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SENATE

S.B. No. **3336**

RECEIVED BY: 

Introduced by Senator Miriam Defensor Santiago

EXPLANATORY NOTE

Eyewitness testimony is powerful evidence in a courtroom, but it is not error-proof. In fact, misidentifications are the leading cause of wrongful convictions overturned by DNA testing. This information is contained in a July 2009 report released by the Innocence Project, an organization based in the Benjamin N. Cardozo School of Law at Yeshiva University, New York, U.S.A.

The findings in “Reevaluating Lineups: Why Witnesses Make Mistakes and How to Reduce the Chance of a Misidentification,” include:

- 240 people, serving an average of 12 years in prison, have been exonerated through DNA testing in the United States, and 75% of those wrongful convictions (179 individual cases as of this report) involved eyewitness misidentification.
- In 38% of the misidentification cases, multiple eyewitnesses misidentified the same innocent person.
- Over 250 witnesses misidentified innocent suspects.
- 53% percent of the misidentification cases (among those where race is known) involved cross-racial misidentifications.
- In 50% of the misidentifications cases, eyewitness testimony was the central evidence used against the defendant (without other corroborating evidence like confessions, forensic science or informant testimony).
- In 36% of the misidentification cases, the real perpetrator was identified through DNA evidence.

The report goes on to show that over the past 30 years, a large body of peer-reviewed, scientific research and practice has demonstrated that simple systemic changes in administering

eyewitness identification procedures can greatly improve the accuracy of those identifications. Based on this, the Innocence Project has drafted model legislation to modify the criminal justice system.

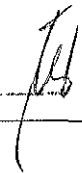
Since traditional eyewitness identifications remain among the most commonly used and compelling evidence brought against criminal defendants in several jurisdictions including the Philippines, we must review these methods and address possible weak areas so as to prevent the innocent from being punished, and the true criminals from getting away. This bill seeks to establish standards and specific procedures with respect to the collection and handling of eyewitness evidence in criminal investigations by law enforcement agencies that are shown by reliable evidence to enhance the accuracy of eyewitness identification.


MIRIAM DEFENSOR SANTIAGO

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1 AN ACT
2 TO IMPROVE THE ACCURACY OF EYEWITNESS IDENTIFICATIONS

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

3 SECTION 1. *Short Title.* – This Act shall be known as the “Eyewitness Identification
4 Reform Act of 2009.”

5 SECTION 2. *Declaration of Policy* - It is the policy of the State to convict the guilty and
6 protect the innocent. Towards this end, an improvement of the accuracy of eyewitness
7 identifications, will enhance the integrity of State’s criminal justice process by an adherence to
8 best practices in evidence gathering.

9 SECTION 3. *Definitions.* – For purposes of this Act, the term:

10 A. Secretary means the Secretary of the Department of Justice

11 B. “Administrator” means the person conducting the photo or live lineup;

12 C. “Suspect” means the person believed by law enforcement to be the possible
13 perpetrator of the crime;

14 D. “Blind” means the administrator does not know the identity of the suspect;

15 E. “Blinded” means the administrator may know who the suspect is, but does not know
16 which lineup member is being viewed by the eyewitness;

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

1 G. "Filler" means either a person or a photograph of a person who is not suspected of an
2 offense and is included in an identification procedure;

3 H. "Identification procedure" means a live lineup, a photo lineup, or a showup.

4 I. "Live lineup" means an identification procedure in which a group of persons, including
5 the suspected perpetrator of an offense and other persons not suspected of the offense, is
6 displayed to an eyewitness for the purpose of determining whether the eyewitness identifies the
7 suspect as the perpetrator;

8 J. "Photo lineup" means an identification procedure in which an array of photographs,
9 including a photograph of the suspected perpetrator of an offense and additional photographs of
10 other persons not suspected of the offense, is displayed to an eyewitness either in hard copy form
11 or via computer for the purpose of determining whether the eyewitness identifies the suspect as
12 the perpetrator; and

13 K. "Show-up" means an identification procedure in which an eyewitness is presented
14 with a single suspect for the purpose of determining whether the eyewitness identifies this
15 individual as the perpetrator.

16 SECTION 4. *Eyewitness Identification Procedures.*

17 Any criminal justice entity conducting eyewitness identification procedures shall adopt
18 specific procedures for conducting photo and live lineups that comply with the following
19 requirements:

20 A. Prior to a photo or live lineup, law enforcement shall record as complete a description
21 as possible of the perpetrator provided by the eyewitness, in the eyewitness's own words. This
22 statement shall also include information regarding the conditions under which the eyewitness
23 observed the perpetrator including location, time, distance, obstructions, lighting, weather
24 conditions, and other impairments, including but not limited to alcohol, drugs, stress, and
25 visual/auditory disabilities. The eyewitness shall be also be asked if he needs glasses or contact
26 lenses and whether he was wearing them at the time of the offense. The administrator shall note
27 whether the eyewitness was wearing glasses or contact lenses at the time of the identification
28 procedure.

