**Text of New York State Enacted Budget**

**Recording Interrogations & Eyewitness ID Reform**

**STATE OF NEW YORK** \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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<http://assembly.state.ny.us/leg/?default_fld=&leg_video=&bn=A03009&term=2017&Text=Y&LFIN=Y>

PART VVV

8 Section 1. Section 60.45 of the criminal procedure law is amended by

9 adding a new subdivision 3 to read as follows:

10 3. (a) Where a person is subject to custodial interrogation by a

11 public servant at a detention facility, the entire custodial interro-

12 gation, including the giving of any required advice of the rights of the

13 individual being questioned, and the waiver of any rights by the indi-

14 vidual, shall be recorded by an appropriate video recording device if

15 the interrogation involves a class A-1 felony, except one defined in

16 article two hundred twenty of the penal law; felony offenses defined in

17 section 130.95 and 130.96 of the penal law; or a felony offense defined

18 in article one hundred twenty-five or one hundred thirty of such law

19 that is defined as a class B violent felony offense in section 70.02 of

20 the penal law. For purposes of this paragraph, the term "detention

21 facility" shall mean a police station, correctional facility, holding

22 facility for prisoners, prosecutor's office or other facility where

23 persons are held in detention in connection with criminal charges that

24 have been or may be filed against them.

25 (b) No confession, admission or other statement shall be subject to a

26 motion to suppress pursuant to subdivision three of section 710.20 of

27 this chapter based solely upon the failure to video record such interro-

28 gation in a detention facility as defined in paragraph (a) of this

29 subdivision. However, where the people offer into evidence a confession,

30 admission or other statement made by a person in custody with respect to

31 his or her participation or lack of participation in an offense speci-

32 fied in paragraph (a) of this subdivision, that has not been video

33 recorded, the court shall consider the failure to record as a factor,

34 but not as the sole factor, in accordance with paragraph (c) of this

35 subdivision in determining whether such confession, admission or other

36 statement shall be admissible.

37 (c) Notwithstanding the requirement of paragraph (a) of this subdivi-

38 sion, upon a showing of good cause by the prosecutor, the custodial

39 interrogation need not be recorded. Good cause shall include, but not be

40 limited to:

41 (i) If electronic recording equipment malfunctions.

42 (ii) If electronic recording equipment is not available because it was

43 otherwise being used.

44 (iii) If statements are made in response to questions that are

45 routinely asked during arrest processing.

46 (iv) If the statement is spontaneously made by the suspect and not in

47 response to police questioning.

48 (v) If the statement is made during an interrogation that is conducted

49 when the interviewer is unaware that a qualifying offense has occurred.

50 (vi) If the statement is made at a location other than the "interview

51 room" because the suspect cannot be brought to such room, e.g., the

52 suspect is in a hospital or the suspect is out of state and that state

53 is not governed by a law requiring the recordation of an interrogation.

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1 (vii) If the statement is made after a suspect has refused to partic-

2 ipate in the interrogation if it is recorded, and appropriate effort to

3 document such refusal is made.

4 (viii) If such statement is not recorded as a result of an inadvertent

5 error or oversight, not the result of any intentional conduct by law

6 enforcement personnel.

7 (ix) If it is law enforcement's reasonable belief that such recording

8 would jeopardize the safety of any person or reveal the identity of a

9 confidential informant.

10 (x) If such statement is made at a location not equipped with a video

11 recording device and the reason for using that location is not to

12 subvert the intent of the law. For purposes of this section, the term

13 "location" shall include those locations specified in paragraph (b) of

14 subdivision four of section 305.2 of the family court act.

15 (d) In the event the court finds that the people have not shown good

16 cause for the non-recording of the confession, admission, or other

17 statement, but determines that a non-recorded confession, admission or

18 other statement is nevertheless admissible because it was voluntarily

19 made then, upon request of the defendant, the court must instruct the

20 jury that the people's failure to record the defendant's confession,

21 admission or other statement as required by this section may be weighed

22 as a factor, but not as the sole factor, in determining whether such

23 confession, admission or other statement was voluntarily made, or was

24 made at all.

25 (e) Video recording as required by this section shall be conducted in

26 accordance with standards established by rule of the division of crimi-

27 nal justice services.

