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LEGISLATIVE ACTION

Senate	.	House
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Floor: 1A/AD/2R	.	
05/05/2011 07:44 PM	.	
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Senator Negron moved the following:

1   **Senate Amendment to Amendment (387558) (with title**
2 **amendment)**
3
4   Delete lines 327 - 330
5 and insert:
6   Section 26. Eyewitness identification.—
7   (1) SHORT TITLE.—This section may be cited as the
8 "Eyewitness Identification Reform Act."
9   (2) DEFINITIONS.—As used in this section, the term:
10   (a) "Eyewitness" means a person whose identification by
11 sight of another person may be relevant in a criminal
12 proceeding.
13   (b) "Filler" means a person or a photograph of a person who

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14 is not suspected of an offense but is included in a lineup.

15   (c) "Independent administrator" means a person who is not

16 participating in the investigation of a criminal offense and is

17 unaware of which person in the lineup is the suspect.

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

19   (e) "Lineup administrator" means the person who conducts a

20 lineup.

21   (f) "Live lineup" means a procedure in which a group of

22 people is displayed to an eyewitness for the purpose of

23 determining if the eyewitness is able to identify the

24 perpetrator of a crime.

25   (g) "Photo lineup" means a procedure in which an array of

26 photographs is displayed to an eyewitness for the purpose of

27 determining if the eyewitness is able to identify the

28 perpetrator of a crime.

29   (3) EYEWITNESS IDENTIFICATION PROCEDURES.—Lineups conducted

30 in this state by state, county, municipal, and other law

31 enforcement agencies must meet all of the following

32 requirements:

33   (a) A lineup must be conducted by an independent

34 administrator. In lieu of using an independent administrator, a

35 photo lineup eyewitness identification procedure may be

36 conducted using an alternative method specified and approved by

37 the Criminal Justice Standards and Training Commission. Any

38 alternative method must be carefully structured to achieve

39 neutral administration and to prevent the administrator from

40 knowing which photograph is being presented to the eyewitness

41 during the identification procedure. Alternative methods may

42 include any of the following:

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43   1. Automated computer programs that can automatically
44   administer the photo lineup directly to an eyewitness and
45   prevent the lineup administrator from seeing which photo the
46   witness is viewing until after the procedure is completed.
47   2. A procedure in which photographs are placed in folders,
48   randomly numbered, and shuffled and then presented to an
49   eyewitness such that the administrator cannot see or track which
50   photograph is being presented to the witness until after the
51   procedure is completed.
52   3. Any other procedure that achieves neutral administration
53   and prevents the administrator from knowing which photograph is
54   being presented to the eyewitness during the identification
55   procedure.
56   (b) Before a lineup, the eyewitness shall be instructed
57   that:
58   1. The perpetrator might or might not be in the lineup;
59   2. The lineup administrator does not know the suspect's
60   identity, except that this instruction need not be given when a
61   specified and approved alternative method of neutral
62   administration is utilized;
63   3. The eyewitness should not feel compelled to make an
64   identification;
65   4. It is as important to exclude innocent persons as it is
66   to identify the perpetrator; and
67   5. The investigation will continue with or without an
68   identification.
69
70   The eyewitness shall acknowledge, in writing, having received a
71   copy of the lineup instructions. If the eyewitness refuses to

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72 sign a document acknowledging receipt of the instructions, the
73 lineup administrator shall document the refusal of the
74 eyewitness to sign the writing and then sign the acknowledgement
75 himself or herself.
76   (4) REMEDIES.—All of the following remedies are available
77 as consequence of a person not complying with the requirements
78 of this section:
79   (a)1. A failure on the part of a person to comply with any
80 requirement of this section shall be considered by the court
81 when adjudicating motions to suppress eyewitness identification.
82   2. A failure on the part of a person to comply with any
83 requirement of this section is admissible in support of claims
84 of eyewitness misidentification, as long as such evidence is
85 otherwise admissible.
86   (b) When evidence of compliance or noncompliance with the
87 requirements of this section has been presented at trial, the
88 jury shall be instructed that it may consider credible evidence
89 of compliance or noncompliance to determine the reliability of
90 eyewitness identifications.
91   (5) EDUCATION AND TRAINING.—The Criminal Justice Standards
92 and Training Commission, in consultation with the Department of
93 Law Enforcement, shall create educational materials and conduct
94 training programs on how to conduct lineups in compliance with
95 this section.
96   Section 27. (1) Sections 1 through 24 of this act shall
97 take effect January 1, 2012.
98   (2) Sections 25 and 26 of this act shall take effect
99 October 1, 2011.
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101
102  ================= T I T L E   A M E N D M E N T =================
103  And the title is amended as follows:
104       Delete line 414
105  and insert:
106  certain conditions; providing a short title; defining terms;
107  requiring state, county, municipal, and other law enforcement
108  agencies that conduct lineups to follow certain specified
109  procedures; requiring the eyewitness to sign an acknowledgement
110  that he or she received the instructions about the lineup
111  procedures from the law enforcement agency; specifying remedies
112  for failing to adhere to the eyewitness identification
113  procedures; requiring the Criminal Justice Standards and
114  Training Commission to create educational materials and conduct
115  training programs on how to conduct lineups in compliance with
116  the act; providing effective dates.
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