

ASSEMBLY BILL NO. 107—ASSEMBLYWOMAN FLORES

PREFILED JANUARY 31, 2011

Referred to Committee on Judiciary

SUMMARY—Requires the adoption of certain policies and procedures regarding the eyewitness identification of criminal suspects. (BDR 14-614)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets [omitted-material] is material to be omitted.

AN ACT relating to criminal procedure; requiring the adoption of certain policies and procedures relating to the identification of criminal suspects; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 This bill requires each law enforcement agency to adopt policies and
2 procedures governing identification procedures conducted to determine whether an
3 eyewitness to a crime is able to identify a suspect as the perpetrator of the crime.
4 Such identification procedures include live lineups, photo lineups and show-ups.
5 **Section 13** of this bill requires the adoption of policies and procedures that are
6 generally applicable to all identification procedures. **Section 14** of this bill requires
7 the adoption of policies and procedures that are specifically applicable to live
8 lineups and photo lineups, in which a suspect or the picture of a suspect is included
9 in a live display or a photo display of a number of other persons. **Section 15** of this
10 bill requires the adoption of policies and procedures that are specifically applicable
11 to show-ups, in which a suspect is presented before a witness for positive
12 identification. **Section 16** of this bill requires the adoption of policies and
13 procedures that are specifically applicable to the completion of an identification
14 procedure. **Section 17** of this bill provides that evidence of failure to comply with
15 any of the policies and procedures required by this bill is admissible in court to
16 challenge the eyewitness identification of a suspect. **Section 18** of this bill requires
17 the Peace Officers' Standards and Training Commission to train peace officers in
18 the policies and procedures required by this bill.



* A B 1 0 7 *

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 171 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 17, inclusive, of this act.

Sec. 2. *As used in sections 2 to 17, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 12, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Administrator” means a person conducting a live lineup or a photo lineup.*

Sec. 4. *“Blind” means the administrator does not know the identity of the suspect.*

Sec. 5. *“Blinded” means the administrator may know the identity of the suspect but does not know which person in a live lineup or photo lineup is being viewed by the eyewitness.*

Sec. 6. *“Eyewitness” means a person who observes another person at or near the scene of a crime.*

Sec. 7. *“Filler” means a person or a photograph of a person who is not suspected of committing a crime but is included in a live lineup or photo lineup.*

Sec. 8. *“Identification procedure” means a live lineup, photo lineup or show-up.*

Sec. 9. *“Live lineup” means an identification procedure in which a group of persons, including the suspect, is displayed to an eyewitness to determine whether the eyewitness identifies the suspect as the perpetrator of a crime.*

Sec. 10. *“Photo lineup” means an identification procedure in which an array of photographs, including a photograph of the suspect, is displayed to an eyewitness in hard copy or by digital image to determine whether the eyewitness identifies the suspect as the perpetrator of a crime.*

Sec. 11. *“Show-up” means an identification procedure in which the suspect appears individually for possible identification by the eyewitness as the perpetrator of a crime.*

Sec. 12. *“Suspect” means a person believed by law enforcement to be the perpetrator of a crime.*

Sec. 13. *Each law enforcement agency shall adopt policies and procedures which comply with the following requirements that are applicable to all identification procedures:*

1. *Before conducting an identification procedure, the law enforcement agency shall record as complete a description as possible of the perpetrator, as provided by the eyewitness in his or her own words. The description must include information*



1 *regarding the conditions under which the eyewitness observed the*
2 *perpetrator, including, without limitation, the location, time,*
3 *distance, obstructions, lighting and weather conditions. The*
4 *description must also include information concerning any*
5 *impairment of the eyewitness, including, without limitation,*
6 *any impairment resulting from the use of alcohol or drugs, any*
7 *impairment caused by stress and any visual or auditory disability.*