28 § 2. Subdivision 3 of section 344.2 of the family court act is renum-

29 bered subdivision 4 and a new subdivision 3 is added to read as follows:

30 3. Where a respondent is subject to custodial interrogation by a

31 public servant at a facility specified in subdivision four of section

32 305.2 of this article, the entire custodial interrogation, including the

33 giving of any required advice of the rights of the individual being

34 questioned, and the waiver of any rights by the individual, shall be

35 recorded and governed in accordance with the provisions of paragraphs

36 (a), (b), (c), (d) and (e) of subdivision three of section 60.45 of the

37 criminal procedure law.

38 § 3. Section 60.25 of the criminal procedure law, subparagraph (ii) of

39 paragraph (a) of subdivision 1 as amended by chapter 479 of the laws of

40 1977, is amended to read as follows:

41 § 60.25 Rules of evidence; identification by means of previous recogni-

42 tion, in absence of present identification.

43 1. In any criminal proceeding in which the defendant's commission of

44 an offense is in issue, testimony as provided in subdivision two may be

45 given by a witness when:

46 (a) Such witness testifies that:

47 (i) He or she observed the person claimed by the people to be the

48 defendant either at the time and place of the commission of the offense

49 or upon some other occasion relevant to the case; and

50 (ii) On a subsequent occasion he or she observed, under circumstances

51 consistent with such rights as an accused person may derive under the

52 constitution of this state or of the United States, a person or, where

53 the observation is made pursuant to a blind or blinded procedure as

54 defined in paragraph (c) of this subdivision, a pictorial, photographic,

55 electronic, filmed or video recorded reproduction of a person whom he or

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1 she recognized as the same person whom he or she had observed on the

2 first or incriminating occasion; and

3 (iii) He or she is unable at the proceeding to state, on the basis of

4 present recollection, whether or not the defendant is the person in

5 question; and

6 (b) It is established that the defendant is in fact the person whom

7 the witness observed and recognized or whose pictorial, photographic,

8 electronic, filmed or video recorded reproduction the witness observed

9 and recognized on the second occasion. Such fact may be established by

10 testimony of another person or persons to whom the witness promptly

11 declared his or her recognition on such occasion and by such pictorial,

12 photographic, electronic, filmed or video recorded reproduction.

13 (c) For purposes of this section, a "blind or blinded procedure" is

14 one in which the witness identifies a person in an array of pictorial,

15 photographic, electronic, filmed or video recorded reproductions under

16 circumstances where, at the time the identification is made, the public

17 servant administering such procedure: (i) does not know which person in

18 the array is the suspect, or (ii) does not know where the suspect is in

19 the array viewed by the witness. The failure of a public servant to

20 follow such a procedure shall be assessed solely for purposes of this

21 article and shall result in the preclusion of testimony regarding the

22 identification procedure as evidence in chief, but shall not constitute

23 a legal basis to suppress evidence made pursuant to subdivision six of

24 section 710.20 of this chapter. This article neither limits nor expands

25 subdivision six of section 710.20 of this chapter.

26 2. Under circumstances prescribed in subdivision one of this section,

27 such witness may testify at the criminal proceeding that the person whom

28 he or she observed and recognized or whose pictorial, photographic,

29 electronic, filmed or video recorded reproduction he or she observed and

30 recognized on the second occasion is the same person whom he or she

31 observed on the first or incriminating occasion. Such testimony,

32 together with the evidence that the defendant is in fact the person whom

33 the witness observed and recognized or whose pictorial, photographic,

34 electronic, filmed or video recorded reproduction he or she observed and

35 recognized on the second occasion, constitutes evidence in chief.

36 § 4. Section 60.30 of the criminal procedure law, as amended by chap-

37 ter 479 of the laws of 1977, is amended to read as follows:

38 § 60.30 Rules of evidence; identification by means of previous recogni-

39 tion, in addition to present identification.

40 In any criminal proceeding in which the defendant's commission of an

41 offense is in issue, a witness who testifies that (a) he or she observed

42 the person claimed by the people to be the defendant either at the time

43 and place of the commission of the offense or upon some other occasion

44 relevant to the case, and (b) on the basis of present recollection, the

45 defendant is the person in question and (c) on a subsequent occasion he

46 or she observed the defendant, or where the observation is made pursuant

47 to a blind or blinded procedure, as defined in paragraph (c) of subdivi-

48 sion one of section 60.25 of this article, a pictorial, photographic,

49 electronic, filmed or video recorded reproduction of the defendant,

50 under circumstances consistent with such rights as an accused person may

51 derive under the constitution of this state or of the United States, and

52 then also recognized him or her or the pictorial, photographic, elec-

53 tronic, filmed or video recorded reproduction of him or her as the same

54 person whom he or she had observed on the first or incriminating occa-

55 sion, may, in addition to making an identification of the defendant at

56 the criminal proceeding on the basis of present recollection as the

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1 person whom he or she observed on the first or incriminating occasion,

2 also describe his or her previous recognition of the defendant and

3 testify that the person whom he or she observed or whose pictorial,

4 photographic, electronic, filmed or video recorded reproduction he or

5 she observed on such second occasion is the same person whom he or she

6 had observed on the first or incriminating occasion. Such testimony and

7 such pictorial, photographic, electronic, filmed or video recorded

8 reproduction constitutes evidence in chief.

