



769658

LEGISLATIVE ACTION

Senate

House

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Floor: WD/2R

05/05/2011 07:45 PM

Senator Negron moved the following:

Senate Amendment (with title amendment)

Between lines 64 and 65

insert:

Section 2. Eyewitness identification.—

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

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

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

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



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14 (c) "Independent administrator" means a person who is not
15 participating in the investigation of a criminal offense and is
16 unaware of which person in the lineup is the suspect.

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

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

20 (f) "Live lineup" means a procedure in which a group of
21 people is displayed to an eyewitness for the purpose of
22 determining if the eyewitness is able to identify the
23 perpetrator of a crime.

24 (g) "Photo lineup" means a procedure in which an array of
25 photographs is displayed to an eyewitness for the purpose of
26 determining if the eyewitness is able to identify the
27 perpetrator of a crime.

28 (3) EYEWITNESS IDENTIFICATION PROCEDURES.—Lineups conducted
29 in this state by state, county, municipal, or other law
30 enforcement agencies must meet all of the following
31 requirements:

32 (a) A lineup must be conducted by an independent
33 administrator. In lieu of using an independent administrator, a
34 photo lineup eyewitness identification procedure may be
35 conducted using an alternative method specified and approved by
36 the Criminal Justice Standards and Training Commission. Any
37 alternative method must be carefully structured to achieve
38 neutral administration and to prevent the administrator from
39 knowing which photograph is being presented to the eyewitness
40 during the identification procedure. Alternative methods may
41 include any of the following:

42 1. Automated computer programs that can automatically



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43 administer the photo lineup directly to an eyewitness and
44 prevent the lineup administrator from seeing which photo the
45 witness is viewing until after the procedure is completed.

46 2. A procedure in which photographs are placed in folders,
47 randomly numbered, and shuffled and then presented to an
48 eyewitness such that the administrator cannot see or track which
49 photograph is being presented to the witness until after the
50 procedure is completed.

51 3. Any other procedure that achieves neutral administration
52 and prevents the administrator from knowing which photograph is
53 being presented to the eyewitness during the identification
54 procedure.

55 (b) Before a lineup, the eyewitness shall be instructed
56 that:

57 1. The perpetrator might or might not be in the lineup;

58 2. The lineup administrator does not know the suspect's
59 identity, except that this instruction need not be given when a
60 specified and approved alternative method of neutral
61 administration is used;

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

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

66 5. The investigation will continue with or without an
67 identification.

68
69 The eyewitness shall acknowledge, in writing, having received a
70 copy of the lineup instructions. If the eyewitness refuses to
71 sign a document acknowledging receipt of the instructions, the



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72 lineup administrator shall document the refusal of the
73 eyewitness to sign the writing and then sign the acknowledgement
74 himself or herself.

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

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

81 2. A failure on the part of a person to comply with any
82 requirement of this section is admissible in support of claims
83 of eyewitness misidentification, as long as such evidence is
84 otherwise admissible.

85 (b) When evidence of compliance or noncompliance with the
86 requirements of this section has been presented at trial, the
87 jury shall be instructed that it may consider credible evidence
88 of compliance or noncompliance to determine the reliability of
89 eyewitness identifications.

90 (5) EDUCATION AND TRAINING.—The Criminal Justice Standards
91 and Training Commission, in consultation with the Department of
92 Law Enforcement, shall create educational materials and conduct
93 training programs on how to conduct lineups in compliance with
94 this section.

95 Section 3. Sections 1 of this act shall take effect July 1,
96 2012, and section 2 of this act shall take effect October 1,
97 2011.

98
99 ===== T I T L E A M E N D M E N T =====

100 And the title is amended as follows:



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101 Delete line 56
102 and insert:
103 veterans; providing a short title; defining terms;
104 requiring state, county, municipal, and other law
105 enforcement agencies that conduct lineups to follow
106 certain specified procedures; requiring the eyewitness
107 to sign an acknowledgement that he or she received the
108 instructions about the lineup procedures from the law
109 enforcement agency; requiring that the lineup
110 administrator document the refusal of an eyewitness to
111 sign the acknowledgement; specifying remedies for
112 failing to adhere to the eyewitness identification
113 procedures; requiring the Criminal Justice Standards
114 and Training Commission to create educational
115 materials and conduct training programs on how to
116 conduct lineups in compliance with the act; providing
117 effective dates.