

# STATE OF NEW YORK

4239

2017-2018 Regular Sessions

## IN ASSEMBLY

February 1, 2017

Introduced by M. of A. LENTOL, O'DONNELL, SEPULVEDA, QUART -- read once  
and referred to the Committee on Codes

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  
18 in detention in connection with criminal charges that have been or may  
19 be filed against them.

20 (b) No confession, admission or other statement shall be subject to a  
21 motion to suppress pursuant to subdivision three of section 710.20 of  
22 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.

LBD03939-02-7

1 gation in a detention facility as defined in paragraph (a) of this  
2 subdivision. However, when the people offer into evidence against a  
3 defendant a confession, admission or other statement made by a person  
4 with respect to an alleged offense specified in paragraph (a) of this  
5 subdivision that has not been video recorded, the court shall consider  
6 the failure to record as a factor, in accordance with paragraph (c) of  
7 this subdivision, in determining whether such confession, admission or  
8 other statement shall be admissible.

9 (c) Notwithstanding the requirement of paragraph (a) of this subdivi-  
10 sion, following a written motion of the prosecutor asserting good cause  
11 pursuant to this paragraph, filed within the time periods specified in  
12 section 710.30 of this chapter, and after an opportunity for a hearing,  
13 upon clear and convincing proof of such good cause, the court may find  
14 that such interrogation need not have been recorded. Such good cause may  
15 include the following:

16 (i) The video recording equipment malfunctioned while the recording of  
17 the interrogation was attempted.

18 (ii) Video recording equipment was not reasonably available because it  
19 was being used to record other interrogations in accordance with this  
20 section, and no such interrogation could reasonably have been delayed.

21 (iii) The statement was made in response to pedigree questions that  
22 are reasonably and routinely asked during arrest processing.

23 (iv) The statement was made spontaneously by the individual and not in  
24 response to questioning by a public servant.

25 (v) The statement was made during an interrogation that was conducted  
26 when the interviewer was unaware and had no reason to suspect that a  
27 qualifying offense may have occurred.

28 (vi) The statement was made after the individual voluntarily, and  
29 without express or implied encouragement by a public servant, refused to  
30 participate in the interrogation if recorded, and the circumstances of  
31 the refusal were recorded or, if such a record of the refusal was  
32 refused as well, reasonably contemporaneous documentation of the circum-  
33 stances of the refusal was made.

34 (vii) It was the reasonable belief of the appropriate law enforcement  
35 official or officials that a video recording would jeopardize the safety  
36 of a specific person or persons or reveal the identity of one or more  
37 specific confidential informants, and reasonably contemporaneous  
38 documentation of the circumstances of such belief was made.

39 (viii) Such statement was made at a location not equipped with an  
40 appropriate recording device, it was not reasonably possible, under the  
41 circumstances, to bring equipment to such location or transfer the indi-  
42 vidual to a detention facility for interrogation, and the reason for  
43 using such location was not to subvert the intent of the law. For  
44 purposes of this section, the term "location" shall include those  
45 locations specified in paragraph (b) of subdivision four of section  
46 305.2 of the family court act.

47 (d) In the event that an interrogation that qualified for recording  
48 under paragraph (a) of this subdivision was not recorded and the court  
49 determines that the non-recorded, alleged confession, admission or other  
50 statement is lawfully admissible, then, upon request of the defendant,  
51 the court must instruct the jury that the law generally requires record-  
52 ing under such circumstances and that the people's failure to record the  
53 defendant's alleged confession, admission or other statement may be  
54 considered in its deliberations, including, but not limited to, in  
55 determining whether such alleged confession, admission or other state-  
56 ment was voluntarily made, is accurate or truthful, or was made at all.

1 When so instructing the jury, if the court has found that good cause for  
2 non-recording existed in accordance with paragraph (c) of this subdivi-  
3 sion, the court, at the request of the people, shall advise the jury of  
4 the factor or factors set forth in paragraph (c) of this subdivision  
5 that the court found to be proved, without disclosing the court's find-  
6 ing with respect thereto, and advise the jury that it may make an inde-  
7 pendent determination concerning what weight, if any, to give to the  
8 failure to record.

