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LEGISLATIVE ACTION

Senate

House

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Floor: WD/2R

05/05/2011 07:44 PM

Senator Negron moved the following:

1 **Senate Amendment to Amendment (387558) (with title**
2 **amendment)**

3
4 Between lines 21 and 22
5 insert:

6 Section 3. 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, or 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 used;

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 a 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 4. Sections 1 of this act shall take effect July 1,
97 2012, and section 2 of this act shall take effect October 1,
98 2011.

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100 ===== T I T L E A M E N D M E N T =====



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101 And the title is amended as follows:
102 Delete line 382
103 and insert:
104 the term of court unless good cause is shown;
105 providing a short title; defining terms; requiring
106 state, county, municipal, and other law enforcement
107 agencies that conduct lineups to follow certain
108 specified procedures; requiring the eyewitness to sign
109 an acknowledgement that he or she received the
110 instructions about the lineup procedures from the law
111 enforcement agency; requiring that the lineup
112 administrator document the refusal of an eyewitness to
113 sign the acknowledgement; specifying remedies for
114 failing to adhere to the eyewitness identification
115 procedures; requiring the Criminal Justice Standards
116 and Training Commission to create educational
117 materials and conduct training programs on how to
118 conduct lineups in compliance with the act; amending
119 ss.