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SENATE BILL 62

**54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

INTRODUCED BY

Cisco McSorley

AN ACT

RELATING TO CRIMINAL PROCEDURE; ENACTING THE ACCURATE  
EYEWITNESS IDENTIFICATION ACT; PROVIDING FOR PROCEDURES TO  
ENHANCE THE ACCURACY OF EYEWITNESS IDENTIFICATIONS.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--This act may be  
cited as the "Accurate Eyewitness Identification Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
Accurate Eyewitness Identification Act:

A. "administrator" means a person conducting a  
photo lineup or live lineup;

B. "blind" means the administrator does not know  
the identity of the suspect;

C. "blinded" means the administrator may know who  
the suspect is but does not know which lineup member is being

1 viewed by the eyewitness;

2 D. "eyewitness" means a person who observes another  
3 person at or near the scene of an offense;

4 E. "filler" means either a person or a photograph  
5 of a person who is not suspected of an offense and is included  
6 in an identification procedure;

7 F. "live lineup" means an identification procedure  
8 in which a group of persons, including the suspected  
9 perpetrator of an offense and other persons not suspected of  
10 the offense, is displayed to an eyewitness for the purpose of  
11 determining whether the eyewitness identifies the suspect as  
12 the perpetrator;

13 G. "photo lineup" means an identification procedure  
14 in which an array of photographs, including a photograph of the  
15 suspected perpetrator of an offense and additional photographs  
16 of other persons not suspected of the offense, is displayed to  
17 an eyewitness either in hard copy form or via computer for the  
18 purpose of determining whether the eyewitness identifies the  
19 suspect as the perpetrator;

20 H. "showup" means an identification procedure in  
21 which an eyewitness is presented with a single suspect for the  
22 purpose of determining whether the eyewitness identifies this  
23 individual as the perpetrator; and

24 I. "suspect" means a person believed by law  
25 enforcement to be the possible perpetrator of the crime.

1           SECTION 3.   ~~[NEW MATERIAL]~~ EYEWITNESS IDENTIFICATION

2 PROCEDURES.--

3           A.   Not later than January 1, 2020, a criminal  
4 justice entity conducting eyewitness identification procedures  
5 shall adopt written policies for using an eyewitness to  
6 identify a suspect upon viewing the suspect in person in a live  
7 lineup or showup or upon viewing a representation of the  
8 suspect in a photo lineup.

9           B.   Each governmental entity in New Mexico that  
10 administers eyewitness identification procedures shall provide  
11 a copy of its written policies to the secretary of public  
12 safety no later than February 1, 2020.

13          C.   A law enforcement agency shall biennially review  
14 policies adopted pursuant to this section.

15          D.   In developing and revising policies pursuant to  
16 this section, a law enforcement agency shall consider those  
17 practices shown by reliable evidence to enhance the accuracy of  
18 identification procedures.  Each governmental entity in New  
19 Mexico that administers eyewitness identification procedures  
20 shall submit its updated written policies to the secretary of  
21 public safety no later than February 1 of each odd-numbered  
22 year.

23          E.   A law enforcement agency shall consider  
24 including in policies adopted pursuant to this section  
25 practices to enhance the objectivity and reliability of

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1 eyewitness identifications and to minimize the possibility of  
2 mistaken identifications, including the following:

3 (1) having a blind or blinded administrator  
4 perform the live lineup or photo lineup;

5 (2) providing the eyewitness with instructions  
6 that minimize the likelihood of an inaccurate identification;

7 (3) composing the lineup so that the fillers  
8 generally resemble the eyewitness's description of the  
9 perpetrator so that the suspect does not unduly stand out from  
10 the fillers;

11 (4) using the appropriate number of fillers in  
12 a live lineup and a photo lineup;

13 (5) ensuring, when practicable, that a  
14 photograph of the suspect used in a photo lineup is  
15 contemporary and resembles the suspect's appearance at the time  
16 of the offense;

17 (6) presenting separate photo lineups and live  
18 lineups when there are multiple eyewitnesses, ensuring that the  
19 same suspect is placed in a different position for each  
20 identification procedure;

21 (7) having the administrator seek and document  
22 a clear statement from the eyewitness, at the time of the  
23 identification and in the eyewitness's own words, as to the  
24 eyewitness's confidence level that the person identified is the  
25 person who committed the crime;

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1 (8) minimizing factors at any point in time  
2 that influence an eyewitness to identify a suspect or affect  
3 the eyewitness's confidence level in identifying a suspect,  
4 including verbal or nonverbal statements by or reactions from  
5 the administrator;

6 (9) presenting lineup members one at a time;

7 (10) adopting relevant practices shown to  
8 enhance the reliability of an eyewitness participating in a  
9 showup procedure, such as:

10 (a) identifying the circumstances under  
11 which a showup is warranted;

12 (b) transporting the eyewitness to a  
13 neutral, non-law enforcement location where the detained  
14 suspect is being held;

15 (c) removing the suspect from the law  
16 enforcement squad car;

17 (d) removing restraints from the suspect  
18 when the suspect is being observed by the eyewitness; and

19 (e) administering the showup procedure  
20 close in time to the commission of the crime;

21 (11) video recording the entirety of the photo  
22 lineup and live lineup and, where practicable, the showup  
23 procedure; and

24 (12) preserving photographic documentation of  
25 all live lineup and photo lineup members and showup suspects,

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underscoring = new  
~~[bracketed material]~~ = delete

1 as well as all descriptions provided by the eyewitness of the  
2 perpetrator.

3 F. All written departmental eyewitness  
4 identification policies shall be made available to the public  
5 upon request.

6 SECTION 4. ~~[NEW MATERIAL]~~ TRAINING OF LAW ENFORCEMENT  
7 OFFICERS.--The secretary of public safety shall create,  
8 administer and conduct training programs for law enforcement  
9 officers and recruits on the methods and technical aspects of  
10 the eyewitness identification practices and procedures shown by  
11 reliable evidence to enhance the accuracy of eyewitness  
12 evidence referenced in the Accurate Eyewitness Identification  
13 Act.

14 SECTION 5. EFFECTIVE DATE.--The effective date of the  
15 provisions of this act is July 1, 2019.