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MODEL LEGISLATION, 2011 STATE LEGISLATIVE SESSIONS

**AN ACT REGARDING WRITTEN EYEWITNESS IDENTIFICATION
ADMINISTRATION PROCEDURES**

SECTION 1. LEGISLATIVE INTENT

The legislature finds that:

- A. The goal of a police investigation is to apprehend the person or persons responsible for the commission of a crime;
- B. Mistaken eyewitness identification has contributed to the wrongful conviction in approximately 75% of the nation's 275 exonerations;
- C. Over the past 30 years, a large body of peer-reviewed, scientific research and practice has demonstrated that simple systemic changes in administering eyewitness identification procedures can greatly improve the accuracy of those identifications;
- D. Policies and procedures to improve the accuracy of eyewitness identifications such as those recommended by the U.S. National Institute of Justice, the American Bar Association, the New Jersey Office of the Attorney General, the Wisconsin Office of the Attorney General, the California Commission on the Fair Administration of Justice, and the North Carolina Actual Innocence Commission are readily available;
- E. More accurate eyewitness identifications increase the ability of police and prosecutors to convict the guilty and protect the innocent;
- F. The integrity of [State's] criminal justice process is enhanced by adherence to best practices in evidence gathering;

- G. Departmental eyewitness identification protocols are worthy of consistency and clarity; and
- H. [State] will benefit from the development of standardized written policies, derived from best practices, that improve the accuracy of eyewitness identifications.

SECTION 2: DEFINITIONS

For the purposes of this Act:

- A. “Administrator” means the person conducting the photo or live lineup;
- B. “Suspect” means the person believed by law enforcement to be the possible perpetrator of the crime;
- C. “Blind” means the administrator does not know the identity of the suspect;
- D. “Blinded” means the administrator may know who the suspect is, but does not know which lineup member is being viewed by the eyewitness;
- E. “Eyewitness” means a person who observes another person at or near the scene of an offense;
- F. “Filler” means either a person or a photograph of a person who is not suspected of an offense and is included in an identification procedure;
- G. “Live lineup” means an identification procedure in which a group of persons, including the suspected perpetrator of an offense and other persons not suspected of the offense, is displayed to an eyewitness for the purpose of determining whether the eyewitness identifies the suspect as the perpetrator;
- H. “Photo lineup” means an identification procedure in which an array of photographs, including a photograph of the suspected perpetrator of an offense and additional photographs of other persons not suspected of the offense, is displayed to an eyewitness either in hard copy form



or via computer for the purpose of determining whether the eyewitness identifies the suspect as the perpetrator; and

I. "Showup" means an identification procedure in which an eyewitness is presented with a single suspect for the purpose of determining whether the eyewitness identifies this individual as the perpetrator.

SECTION 3. EYEWITNESS IDENTIFICATION PROCEDURES

A. Not later than January 1, 2011, any criminal justice entity conducting eyewitness identification procedures shall adopt written policies for using an eyewitness to identify a suspect upon viewing the suspect in person in a live lineup or showup or upon viewing a representation of the suspect in a photo lineup. Each government entity in [State] that administers eyewitness identification procedures shall provide a copy of its written policies to the Secretary of Public Safety no later than February 1, 2011.

B. A law enforcement agency shall biennially review policies adopted under this section. In developing and revising policies under this section, a law enforcement agency shall consider those practices shown by reliable evidence to enhance the accuracy of identification procedures. Each government entity in [State] that administers eyewitness identification procedures must submit its updated written policies to the Secretary of the Department of Public Safety no later than February 1 of each odd-numbered year.

C. A law enforcement agency shall consider including in policies adopted under this Section practices to enhance the objectivity and reliability of eyewitness identifications and to minimize the possibility of mistaken identifications, including the following:



1. Having a blind or blinded administrator perform the live or photo lineup;
2. Providing the eyewitness with instructions that minimize the likelihood of an inaccurate identification;
3. Composing the lineup so that the fillers generally resemble the eyewitness's description of the perpetrator, and so that the suspect does not unduly stand out from the fillers;
4. Using the appropriate number of fillers in a live and a photo lineup;
5. Ensuring, when practicable, that a photograph of the suspect used in a photo lineup is contemporary and resembles his appearance at the time of the offense;
6. Presenting separate photo and live lineups when there are multiple eyewitnesses, ensuring the same suspect is placed in a different position for each identification procedure;
7. Having the administrator seek and document a clear statement from the eyewitness, at the time of the identification and in the eyewitness's own words, as to the eyewitness's confidence level that the person identified is the person who committed the crime;
8. Minimizing factors at any point in time that influence an eyewitness to identify a suspect or affect his or her confidence level in identifying a suspect, including verbal or nonverbal statements by or reactions from the administrator;
9. Presenting lineup members one at a time;
10. Adopting relevant practices shown to enhance the reliability of an eyewitness participating in a showup procedure, such as identifying the circumstances under which a showup is warranted; transporting the eyewitness to a neutral, non-law enforcement



location where the detained suspect is being held; removing the suspect from the law enforcement squad car; removing restraints from the suspect when he is being observed by the eyewitness; and administering the showup procedure close in time to the commission of the crime;

11. Video recording the entirety of the photo and live lineup and, where practicable, the showup procedure; and

12. Preserving photographic documentation of all live and photo lineup members, and showup suspects, as well as all descriptions provided by the eyewitness of the perpetrator.

D. All written departmental eyewitness identification policies shall be made available to the public upon request.

SECTION 4. TRAINING OF LAW ENFORCEMENT OFFICERS

From appropriations made for that purpose, the Secretary of Public Safety shall create, administer, and conduct training programs for law enforcement officers and recruits on the methods and technical aspects of the eyewitness identification practices and procedures shown by reliable evidence to enhance the accuracy of eyewitness evidence referenced in this Act.

SECTION 5. EFFECTIVE DATE

Section 3 of this Act shall take effect on January 1, 2011. Section 4 of this Act shall begin to take effect on July 1, 2011.