9 § 5. Subdivision 6 of section 710.20 of the criminal procedure law, as

10 amended by chapter 8 of the laws of 1976 and as renumbered by chapter

11 481 of the laws of 1983, is amended to read as follows:

12 6. Consists of potential testimony regarding an observation of the

13 defendant either at the time or place of the commission of the offense

14 or upon some other occasion relevant to the case, which potential testi-

15 mony would not be admissible upon the prospective trial of such charge

16 owing to an improperly made previous identification of the defendant or

17 of a pictorial, photographic, electronic, filmed or video recorded

18 reproduction of the defendant by the prospective witness. A claim that

19 the previous identification of the defendant or of a pictorial, photo-

20 graphic, electronic, filmed or video recorded reproduction of the

21 defendant by a prospective witness did not comply with paragraph (c) of

22 subdivision one of section 60.25 of this chapter or with the protocol

23 promulgated in accordance with subdivision twenty-one of section eight

24 hundred thirty-seven of the executive law shall not constitute a legal

25 basis to suppress evidence pursuant to this subdivision. A claim that a

26 public servant failed to comply with paragraph (c) of subdivision one of

27 section 60.25 of this chapter or of subdivision twenty-one of section

28 eight hundred thirty-seven of the executive law shall neither expand nor

29 limit the rights an accused person may derive under the constitution of

30 this state or of the United States.

31 § 6. Subdivision 1 of section 710.30 of the criminal procedure law, as

32 separately amended by chapters 8 and 194 of the laws of 1976, is amended

33 to read as follows:

34 1. Whenever the people intend to offer at a trial (a) evidence of a

35 statement made by a defendant to a public servant, which statement if

36 involuntarily made would render the evidence thereof suppressible upon

37 motion pursuant to subdivision three of section 710.20, or (b) testimony

38 regarding an observation of the defendant either at the time or place of

39 the commission of the offense or upon some other occasion relevant to

40 the case, to be given by a witness who has previously identified him or

41 her or a pictorial, photographic, electronic, filmed or video recorded

42 reproduction of him or her as such, they must serve upon the defendant a

43 notice of such intention, specifying the evidence intended to be

44 offered.

45 § 7. Section 343.3 of the family court act, as added by chapter 920 of

46 the laws of 1982, is amended to read as follows:

47 § 343.3. Rules of evidence; identification by means of previous recog-

48 nition in absence of present identification. 1. In any juvenile delin-

49 quency proceeding in which the respondent's commission of a crime is in

50 issue, testimony as provided in subdivision two may be given by a

51 witness when:

52 (a) such witness testifies that:

53 (i) he or she observed the person claimed by the presentment agency to

54 be the respondent either at the time and place of the commission of the

55 crime or upon some other occasion relevant to the case; and

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1 (ii) on a subsequent occasion he or she observed, under circumstances

2 consistent with such rights as an accused person may derive under the

3 constitution of this state or of the United States, a person, or, where

4 the observation is made pursuant to a blind or blinded procedure as

5 defined herein, a pictorial, photographic, electronic, filmed or video

6 recorded reproduction of a person whom he or she recognized as the same

7 person whom he or she had observed on the first incriminating occasion;

8 and

9 (iii) he or she is unable at the proceeding to state, on the basis of

10 present recollection, whether or not the respondent is the person in

11 question; and

12 (b) it is established that the respondent is in fact the person whom

13 the witness observed and recognized or whose pictorial, photographic,

14 electronic, filmed or video recorded reproduction the witness observed

15 and recognized on the second occasion. Such fact may be established by

16 testimony of another person or persons to whom the witness promptly

17 declared his or her recognition on such occasion and by such pictorial,

18 photographic, electronic, filmed or video recorded reproduction.

