

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

5875--A

2015-2016 Regular Sessions

I N S E N A T E

June 9, 2015

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.

LBD11568-02-5

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

10 (C) NOTWITHSTANDING THE REQUIREMENT OF PARAGRAPH (A) OF THIS SUBDIVI-
11 SION, UPON A SHOWING OF GOOD CAUSE BY THE PROSECUTOR, THE CUSTODIAL
12 INTERROGATION NEED NOT BE RECORDED. GOOD CAUSE SHALL INCLUDE, BUT NOT BE
13 LIMITED TO:

14 (I) IF ELECTRONIC RECORDING EQUIPMENT MALFUNCTIONS.

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

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

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

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

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

27 (VII) IF THE STATEMENT IS MADE AFTER A SUSPECT HAS REFUSED TO PARTIC-
28 IPATE IN THE INTERROGATION IF IT IS RECORDED, AND APPROPRIATE EFFORT TO
29 DOCUMENT SUCH REFUSAL IS MADE.

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

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

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

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

51 (E) VIDEO RECORDING AS REQUIRED BY THIS SECTION SHALL BE CONDUCTED IN
52 ACCORDANCE WITH STANDARDS ESTABLISHED BY RULE OF THE DIVISION OF CRIMI-
53 NAL JUSTICE SERVICES.

54 S 2. Subdivision 3 of section 344.2 of the family court act is renum-
55 bered 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.