1 B. Unless impracticable, a blind or blinded administrator shall conduct the live or photo
2 lineup;

3 C. When it is impracticable for a blind administrator to conduct the eyewitness
4 identification procedure, the investigator shall state in writing the reason therefor;

5 D. The eyewitness shall be instructed, without other eyewitnesses present, prior to any
6 live or photo lineup that:

7 1. The perpetrator may or may not be among the persons in the identification procedure
8 or, in the case of a showup, may or may not be the person that is presented to the
9 eyewitness;

10 2. The administrator does not know who the perpetrator is;

11 3. The eyewitness should not feel compelled to make an identification;

12 4. The investigation will continue whether or not an identification is made;

13 5. The procedure requires the administrator to ask the eyewitness to state, in his own
14 words, how certain he is of any identification; and

15 6. The eyewitness is not to discuss the identification procedure or its results with other
16 eyewitnesses involved in the case and should not speak with the media;

17 E. In a photo lineup, the photograph of the suspect shall be contemporary and shall
18 resemble his or her appearance at the time of the offense;

19 F. In a photo lineup, there shall be no characteristics of the photographs themselves or the
20 background context in which they are placed which shall make any of the photographs unduly
21 stand out;

22 G. A photo or live lineup shall be composed so that the fillers generally resemble the
23 eyewitness's description of the perpetrator, while ensuring that the suspect does not unduly stand
24 out from the fillers;

25 H. In a photo or live lineup, fillers shall possess the following characteristics:

26 1. All fillers selected shall resemble the eyewitness's description of the
27 perpetrator in significant features (i.e., face, weight, build, skin tone, etc.),
28 including any unique or unusual features (i.e., scar, tattoo, etc.);

- 1 2. At least five fillers shall be included in a photo lineup, in addition to the
2 suspect;
- 3 3. At least four fillers shall be included in a live lineup, in addition to the suspect;
4 and
- 5 4. If the eyewitness has previously viewed a photo lineup or live lineup in
6 connection with the identification of another person suspected of involvement in the
7 offense, the fillers in the lineup in which the instant suspect participates shall be
8 different from the fillers used in any prior lineups;
- 9 I. If there are multiple eyewitnesses:
- 10 1. Each eyewitness shall view photo or live lineups separately;
- 11 2. The suspect shall be placed in a different position in the live lineup and/or photo lineup
12 for each eyewitness; and
- 13 3. The eyewitnesses shall not be permitted to communicate with each other until all
14 identification procedures have been completed;
- 15 J. In an identification procedure, no writings or information concerning the instant or any
16 previous arrest, indictment or conviction of the suspect shall be visible or made known to the
17 eyewitness;
- 18 K. In a live lineup, any identifying actions, such as speech, gestures or other movements,
19 shall be performed by all lineup participants;
- 20 L. In a live lineup, all lineup participants must be out of view of the eyewitness prior to
21 the identification procedure;
- 22 M. When there are multiple suspects, each identification procedure shall include only one
23 suspect;
- 24 N. Nothing shall be said to the eyewitness regarding the suspect's position in the photo or
25 live lineup;
- 26 O. Nothing shall be said to the eyewitness that might influence the eyewitness's
27 identification of any particular lineup member;
- 28 P. If the eyewitness makes an identification, the administrator shall seek and document a
29 clear statement from the eyewitness, at the time of the identification and in the eyewitness's own

1 words, as to the eyewitness's confidence level that the person identified in a given identification
2 procedure is the perpetrator;

3 Q. If the eyewitness identifies a person as the perpetrator, the eyewitness shall not be
4 provided any information concerning such person before the administrator obtains the
5 eyewitness's confidence statement about the selection;

6 R. A record of the identification procedure shall be made that includes all identification
7 and non-identification results obtained during the identification procedures, signed by the
8 eyewitnesses;

9 S. Efforts shall be made to perform a live or photo lineup instead of a showup.

10 1. Showups shall only be performed using a live suspect and in exigent c
11 ircumstances that require the immediate display of a suspect to an eyewitness.

12 2. In the event of the administration of a showup procedure:

13 a. A full and detailed description of the perpetrator shall be provided by
14 the eyewitness before the eyewitness observes the suspect. This statement
15 shall also include information regarding the conditions under which the
16 eyewitness observed the perpetrator including location, time, distance,
17 obstructions, lighting, weather conditions, and other impairments,
18 including but not limited to alcohol, drugs, stress, and visual/auditory
19 disabilities. The eyewitness shall be also be asked if he needs glasses or
20 contact lenses and whether he was wearing them at the time of the
21 offense. The administrator shall note whether the eyewitness was wearing
22 glasses or contact lenses at the time of the Identification procedure.

23 b. The eyewitness shall be transported to a neutral, non-law enforcement location
24 where the suspect is being detained for the purposes of a showup procedure.

