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MODEL LEGISLATION, 2007 STATE LEGISLATIVE SESSIONS

AN ACT TO CREATE A TASK FORCE TO RECOMMEND PROCEDURES AND PRACTICES TO IMPROVE THE ACCURACY OF EYEWITNESS IDENTIFICATIONS

SECTION 1. LEGISLATIVE INTENT

Because the goal of a police investigation is to apprehend the person or persons responsible for a crime's commission; because mistaken eyewitness identification has been shown to have contributed to the wrongful conviction in 75% of the nation's more than 185 exonerations; because over the past 25 years, a large body of peer-reviewed, scientific research and practice has emerged which shows that simple systemic changes in administering eyewitness identification procedures can greatly improve the accuracy of those identifications; because new policies and procedures such as those recommended by the U.S. Department of Justice and American Bar Association are readily available; because more accurate eyewitness identifications increase the ability of police and prosecutors to convict the guilty and protect the innocent; and because the integrity of the [State's] criminal justice process is enhanced by adherence to best practices in evidence gathering, [State] will benefit from the creation of an expert task force to identify and recommend policies and procedures to 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. "Blind" means when the administrator does not know which photo or live lineup member



being viewed by the eyewitness is the suspect;

C. “Eyewitness” means a person who observes another person at or near the scene of an offense;

D. “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;

E. “Identification procedure” means either a photo or live lineup;

F. “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;

G. “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 for the purpose of determining whether the eyewitness identifies the suspect as the perpetrator; and

H. “Sequential” means an identification procedure in which the eyewitness views only one member of the live lineup or photo lineup at a time and is shown all persons or photographs even if an identification has been made before all the persons or photographs have been viewed.

SECTION 3. TASK FORCE

A. The task force is convened by the Director of the Department of Public Safety [or other analogous entity] and is composed of nine members:

1. The Governor shall appoint two members:
 - a. One of whom must be a dean of a law school; and
 - b. One of whom must be a law enforcement officer;
2. The Attorney General shall appoint one member who must be an attorney who represents the state in the prosecution of felonies;

3. The Chair of the criminal justice committee of the Senate shall appoint one member who may be a member of the legislature;
 4. The Chair of the criminal justice committee of the House of Representatives shall appoint one member who may be a member of the legislature;
 5. The Chief Justice of the Supreme Court shall appoint one member who must be a member of the judiciary;
 6. The chancellor of The University of [State] System shall appoint two members:
 - a. One who must be a law professor; and
 - b. One who must be a professor in the forensic science field; and
 7. The [State] Public Defender (or in the alternative, the Criminal Defense Lawyers Association) shall appoint one member who must be a criminal defense lawyer.
- B. The task force or their assigned designees, in consultation with eyewitness identification practitioners and experts, shall develop recommended guidelines for policies, procedures and training with respect to the collection and handling of eyewitness evidence in criminal investigations by law enforcement agencies in [State] that are consistent with the reliable evidence supporting best practices. The purpose of the guidelines is to provide law enforcement agencies with information regarding eyewitness identification policies and procedures shown to increase the accuracy of the crime investigation process.
- C. Such guidelines shall include procedures for the administration of live and photo lineups and instructions that will increase the accuracy of eyewitness identifications. Specifically, the guidelines shall include recommendations regarding:
1. The use of blind administration of live and photo lineups;
 2. The issuance of specific instructions to the eyewitness before and during the identification procedure;
 3. The number and selection of fillers to be used in live and photo lineups;



4. The sequential presentation of lineup members;
5. Whether only one suspect should be included in any live or photo lineup;
6. The timing of when the administrator should request and record the eyewitness's statement of his confidence in his selection;
7. Whether to refrain from providing of any confirmatory information to the eyewitness;
8. The visual recording of the lineup and its administration;
9. The video or audio recording of the lineup procedure; and
10. What training, if any, should be made available to law enforcement personnel in the use of these procedures.

SECTION 4. ADOPTION OF GUIDELINES

The Task Force shall establish guidelines for eyewitness identification procedures as specified under Section 3 of this Act by October 1, 2008.

SECTION 5. REPORTING

Not later than October 1, 2008, the task force shall submit a report on the guidelines developed and recommendations concerning their use. Minority reports may also be issued. These reports shall be presented to the Governor, the Chief Justice, and the standing committees of the Legislature having cognizance of matters relating to criminal law and procedure, in accordance with [the appropriate provisions] of the general statutes. The task force shall terminate on the date that it submits such report or October 1, 2008, whichever is earlier.