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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2007

ENROLLED

COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 82

(SENATOR HUNTER, *original sponsor*)

[Passed March 10, 2007; in effect from passage.]

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §62-1E-1, §62-1E-2 and §62-1E-3, all relating to creating the Eyewitness Identification Act; and establishing definitions, eyewitness identification procedures, a study task force and related training.

Be it enacted by the Legislature of West Virginia:

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That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §62-1E-1, §62-1E-2 and §62-1E-3, all to read as follows:

ARTICLE 1E. EYEWITNESS IDENTIFICATION ACT.

§62-1E-1. Definitions.

1 For the purposes of this article:

2 (1) "Eyewitness" means a person whose identification
3 of another person may be relevant in a criminal
4 proceeding.

5 (2) "Lineup" means a live or photographic array of
6 persons of similar appearance.

7 (3) "Lineup administrator" means the person who
8 conducts a lineup.

9 (4) "Live lineup" means a procedure in which a group
10 of people is displayed to an eye witness for the purpose
11 of determining if the eyewitness is able to identify the
12 perpetrator of a crime.

13 (5) "Photo lineup" means a procedure in which an
14 array of photographs is displayed to an eyewitness for
15 the purpose of determining if the eyewitness is able to
16 identify the perpetrator of a crime.

§62-1E-2. Eyewitness identification procedures.

1 (a) Before a lineup, the eyewitness should be given the
2 following three instructions:

3 (1) That the perpetrator might or might not be present

4 in the lineup;

5 (2) That the eyewitness is not required to make an
6 identification; and

7 (3) That it is as important to exclude innocent persons
8 as it is to identify the perpetrator.

9 (b) Law-enforcement officers should make a written
10 record of a lineup, including the following information:

11 (1) The date, time and location of the lineup.

12 (2) The names of every person in the lineup, if known,
13 and all other persons present at the lineup.

14 (3) The words used by the eyewitness in any
15 identification, including words that describe the
16 eyewitness' certainty or uncertainty in the identification
17 at the time the identification is made.

18 (4) Whether it was a photo lineup or live lineup.

19 (5) The number of photos or individuals that were
20 presented in the lineup.

21 (6) Whether the lineup administrator knew which
22 person in the lineup was the suspect.

23 (7) Whether, before the lineup, the eyewitness was
24 instructed that the perpetrator might or might not be
25 presented in the lineup.

26 (8) Whether the lineup was simultaneous or
27 sequential.

28 (9) The signature, or initials, of the eyewitness, or
29 notation if the eyewitness declines or is unable to sign.

30 (10) A video of the lineup and the eyewitness' response
31 may be included.

32 (c) There is hereby created a task force to study and
33 identify best practices for eyewitness identification. The
34 task force consists of the following members:

35 (1) The Director of Criminal Justice Services, or his or
36 her designee, who shall chair, without voting, the task
37 force;

38 (2) The Superintendent of the State Police, or his or
39 her designee;

40 (3) A victim advocate to be designated by the Director
41 of Criminal Justice Services;

42 (4) The Director of Public Defender Services, or his or
43 her designee;

44 (5) The Executive Director of the West Virginia
45 Prosecuting Attorneys Institute, or his or her designee;

46 (6) A circuit judge designated by the Chief Justice of
47 the West Virginia Supreme Court of Appeals;

48 (7) Two professionals in the field of forensic sciences,
49 one to be designated by the Executive Director of the
50 West Virginia Prosecuting Attorneys Institute and the
51 other to be designated by the Director of Public
52 Defender Services;

53 (8) The President of the West Virginia Fraternal Order
54 of Police, or his or her designee;

55 (9) A representative of the Innocence Project of the
56 West Virginia University College of Law;

57 (10) Two licensed practitioners of criminal law, one to
58 be designated by the Executive Director of the West
59 Virginia Prosecuting Attorneys Institute and the other
60 to be designated by the Director of Public Defender
61 Services;

62 (11) The President of the West Virginia Sheriff's
63 Association, or his or her designee.

64 (d) The task force, or their assigned designees, shall
65 serve without compensation, and in consultation with
66 eyewitness identification practitioners and experts,
67 shall develop recommended guidelines for policies,
68 procedures and training with respect to the collection
69 and handling of eyewitness evidence in criminal
70 investigations by law-enforcement agencies that are
71 consistent with the reliable evidence supporting best
72 practices. The purpose of the guidelines is to provide
73 law-enforcement agencies with information regarding
74 eyewitness identification policies and procedures to
75 increase the accuracy of the crime investigation process.

76 (e) Such guidelines shall include procedures for the
77 administration of live and photographic lineups and
78 instructions that will increase the accuracy of
79 eyewitness identifications. The task force, in
80 developing these guidelines, shall consider:

81 (1) The use of blind administration of live and photo

82 lineups;

83 (2) The issuance of specific instructions to the
84 eyewitness before and during the identification
85 procedure;

86 (3) The number and selection of fillers to be used in
87 live and photo lineups;

88 (4) Sequential versus simultaneous presentation of
89 lineup members;

90 (5) Whether only one suspect should be included in
91 any live or photo lineup;

92 (6) The timing of when the administrator should
93 request and record the eyewitness's statement of his
94 confidence in his selection;

95 (7) Whether to refrain from providing of any
96 confirmatory information to the eyewitness;

97 (8) The visual recording of the lineup and its
98 administration;

99 (9) The video or audio recording of the lineup
100 procedure;

101 (10) Any other policies or procedures the task force
102 determines to be relevant; and

103 (11) What training, if any, should be made available to
104 law-enforcement personnel in the use of these
105 procedures.

106 (f) Not later than the fifteenth day of December, two
107 thousand eight, the task force shall submit a report on
108 the guidelines developed and recommendations
109 concerning their use to the standing committees of the
110 Legislature having cognizance of matters relating to
111 criminal law and procedure. Minority reports may also
112 be issued. The task force shall terminate on the
113 fifteenth day of December, two thousand nine, unless
114 earlier terminated by legislative action.

§62-1E-3. Training of law-enforcement officers.

1 The Superintendent of State Police may create
2 educational materials and conduct training programs to
3 instruct law-enforcement officers and recruits how to
4 conduct lineups in compliance with this section.

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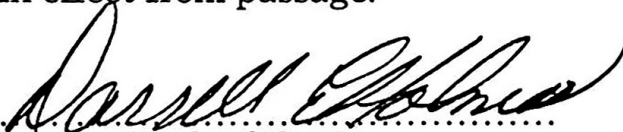
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
Chairman Senate Committee


.....
Chairman House Committee

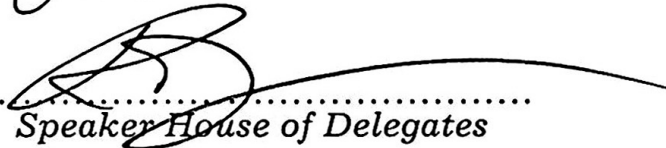
Originated in the Senate.

In effect from passage.


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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within is approved this
the 3rd Day of April , 2007.


.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 20 2007

Time 3:40 pm