25 c. Eyewitnesses shall be provided with instructions prior to the showup,
26 including:

27 i. The perpetrator may or may not be among the persons in the
28 identification procedure or, in the case of a showup, may or may not be the
29 person that is presented to the eyewitness;

- 1 ii. The eyewitness should not feel compelled to make an identification;
- 2 iii. The investigation will continue whether or not an identification is
- 3 made;
- 4 iv. The procedure requires the administrator to ask the eyewitness to state,
- 5 in his own words, how certain he is of any identification; and
- 6 v. The eyewitness is not to discuss the identification procedure or its
- 7 results with other eyewitnesses involved in the case and should not speak
- 8 with the media;

9 d. Measures shall be taken by investigators at the showup, including the
10 administrator of the showup, to reduce potentially damaging or prejudicial inferences that
11 may be drawn by the eyewitness, including:

- 12 i. Refraining from suggesting, through statements or non-verbal conduct, t
- 13 hat the suspect is or may be the perpetrator of the crime;
- 14 ii. Removing the suspect from a squad car; and
- 15 iii. When practicable, removing handcuffs from the suspect;

16 e. If there are multiple eyewitnesses, only one eyewitness at a time shall
17 participate in the showup procedure:

- 18 i. Only one of the eyewitnesses shall be present at the location of the
- 19 showup procedure;
- 20 ii. If a positive identification is made, and an arrest is justified, additional
- 21 eyewitnesses shall be shown live or photo lineups; and

22 f. If there are multiple suspects, these suspects shall be separated and subjected to
23 separate show-up procedures.

24 g. If the eyewitness makes an identification, the administrator shall seek and
25 document a clear statement from the eyewitness, at the time of the identification and in
26 the eyewitness's own words, as to the eyewitness's confidence level that the person
27 identified in a given identification procedure is the perpetrator.

28 T. Unless impracticable, a video record of the identification procedure shall be made that
29 includes the following information:

- 1 1. All identification and non-identification results obtained during the identification procedures,
2 signed by the eyewitnesses, including the eyewitnesses' confidence statements;
- 3 2. The names of all persons present at the identification procedure;
- 4 3. The date and time of the identification procedure;
- 5 4. In a photo or live lineup, any eyewitness identification(s) of (a) filler(s); and
- 6 5. In a photo or live lineup, the names of the lineup members and other relevant identifying
7 information, and the sources of all photographs or persons used in the lineup;

8 U. If a video record of the lineup is impracticable, the officer conducting the lineup shall
9 document the reason therefor, and an audio record of the identification procedure shall be made
10 which includes the items specified in Section 4, (T), (paragraph nos. 1-5) of this Act. The audio
11 record shall be supplemented by the all of the photographs used in a photo lineup, and
12 photographs of all of the individuals used in a live lineup or show-up; and

13 V. If both a video and audio record of the lineup are impracticable, the officer conducting
14 the lineup shall document in writing the reason therefor, and a written record of the lineup shall
15 be made which includes the items specified in Section 4, (T), (paragraph nos.1-5) of this Act.
16 The written record shall be supplemented by the all of the photographs used in a photo lineup,
17 and photographs of all of the individuals used in a live lineup or showup.

18 SECTION 5. *Remedies For Noncompliance.* –

19 A. Evidence of a failure to comply with any of the provisions of this statute shall be
20 considered by trial courts in adjudicating motions to suppress eyewitness identification;

21 B. Evidence of a failure to comply with any of the provisions of this statute shall be
22 admissible in support of claims of eyewitness misidentification as long as such evidence
23 is otherwise admissible.

24 SECTION 6. *Training of Law Enforcement Officers.* –

25 The Department of Justice shall create, administer and conduct training programs for law
26 enforcement officers and recruits regarding the methods, technical aspects and scientific findings

1 regarding the basis of the eyewitness identification practices and procedures referenced in this
2 Act.

3 SECTION 7. *Creation of a Task Force on Implementing Rules and Regulations*
4 *Eyewitness Procedures.*

5 A. A task force is convened by the Secretary of the Department of Justice and is
6 composed of seven members:

- 7 1. The Secretary of the DOJ;
- 8 2. A dean of a law school;
- 9 3. A representative of the Philippine National Police;
- 10 4. A representative of Office of the Prosecutor
- 11 5. A representative of the Public Attorney's Office
- 12 6. A member of the Committee on Justice and Human Rights of the Senate
- 13 7. a member of the Committee on Justice of the House of Representatives

14 B. The task force, in consultation with eyewitness identification practitioners and experts,
15 shall establish the implementing rules and regulations of this act.

16 SECTION 8. *Appropriation.* — To carry out the provisions of this Act, such amount as
17 may be necessary is hereby authorized to be appropriated from the National Treasury.
18 Thereafter, the amount necessary for the continuous operation of the Task Force shall be
19 included in the annual appropriation of the DOJ.

20 SECTION 9. *Separability Clause.* — If any provision or part hereof, is held invalid or
21 unconstitutional, the remainder of the law or the provision not otherwise affected shall remain
22 valid and subsisting.

23 SECTION 10. *Repealing Clause.* — Any law, presidential decree or issuance, executive
24 order, letter of instruction, administrative order, rule or regulation contrary to or is inconsistent
25 with the provision of this Act is hereby repealed, modified, or amended accordingly.

1 SECTION 11. *Effectivity Clause.* – This Act shall take effect fifteen (15) days after its
2 publication in at least two (2) newspapers of general circulation.

Approved,

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