9 (e) Video recording as required by this section shall be conducted in  
10 accordance with standards consistent with this subdivision established  
11 in regulations by the division of criminal justice services.

12 § 2. Subdivision 8 of section 305.2 of the family court act, as  
13 amended by chapter 398 of the laws of 1983, is amended and a new subdivi-  
14 sion 5-a is added to read as follows:

15 5-a. When at any time a child is subject to interrogation by a public  
16 servant at a facility designated by the chief administrator of the  
17 courts as a suitable place for the questioning of juveniles pursuant to  
18 subdivision four of this section, and the public servant is aware or has  
19 reason to suspect that the child interrogated committed an act that  
20 would be a crime if committed by an adult and which is under investi-  
21 gation by such public servant or a law enforcement entity associated  
22 with such public servant, the entire interrogation, including the giving  
23 of any required notice to the child as to his or her rights and his or  
24 her waiver of any rights, shall be video recorded and governed in  
25 accordance with the provisions of subdivision three of section 60.45 of  
26 the criminal procedure law. The interrogation shall be recorded in a  
27 manner such that the persons in the recording are shown and the speech  
28 is intelligible. A copy of the recording shall be subject to discovery  
29 pursuant to section 331.2 of this article. This subdivision shall not  
30 apply to a statement made to the probation service, in accordance with  
31 subdivision seven of section 308.1 of this part, except when such state-  
32 ment may be admissible under such subdivision seven of section 308.1.

33 8. In determining the suitability of questioning and determining the  
34 reasonable period of time for questioning such a child, the child's age,  
35 the presence or absence of his or her parents or other persons legally  
36 responsible for his or her care [~~and~~], notification pursuant to subdivi-  
37 sion three and, where the child has been interrogated at a facility  
38 designated by the chief administrator of the courts as a suitable place  
39 for the questioning of juveniles, whether the interrogation was in  
40 compliance with the video-recording and disclosure requirements of  
41 subdivision five-a of this section shall be included among relevant  
42 considerations.

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

45 3. When at any time a child is subject to interrogation by a public  
46 servant at a facility designated by the chief administrator of the  
47 courts as a suitable place for the questioning of juveniles pursuant to  
48 subdivision four of section 305.2 of this article, and the public serv-  
49 ant is aware or has reason to suspect that the child interrogated  
50 committed an act that would constitute a crime if committed by an adult  
51 and which is under investigation by such public servant or a law  
52 enforcement entity associated with such public servant, the entire  
53 interrogation, including the giving of any required notice to the child  
54 as to his or her rights and his or her waiver of any rights, shall be  
55 video recorded and governed in accordance with the provisions of subdivi-  
56 vision three of section 60.45 of the criminal procedure law. The inter-

1 rogation shall be recorded in a manner such that the persons in the  
2 recording are shown and the speech is intelligible. A copy of the  
3 recording shall be subject to discovery pursuant to section 331.2 of  
4 this article. This subdivision shall not apply to a statement made to  
5 the probation service, in accordance with subdivision seven of section  
6 308.1 of this article, except when such statement may be admissible  
7 under such subdivision seven of section 308.1.

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

11 § 60.25 Rules of evidence; identification by means of previous recogni-  
12 tion, in absence of present identification.

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

16 (a) Such witness testifies that:

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

20 (ii) On a subsequent occasion he or she observed, under circumstances  
21 consistent with such rights as an accused person may derive under the  
22 constitution of this state or of the United States, a person or, where  
23 the observation is made pursuant to a blind procedure as defined in  
24 paragraph (c) of this subdivision, a pictorial, photographic, electronic,  
25 filmed or video recorded reproduction of a person whom he or she  
26 recognized as the same person whom he or she had observed on the first  
27 or incriminating occasion; and

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

31 (b) It is established that the defendant is in fact the person whom  
32 the witness observed and recognized or whose pictorial, photographic,  
33 electronic, filmed or video recorded reproduction the witness observed  
34 and recognized on the second occasion. Such fact may be established by  
35 testimony of another person or persons to whom the witness promptly  
36 declared his or her recognition on such occasion and by such pictorial,  
37 photographic, electronic, filmed or video recorded reproduction.

