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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO CRIMINAL PROCEDURE -- IDENTIFICATION AND APPREHENSION OF
CRIMINALS

Introduced By: Representatives Ajello, Lally, JP O'Neill, M Rice, and Williams

Date Introduced: February 24, 2010

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 12-1 of the General Laws entitled "Identification and Apprehension
2 of Criminals" is hereby amended by adding thereto the following sections:

3 **12-1-16. Prevention of mistaken identification and wrongful convictions act of 2009.**

4 – (a) Legislative title. – This section shall be known and may be cited as the "Prevention
5 of Mistaken Eyewitness Identification and Wrongful Convictions Act of 2010."

6 (b) Legislative purpose. – In enacting this section the general assembly recognizes
7 mistaken eyewitness identification as a leading cause of wrongful convictions in the United States
8 of America. In enacting this section the general assembly expresses its intention of preventing
9 the injustice of a wrongful conviction caused by mistaken eyewitness identification by improving
10 lineup procedures during criminal investigations while further improving the already high quality
11 of criminal justice in our state.

12 **12-1-17. Definitions. – For the purposes of this section:**

13 (1) "Eyewitness" means a person whose identification of another person may be relevant
14 in a criminal proceeding;

15 (2) "Photographic lineup" means a procedure in which an array of photographs are
16 displayed to an eyewitness for the purpose of determining if the eyewitness is able to identify the
17 perpetrator of a crime;

18 (3) "Live lineup" means a procedure in which a group of persons is displayed to an

1 eyewitness for the purpose of determining if the eyewitness is able to identify the perpetrator of a
2 crime;

3 (4) "Lineup" means a photographic lineup or a live lineup;

4 (5) "Administrator" means the person who conducts a lineup;

5 (6) "Blind" means when the administrator does not know who among the members of the
6 photo or live lineup being viewed by the eyewitness is suspect;

7 (7) "Filler" means either a person or a photograph of a person who is not suspected of an
8 offense and is included in an identification procedure; and

9 (8) "Sequential" means lineup procedures where the eyewitness views only one member
10 of the lineup at a time and is shown all photographs or persons even if an identification has been
11 made before all the photographs or persons have been viewed.

12 **12-1-18. Lineup procedures.** – (a) All live lineups shall be photographed or otherwise
13 recorded. These photographs shall be disclosed to the accused and his or her defense counsel
14 during discovery proceedings as provided in the courts' rules of criminal procedure. All
15 photographs of suspects shown to an eyewitness during a photographic lineup shall be disclosed
16 to the accused and his or her defense counsel during discovery proceedings as provided in the
17 courts' rules of criminal procedure.

18 (b) Each eyewitness who views a lineup shall sign a form containing the following
19 information:

20 (1) The suspect might not be in the lineup or photo spread and the eyewitness is not
21 obligated to make an identification.

22 (2) The eyewitness should not assume that the person administering the lineup or photo
23 spread knows which person is the suspect in the case.

24 (c) Suspects in a lineup should not appear to be substantially different from "fillers" in
25 the lineup, based on the eyewitness' previous description of the perpetrator, or based on other
26 factors that would draw attention to the suspect.

27 (d) The administrator shall document in writing signed by the eyewitness all
28 identification and non-identification results obtained during the identification procedure,
29 including any eyewitness identification(s) of (a) filler(s).

30 (e) The administrator shall seek and document a clear statement from the eyewitness, at
31 the time of the identification and in the eyewitness' own words, as to the eyewitness' confidence
32 level that the person identified in a given lineup is the suspect. This confidence statement shall be
33 reduced to writing and signed by the eyewitness.

34 **12-1-19. Improvement of lineup procedures task force.** – (a) In order to: (1) Prevent

1 the injustice of a wrongful conviction caused by mistaken eyewitness identification; (2) Improve
2 lineup procedures during criminal investigations; and (3) Further improve the already high quality
3 of criminal justice in our state, the general assembly creates a taskforce to identify and
4 recommend policies and procedures to improve the accuracy of eyewitness identifications.

5 (b) The task force shall be comprised of the following or their designees:

6 (1) Attorney general;

7 (2) Public defender;

8 (3) Superintendent of the Rhode Island state police;

9 (4) President of the Rhode Island police chiefs' association;

10 (5) Head of the municipal police training academy;

11 (6) President of the Rhode Island bar association;

12 (7) President of the Rhode Island association of criminal defense lawyers; and

13 (8) A representative from a Rhode Island university with expertise in the relevant social
14 sciences as demonstrated by teaching, publication and other scholarly applications.

15 (c) The task force, in consultation with eyewitness identification practitioners and
16 experts, shall develop guidelines for policies, procedures and training with respect to the
17 collection and handling of eyewitness evidence in criminal investigations by law enforcement
18 agencies in Rhode Island. The purpose of the guidelines is to provide law enforcement agencies
19 with information regarding policies and procedures proven to increase the accuracy of the crime
20 investigation process, thus also reducing the possibility of wrongful convictions.

21 (d) Guidelines for policies, procedures and training that may be considered and
22 recommended by the task force include, but are not limited to:

23 (1) Use of blind administration of lineups;

24 (2) Specific instructions to be given to the eyewitness before and during the lineup to
25 increase the accuracy of any identification, including that the purpose of the identification
26 procedure is to exculpate the innocent as well as to identify the actual perpetrator;

27 (3) Number and selection of fillers to be in lineups;

28 (4) Use of sequential lineups versus nonsequential lineups;

29 (5) Inclusion of only one suspect in any lineup;

30 (6) Value of refraining from providing any confirmatory information to the eyewitness;

31 (7) Standards and protocols to be used in the administration and conduct of an
32 identification procedure; and

33 (8) Training, if any, should be made available to law enforcement personnel in the use of
34 these procedures.

1 (e) The task force shall submit a report on the guidelines developed and
2 recommendations concerning their use. Minority reports may also be issued. These reports shall
3 be presented to the governor, the chief justice of the Rhode Island supreme court, the speaker of
4 the house of representatives, the president of the senate, and the chairpersons of the judiciary
5 committees of both the house of representatives and the senate no later than January 1, 2011. The
6 task force shall terminate on the date that it submits its report.

7 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
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1 This act would establish procedures for identification lineups in criminal investigations,
2 specifically including requirements of photographing or otherwise recording the identification,
3 providing information regarding the lineup identification in discovery, disclosing certain
4 information about the lineup to the victim and having the victim sign documents regarding the
5 lineup process.

6 This act would take effect upon passage.

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