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

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

21
22 Section 1. Eyewitness identification.—

23 (1) SHORT TITLE.—This section may be cited as the
24 "Eyewitness Identification Reform Act."

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

26 (a) "Eyewitness" means a person whose identification by
27 sight of another person may be relevant in a criminal
28 proceeding.

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

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

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

35 (e) "Lineup administrator" means the person who conducts a
36 lineup.

37 (f) "Live lineup" means a procedure in which a group of
38 people 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 (g) "Photo lineup" means a procedure in which an array of
42 photographs is displayed to an eyewitness for the purpose of
43 determining if the eyewitness is able to identify the
44 perpetrator of a crime.

45 (3) EYEWITNESS IDENTIFICATION PROCEDURES.—Lineups
46 conducted in this state by state, county, municipal, and other
47 law enforcement agencies must meet all of the following
48 requirements:

49 (a) A lineup must be conducted by an independent
50 administrator or by an alternative method as provided by
51 subsection (4).

52 (b) Individuals or photos must be presented to witnesses
53 sequentially, with each individual or photo presented to the
54 witness in a previously determined order. Thereafter, the live
55 lineup or photo lineup must be removed before the next live
56 lineup or photo lineup is presented.

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57 (c) Before a lineup, the eyewitness shall be instructed
58 that:

- 59 1. The perpetrator might or might not be in the lineup;
60 2. The lineup administrator does not know the suspect's
61 identity;
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 an the eyewitness refuses to
71 sign a document acknowledging receipt of the instructions, the
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 (d) In a photo lineup, the photograph of the suspect must
76 be contemporaneous and, to the extent practicable, resemble the
77 suspect's appearance at the time of the offense.

78 (e) The lineup shall be composed so that the fillers
79 generally resemble the eyewitness's description of the
80 perpetrator, while ensuring that the suspect does not unduly
81 stand out from the fillers. In addition:

- 82 1. In a photo or live lineup at least five fillers must be
83 included in the lineup, in addition to the suspect.
84 2. If the eyewitness has previously viewed a photo or live

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85 lineup in connection with the identification of another person
86 suspected of involvement in the offense, the fillers in the
87 lineup in which the current suspect participates must be
88 different from the fillers used in any previous lineup.

89 (f) If there are multiple eyewitnesses, the suspect shall
90 be placed in a different position in the lineup or photo array
91 for each eyewitness.

92 (g) In any lineup, writings or information concerning any
93 previous arrest, indictment, or conviction of the suspect may
94 not be visible or made known to the eyewitness.

95 (h) In a live lineup, any identifying actions of the
96 suspect, such as speech, gestures, or other movements, must be
97 performed by all lineup participants.

98 (i) In a live lineup, all lineup participants must be out
99 of view of the eyewitness before the lineup.

100 (j) Only one suspect shall be included in a lineup.

101 (k) An eyewitness may be told nothing regarding the
102 suspect's position in the lineup or anything that might
103 influence the eyewitness's identification.

104 (l) The lineup administrator shall seek and document a
105 clear statement from the eyewitness at the time of the
106 identification, and in the eyewitness's own words, as to the
107 eyewitness's confidence level that the person identified in a
108 lineup is the perpetrator. The lineup administrator shall
109 separate all witnesses in order to discourage witnesses from
110 conferring with one another before or during the identification
111 procedure. Each witness shall be given instructions regarding
112 the identification procedures without other witnesses present.

113 (m) If the eyewitness identifies a person as the
114 perpetrator, the eyewitness may not be provided any information
115 concerning the person before the lineup administrator obtains
116 the eyewitness's statement of confidence regarding the
117 identification of the suspect. There may not be anyone present
118 during the live lineup or photographic identification procedures
119 who knows the suspect's identity, except the eyewitness and
120 counsel as required by law.

121 (n) Unless it is not practical, a video record of a live
122 identification procedure shall be made. If a video record is not
123 practical, the reason for the impracticality must be documented,
124 and an audio record shall be made in its place. If neither a
125 video or audio record is practical, the reasons for the
126 impracticality must be documented and the lineup administrator
127 shall make a written record of the lineup.

128 (o) The record, by whatever means recorded, must include
129 all of the following information:

130 1. All identification and nonidentification results,
131 including the eyewitness's statement of confidence, obtained
132 during the identification procedure.

133 2. The signature of the eyewitness. If the eyewitness
134 refuses to sign the record, the lineup administrator shall
135 document the refusal of the eyewitness to sign the results and
136 sign the record.

137 3. The names of all persons present at the lineup.

138 4. The date, time, and location of the lineup.

139 5. The words used by the eyewitness in any identification,
140 including words that describe the eyewitness's certainty of

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identification.

6. Whether it was a photo lineup or live lineup and how many photos or individuals were presented in the lineup.

7. The sources of all photographs or persons used.

8. In a photo lineup, the photographs themselves.

9. In a live lineup, a photo or other visual recording of the lineup which includes all persons who participated in the lineup.

(4) ALTERNATIVE METHOD FOR IDENTIFICATION.—In lieu of using an independent administrator, a photo lineup eyewitness identification procedure may be conducted using an alternative method specified and approved by the Criminal Justice Standards and Training Commission. Any alternative method must be carefully structured to achieve neutral administration and to prevent the administrator from knowing which photograph is being presented to the eyewitness during the identification procedure. The alternative methods may include:

(a) Automated computer programs that can automatically administer the photo lineup directly to an eyewitness and prevent the lineup administrator from seeing which photo the witness is viewing until after the procedure is completed; or

(b) A procedure in which photographs are placed in folders, randomly numbered, and shuffled and then presented to an eyewitness such that the administrator cannot see or track which photograph is being presented to the witness until after the procedure is completed.

(5) REMEDIES.—All of the following remedies are available as consequence of a person not complying with the requirements

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169 of this section:

170 (a)1. A failure on the part of a person to comply with any
171 requirements of this section shall be considered by the court
172 when adjudicating motions to suppress eyewitness identification.

173 2. A failure on the part of a person to comply with any of
174 the requirements of this section shall be admissible in support
175 of claims of eyewitness misidentification, as long as such
176 evidence is otherwise admissible.

177 (b) When evidence of compliance or noncompliance with the
178 requirements of this section has been presented at trial, the
179 jury shall be instructed that it may consider credible evidence
180 of compliance or noncompliance to determine the reliability of
181 eyewitness identifications.

182 (6) EDUCATION AND TRAINING.—The Criminal Justice Standards
183 and Training Commission, in consultation with the Department of
184 Law Enforcement, shall create educational materials and conduct
185 training programs on how to conduct lineups in compliance with
186 this section.

187 Section 2. This act shall take effect July 1, 2011.