§ 343.3. Rules of evidence; identification by means of previous recognition in absence of present identification. 1. In any juvenile delinquency proceeding in which the respondent's commission of a crime is in issue, testimony as provided in subdivision two may be given by a witness when:

(a) such witness testifies that:

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

(ii) on a subsequent occasion he or she observed, under circumstances consistent with such rights as an accused person may derive under the constitution of this state or of the United States, a person, or, where the observation is made pursuant to a blind or blinded procedure as defined herein, a pictorial, photographic, electronic, filmed or video recorded reproduction of a person whom he or she recognized as the same person whom he or she had observed on the first incriminating occasion; and

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

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

(c) For purposes of this section, a "blind or blinded procedure" is one in which the witness identifies a person in an array of pictorial, photographic, electronic, filmed or video recorded reproductions under circumstances where, at the time the identification is made, the public servant administering such procedure: (i) does not know which person in the array is the suspect, or (ii) does not know where the suspect is in the array viewed by the witness. The failure of a public servant to follow such a procedure shall be assessed solely for purposes of this article and shall result in the preclusion of testimony regarding the identification procedure as evidence in chief, but shall not constitute

a legal basis to suppress evidence made pursuant to subdivision six of section 710.20 of the criminal procedure law. This article neither limits not expands subdivision six of section 710.20 of the criminal procedure law.

2. Under circumstances prescribed in subdivision one, such witness may testify at the 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 respondent 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.