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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.

15  
16 Be It Enacted by the Legislature of the State of Florida:

17  
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.