38 (c) (i) For purposes of this section, a "blind procedure" is one in  
39 which the witness identifies a person in an array of pictorial, photo-  
40 graphic, electronic, filmed or video recorded reproductions under  
41 circumstances that comply with the applicable provisions of section  
42 60.80 of the criminal procedure law and the protocols promulgated in  
43 accordance with subdivision twenty-one of section eight hundred thirty-  
44 seven of the executive law and where, at the time the identification is  
45 made, each public servant administering such procedure and with whom the  
46 witness communicates with respect to the conducting of such procedure  
47 does not know which person in the array is the suspect.

48 (ii) The failure of a public servant to follow such a procedure shall  
49 result in the preclusion of testimony regarding the identification  
50 procedure as evidence in chief, but shall not, in and of itself, consti-  
51 tute a legal basis to suppress evidence in response to a motion made  
52 pursuant to subdivision six of section 710.20 of this chapter. This  
53 paragraph, in and of itself, neither limits nor expands subdivision six  
54 of section 710.20 of this chapter.

55 2. Under circumstances prescribed in subdivision one of this section,  
56 such witness may testify at the criminal proceeding that the person whom

1 he or she observed and recognized or whose pictorial, photographic,  
2 electronic, filmed or video recorded reproduction he or she observed and  
3 recognized on the second occasion is the same person whom he or she  
4 observed on the first or incriminating occasion. Such testimony,  
5 together with the evidence that the defendant is in fact the person whom  
6 the witness observed and recognized or whose pictorial, photographic,  
7 electronic, filmed or video recorded reproduction he or she observed and  
8 recognized on the second occasion, constitutes evidence in chief.

9 § 5. Section 60.30 of the criminal procedure law, as amended by chap-  
10 ter 479 of the laws of 1977, is amended to read as follows:

11 § 60.30 Rules of evidence; identification by means of previous recogni-  
12 tion, in addition to present identification.

13 In any criminal proceeding in which the defendant's commission of an  
14 offense is in issue, a witness who testifies that (a) he or she observed  
15 the person claimed by the people to be the defendant either at the time  
16 and place of the commission of the offense or upon some other occasion  
17 relevant to the case, and (b) on the basis of present recollection, the  
18 defendant is the person in question and (c) on a subsequent occasion he  
19 or she observed the defendant, or where the observation is made pursuant  
20 to a blind procedure, as defined in paragraph (c) of subdivision one of  
21 section 60.25 of this article, a pictorial, photographic, electronic,  
22 filmed or video recorded reproduction of the defendant, under circum-  
23 stances consistent with such rights as an accused person may derive  
24 under the constitution of this state or of the United States, and then  
25 also recognized him or her or the pictorial, photographic, electronic,  
26 filmed or video recorded reproduction of him or her as the same person  
27 whom he or she had observed on the first or incriminating occasion, may,  
28 in addition to making an identification of the defendant at the criminal  
29 proceeding on the basis of present recollection as the person whom he or  
30 she observed on the first or incriminating occasion, also describe his  
31 or her previous recognition of the defendant and testify that the person  
32 whom he or she observed or whose pictorial, photographic, electronic,  
33 filmed or video recorded reproduction he or she observed on such second  
34 occasion is the same person whom he or she had observed on the first or  
35 incriminating occasion. Such testimony and such pictorial, photograph-  
36 ic, electronic, filmed or video recorded reproduction constitutes  
37 evidence in chief.

38 § 6. The criminal procedure law is amended by adding a new section  
39 60.80 to read as follows:

40 § 60.80 Eyewitness identification procedures.

41 In any array and any live lineup identification procedure conducted by  
42 a public servant, the following procedures shall be followed:

43 1. The identification procedure shall be conducted as a "blind proce-  
44 dure" as defined in subparagraph (i) of paragraph (c) of subdivision one  
45 of section 60.25 of this article.