8 2. *Before conducting an identification procedure, the law*
9 *enforcement agency shall ask the eyewitness if he or she needs*
10 *prescription glasses or contact lenses to see clearly and whether he*
11 *or she was wearing such glasses or contact lenses at the time of*
12 *the crime. The administrator shall note whether the eyewitness*
13 *was wearing prescription glasses or contact lenses at the time of*
14 *the identification procedure.*

15 3. *Before conducting an identification procedure, the law*
16 *enforcement agency shall inform the eyewitness, without any*
17 *other eyewitness being present, that:*

18 (a) *The perpetrator may or may not be among the persons in a*
19 *live lineup or photo lineup;*

20 (b) *The perpetrator may or may not be the person that is*
21 *presented to the eyewitness in a show-up;*

22 (c) *The administrator may or may not know the identity of the*
23 *perpetrator;*

24 (d) *The eyewitness should not feel compelled to make an*
25 *identification of the perpetrator;*

26 (e) *The investigation will continue whether or not the*
27 *eyewitness makes an identification of the perpetrator;*

28 (f) *The identification procedure requires the administrator to*
29 *ask the eyewitness to state, in his or her own words, how certain*
30 *the eyewitness is of any identification of the perpetrator; and*

31 (g) *The eyewitness may not discuss the identification*
32 *procedure or its results with other eyewitnesses involved in the*
33 *case and may not speak with the media concerning the*
34 *identification procedure.*

35 4. *In conducting an identification procedure, any writing or*
36 *information concerning the arrest of the suspect or any previous*
37 *arrest, indictment or conviction of the suspect must not be visible*
38 *or made known to the eyewitness.*

39 **Sec. 14.** *Each law enforcement agency shall adopt policies*
40 *and procedures which comply with the following requirements*
41 *that are applicable to the use of a live lineup or photo lineup:*

42 1. *Unless it is impracticable, a live lineup or photo lineup*
43 *must be conducted blind or blinded.*



2. If it is impracticable for a live lineup or photo lineup to be conducted blind, the administrator shall state the reasons therefor in writing.

3. All fillers selected for a live lineup or photo lineup must resemble the eyewitness's description of the perpetrator in significant features, including any unique or unusual features, while ensuring that the suspect does not unduly stand out from the fillers.

4. At least four fillers must be included in a live lineup.

5. At least five fillers must be included in a photo lineup.

6. If the eyewitness has previously viewed a live lineup or photo lineup in connection with the identification of another person suspected of involvement in the crime, the fillers in the current live lineup or photo lineup must be different from the fillers used in the previous live lineup or photo lineup.

7. The eyewitness must not be informed of the suspect's position in a live lineup or photo lineup.

8. No communication may be made that might influence the eyewitness's identification of any particular person in a live lineup or photo lineup.

9. If there are multiple suspects, a live lineup or photo lineup must include only one of the suspects.

10. If there are multiple eyewitnesses:

(a) Each eyewitness must view a live lineup or photo lineup separately;

(b) The suspect must be placed in a different position in a live lineup or photo lineup for each eyewitness; and

(c) The eyewitnesses must not be permitted to communicate with each other until all live lineups and photo lineups have been completed.

11. In a live lineup:

(a) Any identifying actions, such as speech, gestures or other movements, must be performed by each person participating in the live lineup; and

(b) All persons participating in the live lineup must be out of view of the eyewitness before the start of the live lineup.

12. In a photo lineup:

(a) The photograph of the suspect must be contemporary and must resemble his or her appearance at the time of the crime;

(b) The characteristics of the photographs, or the background context in which the photographs are placed, must not make any of the photographs unduly stand out; and

(c) The photographs must not be so similar to the suspect that a person who knows the suspect cannot easily identify the suspect.



