

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 295

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

AN ACT

RELATING TO LAW ENFORCEMENT; ENACTING THE RELIABLE EYEWITNESS  
IDENTIFICATION ACT; PROVIDING PROCEDURES FOR LINEUPS; REQUIRING  
EYEWITNESS STATEMENTS; REQUIRING THAT RECORDS BE KEPT OF LINEUP  
PROCEDURES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the  
"Reliable Eyewitness Identification Act".

Section 2. DEFINITIONS.--As used in the Reliable  
Eyewitness Identification Act:

A. "administrator" means a person who conducts a  
lineup procedure;

B. "eyewitness" means a person whose identification  
of another person may be relevant in a felony criminal  
investigation or proceeding;

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underscored material = new  
[bracketed material] = delete

1           C. "lineup" means a series of persons or  
2 photographs shown to an eyewitness for the purpose of  
3 determining whether the eyewitness can identify the subject;

4           D. "member" means a person or a photograph that is  
5 included in a lineup;

6           E. "subject" means a person relevant to a criminal  
7 investigation who was seen by an eyewitness and who is sought  
8 to be identified through a lineup; and

9           F. "suspect" means a person who is believed to be  
10 the subject.

11           Section 3. LINEUP PROCEDURE.--

12           A. Unless otherwise required by age, disability or  
13 the language needs of the eyewitness, only an administrator  
14 shall be present with an eyewitness during the lineup procedure  
15 provided in this section, except that a suspect's attorney may  
16 be present during a lineup of persons. No other person shall  
17 be in a position to be seen or heard by the eyewitness during  
18 the lineup procedure.

19           B. The administrator shall:

20                   (1) not know who among the members is a  
21 suspect; or

22                   (2) during a lineup of photographs, use a  
23 procedure whereby the administrator does not know which member  
24 is being shown to the eyewitness.

25           C. Prior to being shown a lineup, and as close in

1 time to the incident as possible, an eyewitness shall give a  
2 description of the subject and the circumstances under which  
3 the subject was seen by the eyewitness, including the time of  
4 day, the length of time the subject was seen, the distance from  
5 the eyewitness to the subject and the lighting conditions. The  
6 description shall be recorded or written.

7 D. Prior to a lineup, an eyewitness shall be  
8 instructed that:

9 (1) the eyewitness should not feel compelled  
10 to make an identification;

11 (2) the subject may not be among the members  
12 of the lineup; and

13 (3) an identification, or a lack of  
14 identification, will not end the investigation.

15 E. No more than one suspect shall be included in a  
16 lineup.

17 F. A live lineup shall consist of at least six  
18 persons.

19 G. A photo lineup shall consist of at least ten  
20 photographs. No more than one photograph of the suspect shall  
21 be included in the photo lineup.

22 H. Members of a lineup shall be shown sequentially  
23 and not simultaneously in a first viewing so that an eyewitness  
24 views only one member at a time and expresses an opinion as to  
25 that member before seeing the next member. The eyewitness

.167046.8

1 shall be shown all the members included in the lineup  
2 sequentially even if an identification has been made before all  
3 members have been viewed by the eyewitness. Thereafter, upon  
4 the request of the eyewitness, the lineup may be shown  
5 simultaneously.

6 I. A member of a lineup shall generally fit the  
7 description of the subject, and no member shall unduly stand  
8 out from other members of the lineup.

9 J. Except as provided in Section 4 of the Reliable  
10 Eyewitness Identification Act, a suspect or a photograph of a  
11 suspect shall not be presented to an eyewitness for the purpose  
12 of identification unless the suspect or photograph is included  
13 in a lineup.

14 K. No information or suggestion concerning the  
15 correctness of the identification shall be communicated to the  
16 eyewitness.

17 L. Immediately after a lineup, an eyewitness shall  
18 describe the eyewitness's reactions to the lineup procedure,  
19 any identification made by the eyewitness and the degree of  
20 confidence felt by the eyewitness in making an identification.  
21 The description shall be recorded or written.

22 M. A complete audio and visual recording shall be  
23 made of each lineup procedure and shall include:

- 24 (1) all of the members in the lineup;  
25 (2) all of the persons present during the

1 lineup procedure;

2 (3) any remarks or actions made during the  
3 lineup procedure;

4 (4) any reactions by the eyewitness; and

5 (5) the eyewitness giving a description  
6 pursuant to Subsections C and L of this section.

7 N. An administrator shall comply with the  
8 provisions of Subsection M of this section unless the  
9 administrator has good cause and makes a contemporaneous  
10 written or electronic record of the reasons for not complying.

11 Good cause includes:

12 (1) the recording equipment was not reasonably  
13 available;

14 (2) the recording equipment failed and  
15 obtaining replacement equipment was not feasible; or

16 (3) the witness refused to be recorded.

17 Section 4. IDENTIFICATION OUTSIDE A LINEUP.--

18 A. A suspect may not be shown to an eyewitness  
19 outside a lineup procedure for the purpose of identification  
20 unless:

21 (1) the suspect is shown within three hours  
22 after the subject was seen by the eyewitness;

23 (2) initial information pursuant to Subsection  
24 C of Section 3 of the Reliable Eyewitness Identification Act is  
25 obtained from the eyewitness;

.167046.8

1 (3) the suspect fits the description of the  
2 subject described by the witness;

3 (4) considering the totality of the  
4 circumstances, the suspect was found in reasonable proximity in  
5 time and place to the event seen by the eyewitness; and

6 (5) it is not feasible to conduct a lineup  
7 procedure.

8 B. All requirements for identification outside a  
9 lineup procedure as set forth in this section shall be  
10 documented and preserved.

11 Section 5. PRESERVATION OF RECORD.--A record of a lineup  
12 procedure shall be made that includes:

13 A. the date, time and location of the lineup  
14 procedure;

15 B. the names of all persons present during the  
16 lineup procedure;

17 C. the names of the members of the lineup and the  
18 sequence in which the members were shown to the eyewitness;

19 D. copies of all photographs used in the lineup, if  
20 any, and the sources of all photographs used;

21 E. identification and nonidentification results  
22 obtained during the procedure and signed by the eyewitness;

23 F. the information provided by the eyewitness  
24 pursuant to Subsections C and L of Section 3 of the Reliable  
25 Eyewitness Identification Act; and

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1           G. the recording made pursuant to Subsection M of  
2 Section 3 of the Reliable Eyewitness Identification Act.

3           Section 6. ADMISSIBILITY OF EVIDENCE.--The provisions of  
4 the Reliable Eyewitness Identification Act shall not be  
5 construed to exclude otherwise admissible evidence in any  
6 judicial proceeding.

7           Section 7. APPLICABILITY.--

8           A. The provisions of the Reliable Eyewitness  
9 Identification Act shall apply unless a law enforcement agency  
10 has good cause and makes a contemporaneous written or  
11 electronic record of the reasons for not complying.

12           B. The provisions of the Reliable Eyewitness  
13 Identification Act do not apply to lineup procedures conducted  
14 outside of New Mexico and do not apply within a correctional  
15 facility.

16           Section 8. EFFECTIVE DATE.--The effective date of the  
17 provisions of this act is January 1, 2008.