46 2. Prior to any such identification procedure, the eyewitness shall be  
47 instructed that:

48 (a) the perpetrator may or may not be among the persons in the iden-  
49 tification procedure;

50 (b) the administrator does not know who the perpetrator is;

51 (c) the eyewitness should not feel compelled to make an identifica-  
52 tion;

53 (d) the investigation will continue whether or not an identifica-  
54 tion is made; and

1 (e) the procedure requires the administrator to ask and then document  
2 a statement, made in the witness's own words, of the witness's level of  
3 confidence in the accuracy of any identification.

4 3. (a) Unless impracticable, the photograph of the suspect used in a  
5 photo array shall be contemporary and resemble the suspect's appearance  
6 at the time of the offense. When such is impracticable, the investigator  
7 shall document, in reasonably contemporaneous written form, the reasons  
8 therefor.

9 (b) In a photo array, there shall be no characteristics of the photo-  
10 graphs themselves or the background on which they are placed that would  
11 make any photograph stand out.

12 (c) A photo array or live lineup shall be composed so that the fillers  
13 generally resemble the eyewitness's description of the perpetrator,  
14 while ensuring that the suspect does not stand out from the fillers.

15 (d) If there are multiple eyewitnesses, each eyewitness shall view the  
16 photo array or live lineup separately, the suspect shall be placed in a  
17 different position in the live lineup and/or photo array for each  
18 eyewitness, and the eyewitnesses shall not be permitted to communicate  
19 with each other until all of the identification procedures have been  
20 completed.

21 4. (a) Nothing shall be said to an eyewitness that might influence his  
22 or her identification of any particular person in the live lineup or  
23 photo array.

24 (b) If the eyewitness identifies a person as the perpetrator, the  
25 eyewitness shall not be provided any information concerning such person  
26 before the administrator obtains the eyewitness's confidence statement  
27 about the selection.

28 5. (a) A record of the identification procedure shall be made that  
29 includes all identification and non-identification results obtained  
30 during the identification procedures.

31 (b) (i) A video recording shall be made of the entire identification  
32 procedure, including but not limited to the setting up of the procedure  
33 and the instructions and statements of witnesses and the statement or  
34 statements made in compliance with paragraph (e) of subdivision two of  
35 this section.

36 (ii) Notwithstanding the requirements of subparagraph (i) of this  
37 paragraph, following a written motion of the prosecutor, and after an  
38 opportunity for a hearing, the court may find that a video recording was  
39 not required if the people show by clear and convincing evidence that  
40 (A) the video recording equipment malfunctioned while the recording of  
41 the identification procedure was attempted; (B) video recording equip-  
42 ment was not reasonably available because it was being used to record  
43 other identification procedures in accordance with this section, and no  
44 such identification procedure could reasonably have been delayed; or (C)  
45 such identification procedure was made at a location not equipped with  
46 an appropriate recording device, it was not reasonably possible, under  
47 the circumstances, to bring equipment to such location or move the  
48 procedure to a location at which appropriate video recording was avail-  
49 able, and the reason for using the location was not to subvert the  
50 intent of the law.

51 (iii) Video recording, as required by this paragraph, shall be  
52 conducted in accordance with standards consistent with this paragraph  
53 established in regulations by the division of criminal justice services.

54 6. The following definitions shall apply to this section:

55 (a) "Blind" means at the time the identification is made, each public  
56 servant administering the identification procedure and with whom the

1 witness communicates does not know which person in the array is the  
2 suspect.

3 (b) "Eyewitness" or "witness" means a person who observes another  
4 person at or near the scene of an offense or upon some other occasion  
5 relevant to the investigation or case.

6 (c) "Filler" means either a person or a photograph of a person who is  
7 not suspected of the offense under investigation and is included in an  
8 identification procedure.

9 (d) "Identification procedure" means a live lineup or a photo array.

10 (e) "Live lineup" means an identification procedure in which a group  
11 of persons, including the suspected perpetrator of an offense and other  
12 persons not suspected of the offense, is displayed to an eyewitness for  
13 the purpose of determining whether the eyewitness identifies the suspect  
14 as the perpetrator.

15 (f) "Array" means any photographic array.