1 **Sec. 15.** *Each law enforcement agency shall adopt policies*
2 *and procedures which comply with the following requirements*
3 *that are applicable to the use of a show-up:*

4 1. *Reasonable efforts must be made to conduct a live lineup*
5 *or photo lineup instead of a show-up.*

6 2. *A show-up must only be conducted:*

7 (a) *Using a live suspect; and*

8 (b) *In exigent circumstances that require the immediate*
9 *display of a suspect to an eyewitness.*

10 3. *If a show-up is conducted:*

11 (a) *The eyewitness must be transported to a neutral location*
12 *which is not a part of any law enforcement agency where the*
13 *suspect is being detained for the purposes of the show-up;*

14 (b) *The suspect must not be made to wear the clothes the*
15 *perpetrator was alleged to be wearing at the time of the crime;*

16 (c) *The suspect must not be made to say the words the*
17 *perpetrator is alleged to have said or to perform acts reportedly*
18 *committed by the perpetrator; and*

19 (d) *To reduce potentially damaging or prejudicial inferences*
20 *that may be drawn by the eyewitness, an investigator:*

21 (1) *Shall refrain from suggesting, through statements or*
22 *nonverbal conduct, that the suspect is or may be the perpetrator of*
23 *the crime;*

24 (2) *Shall not remove the suspect from a law enforcement*
25 *vehicle in view of the eyewitness; and*

26 (3) *Shall remove handcuffs, when practicable, from the*
27 *suspect before the show-up.*

28 4. *If there are multiple eyewitnesses:*

29 (a) *Only one eyewitness may participate in a show-up at a*
30 *time; and*

31 (b) *Only one eyewitness may be present at the location of a*
32 *show-up at a time.*

33 5. *If there are multiple suspects, the suspects must be*
34 *separated and subjected to a separate show-up.*

35 6. *If a positive identification is made during a show-up, and*
36 *an arrest is justified, any additional eyewitnesses must be shown a*
37 *live lineup or photo lineup.*

38 **Sec. 16.** *Each law enforcement agency shall adopt policies*
39 *and procedures which comply with the following requirements*
40 *that are applicable to the completion of an identification*
41 *procedure:*

42 1. *If, during an identification procedure, an eyewitness*
43 *identifies a person as the perpetrator, the administrator shall*
44 *procure and document a clear statement from the eyewitness at the*
45 *time of the identification and in the eyewitness's own words. The*



1 *statement must include the level of confidence of the eyewitness*
2 *that the person identified in the identification procedure is the*
3 *perpetrator.*

4 *2. If, during an identification procedure, the eyewitness*
5 *identifies a person as the perpetrator, the eyewitness must not be*
6 *provided with any information concerning the person before the*
7 *administrator obtains a statement pursuant to subsection 1.*

8 *3. A record of the identification procedure must be made that*
9 *includes all results obtained during the identification procedure,*
10 *including each positive identification of a person as the*
11 *perpetrator and each failure to make such an identification. The*
12 *record must be signed by the eyewitness.*

13 *4. Unless it is impracticable, a video record of the*
14 *identification procedure must be made that includes the following:*

15 *(a) All results obtained during the identification procedure,*
16 *including each positive identification of a person as the*
17 *perpetrator and each failure to make such an identification,*
18 *signed by the eyewitness, including the eyewitness's statement*
19 *regarding his or her level of confidence in the identification;*

20 *(b) The names of all persons present during the identification*
21 *procedure;*

22 *(c) The date and time of the identification procedure;*

23 *(d) Any eyewitness identification of a filler;*

24 *(e) The names of the persons participating as fillers in a live*
25 *lineup or photo lineup, and any other relevant identifying*
26 *information; and*

27 *(f) The sources of all persons or photographs used in a live*
28 *lineup or photo lineup.*

29 *5. If a video record of an identification procedure is*
30 *impracticable, the administrator shall document the reasons*
31 *therefor in writing, and an audio record of the identification*
32 *procedure must be made which includes the information specified*
33 *in subsection 4. The audio record must be supplemented by all the*
34 *photographs used in a photo lineup and photographs of all the*
35 *persons who participated in a live lineup or show-up.*

