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1 A bill to be entitled
2 An act relating to eyewitness identification;
3 providing a short title; defining terms; requiring
4 state, county, municipal, and other law enforcement
5 agencies that conduct lineups to follow certain
6 specified procedures; requiring the eyewitness to sign
7 an acknowledgement that he or she received the
8 instructions about the lineup procedures from the law
9 enforcement agency; specifying remedies for failing to
10 adhere to the eyewitness identification procedures;
11 requiring the Criminal Justice Standards and Training
12 Commission to create educational materials and conduct
13 training programs on how to conduct lineups in
14 compliance with the act; providing an effective date.

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16 Be It Enacted by the Legislature of the State of Florida:

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18 Section 1. Eyewitness identification.—

19 (1) SHORT TITLE.—This section may be cited as the
20 “Eyewitness Identification Reform Act.”

21 (2) DEFINITIONS.—As used in this section, the term:

22 (a) “Eyewitness” means a person whose identification by
23 sight of another person may be relevant in a criminal
24 proceeding.

25 (b) “Filler” means a person or a photograph of a person who
26 is not suspected of an offense but is included in a lineup.

27 (c) “Independent administrator” means a person who is not
28 participating in the investigation of a criminal offense and is
29 unaware of which person in the lineup is the suspect.

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30 (d) "Lineup" means a photo lineup or live lineup.

31 (e) "Lineup administrator" means the person who conducts a
32 lineup.

33 (f) "Live lineup" means a procedure in which a group of
34 people is displayed to an eyewitness for the purpose of
35 determining if the eyewitness is able to identify the
36 perpetrator of a crime.

37 (g) "Photo lineup" means a procedure in which an array of
38 photographs is displayed to an eyewitness for the purpose of
39 determining if the eyewitness is able to identify the
40 perpetrator of a crime.

41 (3) EYEWITNESS IDENTIFICATION PROCEDURES.—Lineups conducted
42 in this state by state, county, municipal, and other law
43 enforcement agencies must meet all of the following
44 requirements:

45 (a) A lineup must be conducted by an independent
46 administrator. In lieu of using an independent administrator, a
47 photo lineup eyewitness identification procedure may be
48 conducted using an alternative method specified and approved by
49 the Criminal Justice Standards and Training Commission. Any
50 alternative method must be carefully structured to achieve
51 neutral administration and to prevent the administrator from
52 knowing which photograph is being presented to the eyewitness
53 during the identification procedure. Alternative methods may
54 include any of the following:

55 1. Automated computer programs that can automatically
56 administer the photo lineup directly to an eyewitness and
57 prevent the lineup administrator from seeing which photo the
58 witness is viewing until after the procedure is completed.

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59 2. A procedure in which photographs are placed in folders,
60 randomly numbered, and shuffled and then presented to an
61 eyewitness such that the administrator cannot see or track which
62 photograph is being presented to the witness until after the
63 procedure is completed.

64 3. Any other procedure that achieves neutral administration
65 and prevents the administrator from knowing which photograph is
66 being presented to the eyewitness during the identification
67 procedure.

68 (b) Before a lineup, the eyewitness shall be instructed
69 that:

70 1. The perpetrator might or might not be in the lineup;
71 2. The lineup administrator does not know the suspect's
72 identity, except that this instruction need not be given when a
73 specified and approved alternative method of neutral
74 administration is utilized;

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

77 4. It is as important to exclude innocent persons as it is
78 to identify the perpetrator; and

79 5. The investigation will continue with or without an
80 identification.

81
82 The eyewitness shall acknowledge, in writing, having received a
83 copy of the lineup instructions. If the eyewitness refuses to
84 sign a document acknowledging receipt of the instructions, the
85 lineup administrator shall document the refusal of the
86 eyewitness to sign the writing and then sign the acknowledgement
87 himself or herself.

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88 (4) REMEDIES.—All of the following remedies are available
89 as consequence of a person not complying with the requirements
90 of this section:

91 (a)1. A failure on the part of a person to comply with any
92 requirement of this section shall be considered by the court
93 when adjudicating motions to suppress eyewitness identification.

94 2. A failure on the part of a person to comply with any
95 requirement of this section is admissible in support of claims
96 of eyewitness misidentification, as long as such evidence is
97 otherwise admissible.

98 (b) When evidence of compliance or noncompliance with the
99 requirements of this section has been presented at trial, the
100 jury shall be instructed that it may consider credible evidence
101 of compliance or noncompliance to determine the reliability of
102 eyewitness identifications.

103 (5) EDUCATION AND TRAINING.—The Criminal Justice Standards
104 and Training Commission, in consultation with the Department of
105 Law Enforcement, shall create educational materials and conduct
106 training programs on how to conduct lineups in compliance with
107 this section.

108 Section 2. This act shall take effect October 1, 2011.