19 (c) For purposes of this section, a "blind or blinded procedure" is

20 one in which the witness identifies a person in an array of pictorial,

21 photographic, electronic, filmed or video recorded reproductions under

22 circumstances where, at the time the identification is made, the public

23 servant administering such procedure: (i) does not know which person in

24 the array is the suspect, or (ii) does not know where the suspect is in

25 the array viewed by the witness. The failure of a public servant to

26 follow such a procedure shall be assessed solely for purposes of this

27 article and shall result in the preclusion of testimony regarding the

28 identification procedure as evidence in chief, but shall not constitute

29 a legal basis to suppress evidence made pursuant to subdivision six of

30 section 710.20 of the criminal procedure law. This article neither

31 limits not expands subdivision six of section 710.20 of the criminal

32 procedure law.

33 2. Under circumstances prescribed in subdivision one, such witness may

34 testify at the proceeding that the person whom he or she observed and

35 recognized or whose pictorial, photographic, electronic, filmed or video

36 recorded reproduction he or she observed and recognized on the second

37 occasion is the same person whom he or she observed on the first or

38 incriminating occasion. Such testimony, together with the evidence that

39 the respondent is in fact the person whom the witness observed and

40 recognized or whose pictorial, photographic, electronic, filmed or video

41 recorded reproduction he or she observed and recognized on the second

42 occasion, constitutes evidence in chief.

43 § 8. Section 343.4 of the family court act, as added by chapter 920 of

44 the laws of 1982, is amended to read as follows:

45 § 343.4. Rules of evidence; identification by means of previous recog-

46 nition, in addition to present identification. In any juvenile delin-

47 quency proceeding in which the respondent's commission of a crime is in

48 issue, a witness who testifies that: (a) he or she observed the person

49 claimed by the presentment agency to be the respondent either at the

50 time and place of the commission of the crime or upon some other occa-

51 sion relevant to the case, and (b) on the basis of present recollection,

52 the respondent is the person in question, and (c) on a subsequent occa-

53 sion he or she observed the respondent, or, where the observation is

54 made pursuant to a blind or blinded procedure, a pictorial, photograph-

55 ic, electronic, filmed or video recorded reproduction of the respondent

56 under circumstances consistent with such rights as an accused person may

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1 derive under the constitution of this state or of the United States, and

2 then also recognized him or her or the pictorial, photographic, elec-

3 tronic, filmed or video recorded reproduction of him or her as the same

4 person whom he or she had observed on the first or incriminating occa-

5 sion, may, in addition to making an identification of the respondent at

6 the delinquency proceeding on the basis of present recollection as the

7 person whom he or she observed on the first or incriminating occasion,

8 also describe his or her previous recognition of the respondent and

9 testify that the person whom he or she observed or whose pictorial,

10 photographic, electronic, filmed or video recorded reproduction he or

11 she observed on such second occasion is the same person whom he or she

12 had observed on the first or incriminating occasion. Such testimony and

13 such pictorial, photographic, electronic, filmed or video recorded

14 reproduction constitutes evidence in chief. For purposes of this

15 section, a "blind or blinded procedure" shall be as defined in paragraph

16 (c) of subdivision one of section 343.3 of this part.

17 § 9. Section 837 of the executive law is amended by adding a new

18 subdivision 21 to read as follows:

19 21. Promulgate a standardized and detailed written protocol that is

20 grounded in evidence-based principles for the administration of photo-

21 graphic array and live lineup identification procedures for police agen-

22 cies and standardized forms for use by such agencies in the reporting

23 and recording of such identification procedure. The protocol shall

24 address the following topics:

25 (a) the selection of photographic array and live lineup filler photo-

26 graphs or participants;

27 (b) instructions given to a witness before conducting a photographic

28 array or live lineup identification procedure;

29 (c) the documentation and preservation of results of a photographic

30 array or live lineup identification procedure;

31 (d) procedures for eliciting and documenting the witness's confidence

32 in his or her identification following a photographic array or live

33 lineup identification procedure, in the event that an identification is

34 made; and

35 (e) procedures for administering a photographic array or live lineup

36 identification procedure in a manner designed to prevent opportunities

37 to influence the witness.

38 § 10. Subdivision 4 of section 840 of the executive law is amended by

39 adding a new paragraph (c) to read as follows:

40 (c) Disseminate the written policies and procedures promulgated in

41 accordance with subdivision twenty-one of section eight hundred thirty-

42 seven of this article to all police departments in this state and imple-

43 ment a training program for all current and new police officers regard-

44 ing the policies and procedures established pursuant to such

45 subdivision.