
3 upon the defendant a notice of such intention, specifying the evidence
4 intended to be offered.

5 S 9. Section 343.3 of the family court act, as added by chapter 920 of
6 the laws of 1982, is amended to read as follows:

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

12 (a) such witness testifies that:

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

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

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

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

34 (C) (I) FOR PURPOSES OF THIS SECTION, A "BLIND PROCEDURE" IS ONE IN
35 WHICH THE WITNESS IDENTIFIES A PERSON IN AN ARRAY OF PICTORIAL, PHOTO-
36 GRAPHIC, ELECTRONIC, FILMED OR VIDEO RECORDED REPRODUCTIONS UNDER
37 CIRCUMSTANCES THAT COMPLY WITH THE APPLICABLE PROVISIONS OF SECTION
38 60.80 OF THE CRIMINAL PROCEDURE LAW AND THE PROTOCOLS PROMULGATED IN
39 ACCORDANCE WITH SUBDIVISION TWENTY-ONE OF SECTION EIGHT HUNDRED THIRTY-
40 SEVEN OF THE EXECUTIVE LAW AND WHERE, AT THE TIME THE IDENTIFICATION IS
41 MADE, EACH PUBLIC SERVANT ADMINISTERING SUCH PROCEDURE AND WITH WHOM THE
42 WITNESS COMMUNICATES WITH RESPECT TO THE CONDUCTING OF SUCH PROCEDURE
43 DOES NOT KNOW WHICH PERSON IN THE ARRAY IS THE SUSPECT.

44 (II) THE FAILURE OF A PUBLIC SERVANT TO FOLLOW SUCH A PROCEDURE SHALL
45 RESULT IN THE PRECLUSION OF TESTIMONY REGARDING THE IDENTIFICATION
46 PROCEDURE AS EVIDENCE IN CHIEF, BUT SHALL NOT, IN OF OF ITSELF, CONSTI-
47 TUTE A LEGAL BASIS TO SUPPRESS EVIDENCE MADE PURSUANT TO SUBDIVISION SIX
48 OF SECTION 710.20 OF THE CRIMINAL PROCEDURE LAW. THIS PARAGRAPH, IN AND
49 OF ITSELF, NEITHER LIMITS NOR EXPANDS SUBDIVISION SIX OF SECTION 710.20
50 OF THE CRIMINAL PROCEDURE LAW.

51 2. Under circumstances prescribed in subdivision one OF THIS SECTION,
52 such witness may testify at the proceeding that the person whom he OR
53 SHE observed and recognized OR WHOSE PICTORIAL, PHOTOGRAPHIC, ELECTRON-
54 IC, FILMED OR VIDEO RECORDED REPRODUCTION HE OR SHE OBSERVED AND RECOG-
55 NIZED on the second occasion is the same person whom he OR SHE observed
56 on the first or incriminating occasion. Such testimony, together with

1 the evidence that the respondent is in fact the person whom the witness
2 observed and recognized OR WHOSE PICTORIAL, PHOTOGRAPHIC, ELECTRONIC,
3 FILMED OR VIDEO RECORDED REPRODUCTION HE OR SHE OBSERVED AND RECOGNIZED
4 on the second occasion, constitutes evidence in chief.

5 S 10. Section 343.4 of the family court act, as added by chapter 920
6 of the laws of 1982, is amended to read as follows:

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

35 S 11. Section 837 of the executive law is amended by adding a new
36 subdivision 21 to read as follows:

37 21. PROMULGATE BY REGULATION A STANDARDIZED AND DETAILED WRITTEN
38 PROTOCOL THAT IS GROUNDED IN EVIDENCE-BASED PRINCIPLES FOR THE ADMINIS-
39 TRATION OF PHOTOGRAPHIC ARRAY AND LIVE LINEUP IDENTIFICATION PROCEDURES
40 FOR POLICE AGENCIES AND STANDARDIZED FORMS FOR USE BY SUCH AGENCIES IN
41 THE REPORTING AND RECORDING OF SUCH IDENTIFICATION PROCEDURE. SUCH
42 PROTOCOL SHALL BE CONSISTENT IN ALL RESPECTS WITH SECTION 60.80 OF THE
43 CRIMINAL PROCEDURE LAW.

44 S 12. Subdivision 4 of section 840 of the executive law is amended by
45 adding a new paragraph (c) to read as follows:

46 (C) DISSEMINATE THE WRITTEN POLICIES AND PROCEDURES PROMULGATED IN
47 ACCORDANCE WITH SECTION 60.80 OF THE CRIMINAL PROCEDURE LAW AND SUBDIVI-
48 SION TWENTY-ONE OF SECTION EIGHT HUNDRED THIRTY-SEVEN OF THIS ARTICLE TO
49 ALL POLICE DEPARTMENTS AND LAW ENFORCEMENT AGENCIES IN THIS STATE AND
50 IMPLEMENT A TRAINING PROGRAM FOR ALL CURRENT AND NEW POLICE OFFICERS AND
51 FOR RELEVANT LAW ENFORCEMENT OFFICIALS REGARDING THE POLICIES AND PROCE-
52 DURES ESTABLISHED PURSUANT TO SECTION 60.80 OF THE CRIMINAL PROCEDURE
53 LAW AND SUBDIVISION TWENTY-ONE OF SECTION EIGHT HUNDRED THIRTY-SEVEN OF
54 THIS ARTICLE.

55 S 13. This act shall take effect on the thirtieth day after it shall
56 have become a law; provided, however, that sections one, two and three

1 of this act shall apply to alleged confessions, admissions and state-
2 ments made on or after such effective date; and provided, further,
3 sections four through eleven of this act shall take effect on the nine-
4 tieth day after it shall have become a law.