16 (g) "Photographic array" or "photo array" means an identification  
17 procedure in which an array of photographs, including a photograph of  
18 the suspected perpetrator of an offense and other persons not suspected  
19 of the offense, is displayed to an eyewitness either in hard copy form  
20 or via computer for the purpose of determining whether the eyewitness  
21 identifies the suspect as the perpetrator.

22 § 7. Subdivision 6 of section 710.20 of the criminal procedure law, as  
23 amended by chapter 8 of the laws of 1976 and as renumbered by chapter  
24 481 of the laws of 1983, is amended to read as follows:

25 6. Consists of potential testimony regarding an observation of the  
26 defendant either at the time or place of the commission of the offense  
27 or upon some other occasion relevant to the case, which potential testi-  
28 mony would not be admissible upon the prospective trial of such charge  
29 owing to an improperly made previous identification of the defendant or  
30 identification of a pictorial, photographic, electronic, filmed or video  
31 recorded reproduction of the defendant by the prospective witness. A  
32 claim that such previous identification of the defendant or identifica-  
33 tion of a pictorial, photographic, electronic, filmed or video recorded  
34 reproduction of the defendant by a prospective witness did not comply  
35 with paragraph (c) of subdivision one of section 60.25 or section 60.80  
36 of this chapter or with the protocols promulgated in accordance with  
37 subdivision twenty-one of section eight hundred thirty-seven of the  
38 executive law shall not, in and of itself, constitute a legal basis to  
39 suppress evidence in response to a motion made pursuant to this subdivi-  
40 sion.

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

44 1. Whenever the people intend to offer at a trial (a) evidence of a  
45 statement made by a defendant to a public servant, which statement if  
46 involuntarily made would render the evidence thereof suppressible upon  
47 motion pursuant to subdivision three of section 710.20 of this article,  
48 or (b) testimony regarding an observation of the defendant either at the  
49 time or place of the commission of the offense or upon some other occa-  
50 sion relevant to the case, to be given by a witness who has previously  
51 identified him or her or a pictorial, photographic, electronic, filmed  
52 or video recorded reproduction of him or her as such, they must serve  
53 upon the defendant a notice of such intention, specifying the evidence  
54 intended to be offered.

55 § 9. Section 343.3 of the family court act, as added by chapter 920 of  
56 the laws of 1982, is amended to read as follows:

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

6 (a) such witness testifies that:

7 (i) he or she observed the person claimed by the presentment agency to  
8 be the respondent either at the time and place of the commission of the  
9 crime or upon some other occasion relevant to the case; and

10 (ii) on a subsequent occasion he or she observed, under circumstances  
11 consistent with such rights as an accused person may derive under the  
12 constitution of this state or of the United States, a person, or, where  
13 the observation is made pursuant to a blind procedure as defined in  
14 paragraph (c) of this subdivision, a pictorial, photographic, electron-  
15 ic, filmed or video recorded reproduction of a person whom he or she  
16 recognized as the same person whom he or she had observed on the first  
17 incriminating occasion; and

18 (iii) he or she is unable at the proceeding to state, on the basis of  
19 present recollection, whether or not the respondent is the person in  
20 question; and

21 (b) it is established that the respondent is in fact the person whom  
22 the witness observed and recognized or whose pictorial, photographic,  
23 electronic, filmed or video recorded reproduction the witness observed  
24 and recognized on the second occasion. Such fact may be established by  
25 testimony of another person or persons to whom the witness promptly  
26 declared his or her recognition on such occasion and by such pictorial,  
27 photographic, electronic, filmed or video recorded reproduction.

28 (c) (i) For purposes of this section, a "blind procedure" is one in  
29 which the witness identifies a person in an array of pictorial, photo-  
30 graphic, electronic, filmed or video recorded reproductions under  
31 circumstances that comply with the applicable provisions of section  
32 60.80 of the criminal procedure law and the protocols promulgated in  
33 accordance with subdivision twenty-one of section eight hundred thirty-  
34 seven of the executive law and where, at the time the identification is  
35 made, each public servant administering such procedure and with whom the  
36 witness communicates with respect to the conducting of such procedure  
37 does not know which person in the array is the suspect.

