



Benjamin N. Cardozo School of Law, Yeshiva University

MODEL LEGISLATION, 2006 STATE LEGISLATIVE SESSIONS

AN ACT TO FUND PILOT FIELD PROGRAMS 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 studies of eyewitness identification procedures indicate the criminal justice system can significantly decrease the rate of erroneous eyewitness identifications by implementing changes to identification procedures; because decreased erroneous eyewitness identifications increase the ability of police and prosecutors to convict the guilty and protect our communities; and because new policies and procedures such as those recommended by the National Institute of Justice and the growing body of peer-reviewed research on the subject are readily available and reforms have proven effective in other jurisdictions, it is useful to conduct pilot field studies of these recommendations to test their efficacy and practicability.

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 who among the members of the photo or live lineup 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. "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

Barry C. Scheck, Esq. and Peter J. Neufeld, Esq., *Directors* Maddy deLone, Esq., *Executive Director*
100 Fifth Avenue, 3rd Floor • New York, NY 10011 • Tel: 212/364-5340 • Fax: 212/364-5341
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an eyewitness for the purpose of determining whether the eyewitness is able to identify the suspect as the perpetrator;

Comment [g1]: Why are "blind" and "sequential" not defined here, even though they are in the other two models?

E. "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 is able to identify the suspect as the perpetrator; and

F. "Sequential" means lineup procedures where the eyewitness views only one member of the lineup at a time and is shown all photographs or persons even if an identification has been made before all the photographs or persons have been viewed.

SECTION 3. ESTABLISHMENT OF PILOT JURISDICTIONS:

A. The Department of Public Safety shall establish a grant program to provide funding for pilot field studies of the efficacy of eyewitness identification policies and procedures.

B. Four jurisdictions will be granted funding from the Department of Public Safety for these studies:

1. A police district within a police department in a municipality whose population is at least 500,000 residents;
2. A police department in a municipality whose population is at least 100,000 residents but less than 500,000 residents;
3. A police department in a municipality whose population is more than 50,000 residents but less than 100,000 residents; and
4. A police department in a municipality whose population is less than 50,000 residents.

All such pilot jurisdictions shall be designated by September 1, 2006.

SECTION 4. TRAINING IN PILOT JURISDICTIONS:

The Department of Public Safety shall provide at least one day of training for the jurisdictions participating in these pilot studies.

SECTION 5. FUNDING LEVELS:

A. \$80,000 shall be appropriated to the Department of Public Safety to provide grants of up to \$20,000 to each police department selected to field-test and report on eyewitness identification procedures. The disbursed funds will be used for training, instruction, implementation and evaluation.

B. \$7,500 shall be appropriated to the Department of Public Safety to provide training in eyewitness identification procedures to these jurisdictions.

1. This training shall include, but not be limited to:

(a) An overview of relevant contemporary studies of eyewitness identification procedures and experiences with the recommended procedures in other jurisdictions;

(b) Instructions for administering the procedures recommended by the National Institute of Justice and peer-reviewed research;

(c) Recommendations for police department trainings;

(d) Additional sources of information on the science, training and experiences with the recommended procedures; and

(e) Suggested evaluation procedures of the field studies, based in part on experiences in other jurisdictions that have evaluated their eyewitness identification procedures.

2. For jurisdictions assessing the use of sequential lineups, this training also shall include procedures for administering and evaluating sequential lineups.



SECTION 6. PROCEDURES TO BE STUDIED:

A. Such pilot studies shall include procedures for the use of blind administration of live and photo lineups and the instructions recommended to accompany them, including procedures where:

1. The administrator does not know who among the members of the live or photo lineup being viewed by the eyewitness is the suspect;
2. At least five photographs shall be included in a photo lineup, and at least four individuals shall be included in a live lineup who resemble the eyewitness's description of the suspect in all significant respects;
3. No live or photo lineup contains more than one suspect;
4. Prior to the lineup, the administrator provides instructions to the eyewitness to ensure the eyewitness understands the purpose of the identification procedure is to exculpate the innocent as well as to identify the actual perpetrator; and
5. The person conducting the live or photo lineup asks eyewitnesses to use their own words to describe their confidence levels and refrain from providing any confirmatory information until after those initial confidence levels have been recorded.

B. One or more of these studies also shall include policies and procedures for administering sequential lineups.

SECTION 7. REPORT ON THE PILOT STUDIES:

The Department of Public Safety shall collect reports from each of the participating police departments regarding their findings on the efficacy and practicability of the studied procedures, and shall file a report of the findings with the Governor, the Chief Justice, the Senate President and Speaker of the House no later than April 1, 2008.