



The Legislature  
of the  
State of New Mexico

51st Legislature, 1st Session

LAWS 2013

CHAPTER \_\_\_\_\_

SENATE BILL 490, as amended

**POCKET VETOED**

Introduced by

SENATOR CISCO McSORLEY



1 AN ACT  
2 RELATING TO CRIMINAL PROCEDURE; PROVIDING FOR PROCEDURES TO  
3 ENHANCE THE ACCURACY OF EYEWITNESS IDENTIFICATIONS.  
4

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

6 SECTION 1. DEFINITIONS.--As used in this act:

7 A. "administrator" means a person conducting a  
8 photo lineup or live lineup;

9 B. "blind" means the administrator does not know  
10 the identity of the suspect;

11 C. "blinded" means the administrator may know who  
12 the suspect is but does not know which lineup member is being  
13 viewed by the eyewitness;

14 D. "eyewitness" means a person who observes  
15 another person at or near the scene of an offense;

16 E. "filler" means either a person or a photograph  
17 of a person who is not suspected of an offense and is  
18 included in an identification procedure;

19 F. "live lineup" means an identification procedure  
20 in which a group of persons, including the suspected  
21 perpetrator of an offense and other persons not suspected of  
22 the offense, is displayed to an eyewitness for the purpose of  
23 determining whether the eyewitness identifies the suspect as  
24 the perpetrator;

25 G. "photo lineup" means an identification

1 procedure in which an array of photographs, including a  
2 photograph of the suspected perpetrator of an offense and  
3 additional photographs of other persons not suspected of the  
4 offense, is displayed to an eyewitness either in hard copy  
5 form or via computer for the purpose of determining whether  
6 the eyewitness identifies the suspect as the perpetrator;

7 H. "showup" means an identification procedure in  
8 which an eyewitness is presented with a single suspect for  
9 the purpose of determining whether the eyewitness identifies  
10 this individual as the perpetrator; and

11 I. "suspect" means a person believed by law  
12 enforcement to be the possible perpetrator of the crime.

13 SECTION 2. EYEWITNESS IDENTIFICATION PROCEDURES.--

14 A. Not later than January 1, 2014, every law  
15 enforcement agency conducting eyewitness identification  
16 procedures shall adopt written policies for using an  
17 eyewitness to identify a suspect upon viewing the suspect in  
18 person in a live lineup or showup or upon viewing a  
19 representation of the suspect in a photo lineup.

20 B. A law enforcement agency shall biennially  
21 review policies adopted pursuant to this section.

22 C. In developing and revising policies pursuant to  
23 this section, a law enforcement agency shall consider those  
24 practices shown by reliable evidence to enhance the accuracy  
25 of identification procedures.

1           D. A law enforcement agency shall consider  
2 including in policies adopted pursuant to this section  
3 practices to enhance the objectivity and reliability of  
4 eyewitness identifications and to minimize the possibility of  
5 mistaken identifications, including the following:

6                   (1) having a blind or blinded administrator  
7 perform the live lineup or photo lineup;

8                   (2) providing the eyewitness with  
9 instructions that minimize the likelihood of an inaccurate  
10 identification;

11                   (3) composing the lineup so that the fillers  
12 generally resemble the eyewitness's description of the  
13 perpetrator so that the suspect does not unduly stand out  
14 from the fillers;

15                   (4) using the appropriate number of fillers  
16 in a live lineup and a photo lineup;

17                   (5) ensuring, when practicable, that a  
18 photograph of the suspect used in a photo lineup is  
19 contemporary and resembles the suspect's appearance at the  
20 time of the offense;

21                   (6) presenting separate photo lineups and  
22 live lineups when there are multiple eyewitnesses, ensuring  
23 that the same suspect is placed in a different position for  
24 each identification procedure;

25                   (7) having the administrator seek and

1 document a clear statement from the eyewitness, at the time  
2 of the identification and in the eyewitness's own words, as  
3 to the eyewitness's confidence level that the person  
4 identified is the person who committed the crime;

5 (8) minimizing factors at any point in time  
6 that influence an eyewitness to identify a suspect or affect  
7 the eyewitness' confidence level in identifying a suspect,  
8 including verbal or nonverbal statements by or reactions from  
9 the administrator;

10 (9) presenting lineup members one at a time;

11 (10) adopting relevant practices shown to  
12 enhance the reliability of an eyewitness participating in a  
13 showup procedure, such as:

14 (a) identifying the circumstances under  
15 which a showup is warranted;

16 (b) transporting the eyewitness to a  
17 neutral, non-law enforcement location where the detained  
18 suspect is being held;

19 (c) removing the suspect from the law  
20 enforcement squad car;

21 (d) removing restraints from the  
22 suspect when the suspect is being observed by the eyewitness;  
23 and

24 (e) administering the showup procedure  
25 close in time to the commission of the crime;

1 (11) video recording the entirety of the  
2 photo lineup and live lineup and, where practicable, the  
3 showup procedure; and

4 (12) preserving photographic documentation  
5 of all live lineup and photo lineup members and showup  
6 suspects, as well as all descriptions provided by the  
7 eyewitness of the perpetrator.

8 E. All written departmental eyewitness  
9 identification policies shall be made available to the public  
10 upon request.

11 SECTION 3. TRAINING OF LAW ENFORCEMENT OFFICERS.--The  
12 secretary of public safety shall create, administer and  
13 conduct training programs for law enforcement officers and  
14 recruits on the methods and technical aspects of the  
15 eyewitness identification practices and procedures shown by  
16 reliable evidence to enhance the accuracy of eyewitness  
17 evidence referenced in this act.

18 SECTION 4. EFFECTIVE DATE.--The effective date of the  
19 provisions of this act is July 1, 2013. \_\_\_\_\_

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Approved by me this \_\_\_\_\_ day of \_\_\_\_\_, 2013

s/Governor Susana Martinez  
Governor Susana Martinez  
State of New Mexico

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