38 (ii) The failure of a public servant to follow such a procedure shall  
39 result in the preclusion of testimony regarding the identification  
40 procedure as evidence in chief, but shall not, in of of itself, consti-  
41 tute a legal basis to suppress evidence made pursuant to subdivision six  
42 of section 710.20 of the criminal procedure law. This paragraph, in and  
43 of itself, neither limits nor expands subdivision six of section 710.20  
44 of the criminal procedure law.

45 2. Under circumstances prescribed in subdivision one of this section,  
46 such witness may testify at the proceeding that the person whom he or  
47 she observed and recognized or whose pictorial, photographic, electron-  
48 ic, filmed or video recorded reproduction he or she observed and recog-  
49 nized on the second occasion is the same person whom he or she observed  
50 on the first or incriminating occasion. Such testimony, together with  
51 the evidence that the respondent is in fact the person whom the witness  
52 observed and recognized or whose pictorial, photographic, electronic,  
53 filmed or video recorded reproduction he or she observed and recognized  
54 on the second occasion, constitutes evidence in chief.

55 § 10. Section 343.4 of the family court act, as added by chapter 920  
56 of the laws of 1982, is amended to read as follows:

1 § 343.4. Rules of evidence; identification by means of previous recog-  
2 nition, in addition to present identification. In any juvenile delin-  
3 quency proceeding in which the respondent's commission of a crime is in  
4 issue, a witness who testifies that: (a) he or she observed the person  
5 claimed by the presentment agency to be the respondent either at the  
6 time and place of the commission of the crime or upon some other occa-  
7 sion relevant to the case, and (b) on the basis of present recollection,  
8 the respondent is the person in question, and (c) on a subsequent occa-  
9 sion he or she observed the respondent, or, where the observation is  
10 made pursuant to a blind procedure, a pictorial, photographic, electron-  
11 ic, filmed or video recorded reproduction of the respondent under  
12 circumstances consistent with such rights as an accused person may  
13 derive under the constitution of this state or of the United States, and  
14 then also recognized him or her or the pictorial, photographic, elec-  
15 tronic, filmed or video recorded reproduction of him or her as the same  
16 person whom he or she had observed on the first or incriminating occa-  
17 sion, may, in addition to making an identification of the respondent at  
18 the delinquency proceeding on the basis of present recollection as the  
19 person whom he or she observed on the first or incriminating occasion,  
20 also describe his or her previous recognition of the respondent and  
21 testify that the person whom he or she observed or whose pictorial,  
22 photographic, electronic, filmed or video recorded reproduction he or  
23 she observed on such second occasion is the same person whom he or she  
24 had observed on the first or incriminating occasion. Such testimony and  
25 such pictorial, photographic, electronic, filmed or video recorded  
26 reproduction constitutes evidence in chief. For purposes of this  
27 section, a "blind procedure" shall be as defined in subparagraph (i) of  
28 paragraph (c) of subdivision one of section 343.3 of this part.

29 § 11. Section 837 of the executive law is amended by adding a new  
30 subdivision 21 to read as follows:

31 21. Promulgate by regulation a standardized and detailed written  
32 protocol that is grounded in evidence-based principles for the adminis-  
33 tration of photographic array and live lineup identification procedures  
34 for police agencies and standardized forms for use by such agencies in  
35 the reporting and recording of such identification procedure. Such  
36 protocol shall be consistent in all respects with section 60.80 of the  
37 criminal procedure law.

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

40 (c) Disseminate the written policies and procedures promulgated in  
41 accordance with section 60.80 of the criminal procedure law and subdivi-  
42 sion twenty-one of section eight hundred thirty-seven of this article to  
43 all police departments and law enforcement agencies in this state and  
44 implement a training program for all current and new police officers and  
45 for relevant law enforcement officials regarding the policies and proce-  
46 dures established pursuant to section 60.80 of the criminal procedure  
47 law and subdivision twenty-one of section eight hundred thirty-seven of  
48 this article.

49 § 13. This act shall take effect on the ninetieth day after it shall  
50 have become a law.