36 *6. If both a video and audio record of the identification*
37 *procedure are impracticable, the administrator shall document*
38 *the reasons therefor in writing, and a written record of the*
39 *identification procedure must be made which includes the*
40 *information specified in subsection 4. The written record must be*
41 *supplemented by all the photographs used in a photo lineup and*
42 *photographs of all the persons who participated in a live lineup or*
43 *show-up.*

44 **Sec. 17. 1. Evidence of failure to comply with any of the**
45 **provisions of sections 2 to 16, inclusive, of this act must be**



1 *considered by a trial court in adjudicating a motion to suppress*
2 *any eyewitness identification of a suspect.*

3 2. *Evidence of failure to comply with any of the provisions of*
4 *sections 2 to 16, inclusive, of this act is admissible in support of*
5 *claims of eyewitness misidentification of a suspect as long as such*
6 *evidence is otherwise admissible.*

7 3. *If evidence of failure to comply with any of the provisions*
8 *of sections 2 to 16, inclusive, of this act is presented at trial, the*
9 *jury must be instructed that it may consider credible evidence of*
10 *noncompliance in determining the reliability of an eyewitness's*
11 *identification of a suspect.*

12 **Sec. 18.** Chapter 289 of NRS is hereby amended by adding
13 thereto a new section to read as follows:

14 *As a condition of the certification of each peace officer, the*
15 *Peace Officers' Standards and Training Commission shall require*
16 *each peace officer to be trained in the methods, technical aspects*
17 *and scientific findings regarding the identification procedures*
18 *required pursuant to sections 2 to 17, inclusive, of this act.*

19 **Sec. 19.** NRS 289.450 is hereby amended to read as follows:

20 289.450 As used in NRS 289.450 to 289.600, inclusive, *and*
21 *section 18 of this act*, unless the context otherwise requires, the
22 words and terms defined in NRS 289.460 to 289.490, inclusive,
23 have the meanings ascribed to them in those sections.

24 **Sec. 20.** NRS 289.510 is hereby amended to read as follows:

25 289.510 1. The Commission:

26 (a) Shall meet at the call of the Chair, who must be elected by a
27 majority vote of the members of the Commission.

28 (b) Shall provide for and encourage the training and education
29 of persons whose primary duty is law enforcement to ensure the
30 safety of the residents of and visitors to this State.

31 (c) Shall adopt regulations establishing minimum standards for
32 the certification and decertification, recruitment, selection and
33 training of peace officers. The regulations must establish:

34 (1) Requirements for basic training for category I, category II
35 and category III peace officers and reserve peace officers;

36 (2) Standards for programs for the continuing education of
37 peace officers, including minimum courses of study and
38 requirements concerning attendance;

39 (3) Qualifications for instructors of peace officers; and

40 (4) Requirements for the certification of a course of training.

41 (d) Shall, when necessary, present courses of training and
42 continuing education courses for category I, category II and
43 category III peace officers and reserve peace officers.



(e) May make necessary inquiries to determine whether the agencies of this State and of the local governments are complying with standards set forth in its regulations.

(f) Shall carry out the duties required of the Commission pursuant to NRS 432B.610 and 432B.620.

(g) May perform any other acts that may be necessary and appropriate to the functions of the Commission as set forth in NRS 289.450 to 289.600, inclusive ~~H~~, *and section 18 of this act.*

(h) May enter into an interlocal agreement with an Indian tribe to provide training to and certification of persons employed as police officers by that Indian tribe.

2. Regulations adopted by the Commission:

(a) Apply to all agencies of this State and of local governments in this State that employ persons as peace officers;

(b) Must require that all peace officers receive training in the handling of cases involving abuse or neglect of children or missing children;

(c) Must require that all peace officers receive training in the handling of cases involving abuse, neglect, exploitation and isolation of older persons; and

(d) May require that training be carried on at institutions which it approves in those regulations.

Sec. 21. The amendatory provisions of this act apply to any identification procedure conducted on or after the effective date of this act.

Sec. 22. This act becomes effective upon passage and approval.

