

LC01189

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2005

A N A C T

RELATING TO CRIMINAL PROCEDURE -- ARREST

Introduced By: Representatives O'Neill, Landroche, Anguilla, Schadone, and Jackson

Date Introduced: February 08, 2005

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 12-7 of the General Laws entitled "Arrest" is hereby amended by
2 adding thereto the following sections:

3 **12-7-22. Definitions.** – For the purposes of this section, the following definitions shall
4 apply:

5 (1) "Eyewitness" means a person who observes another person at or near the scene of the
6 offense;

7 (2) "Photo lineup" means a procedure in which an array of photographs, including a
8 photograph of the person suspected as the perpetrator of an offense and additional photographs of
9 other persons not suspected of the offense, is displayed to an eyewitness for the purpose of
10 determining whether the eyewitness is able to identify the suspect as the perpetrator;

11 (3) "Live lineup" means a procedure in which a group of persons, including the person
12 suspected as the perpetrator of an offense and other persons not suspected of the offense, is
13 displayed to an eyewitness for the purpose of determining whether the eyewitness is able to
14 identify the suspect as the perpetrator;

15 (4) "Investigator" means the person conducting the live or photo lineup;

16 (5) "Identification procedure" means either a photo lineup or a live lineup; and

17 (6) "Filler" means either a person or a photograph of a person who is not suspected of an
18 offense and is included in an identification procedure.

19 **12-7-23. Eyewitness identification procedures.** – Not later than January 1, 2006, each

1 municipal police department and the state police shall adopt procedures for the conducting of
2 photo lineups and live lineups that comply with the following requirements:

3 (a) When practicable, the investigator shall be a person who is not aware of which person
4 in the photo lineup or live lineup is suspected as the perpetrator of the offense:

5 (1) when it is not practicable for the investigator to be a person who is not aware of which
6 person in the photo or live lineup is suspected as the perpetrator of the offense, the lineup will be
7 presented simultaneously, not sequentially; and

8 (2) the investigator shall state in writing the reason that the presentation of the lineup was
9 not made by a person who was not aware of which person in the photo lineup or live lineup was
10 suspected as the perpetrator of the offense.

11 (b) Prior to the identification procedure, the investigator shall instruct the eyewitness that:

12 (1) the perpetrator may not be among the persons in the photo lineup or the live lineup;

13 (2) the eyewitness should not feel compelled to make an identification;

14 (3) when administering a live lineup or photo lineup in sequence rather than
15 simultaneously;

16 (A) Each photograph or person will be viewed one at a time;

17 (B) The photographs or persons will be displayed in random order;

18 (C) The eyewitness should take as much time as needed in making a decision about each
19 photograph or person before moving to the next one; and

20 (D) All photographs or persons will be shown to the eyewitness, even if an identification
21 is made before all have been viewed.

22 (c) When administering a live lineup or photo lineup in sequence rather than
23 simultaneously, the investigator shall conduct the identification procedure with the eyewitness as
24 follows:

25 (1) Each photograph or person will be viewed one at a time;

26 (2) The photographs or persons will be displayed in random order;

27 (3) The eyewitness should take as much time as needed in making a decision about each
28 photograph or person before moving to the next one; and

29 (4) All photographs or persons will be shown to the eyewitness, even if an identification
30 is made before all have been viewed.

31 (d) The photo lineup or live lineup shall be composed so that the fillers generally fit the
32 description of the person suspected as the perpetrator and, in the case of a photo lineup, so that
33 the photograph of the person suspected as the perpetrator resembles his or her appearance at the
34 time of the offense and does not unduly stand out;

1 (e) At least five (5) fillers shall be included in the photo lineup and at least four (4) fillers
2 shall be included in the live lineup, in addition to the person suspected as the perpetrator;

3 (f) The person suspected as the perpetrator shall be the only suspected perpetrator
4 included in the identification procedure;

5 (g) The investigator shall seek, in the eyewitness's own words, his or her confidence level
6 that the person or persons identified in the lineup is the suspect;

7 (h) A written record of the identification procedure shall be made that includes the
8 following information:

9 (1) All identification and nonidentification results obtained during the identification
10 procedure, signed by the eyewitness, including the eyewitness's own words regarding how certain
11 he or she is of the selection;

12 (2) The names of all persons present at the identification procedure;

13 (3) The date and time of the identification procedure.

14 **12-7-24. Remedies for noncompliance.** – (a) Evidence of a failure to comply with any
15 of the provisions of Rhode Island general laws section 12-7-23 shall be admissible for
16 consideration by the trial courts in adjudicating motions to suppress eyewitness identification.

17 (b) Evidence of a failure to comply with any of the provisions of Rhode Island general
18 laws section 12-7-23 shall be admissible in support of claims of eyewitness misidentification as
19 long as such evidence is otherwise admissible pursuant to the rules of evidence and criminal
20 procedure.

21 SECTION 2. This act shall take effect on January 1, 2006.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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RELATING TO CRIMINAL PROCEDURE -- ARREST

- 1 This act would add various procedures relative to the manner in which "photo lineups"
- 2 and "live lineups" are conducted by municipal and state police forces.
- 3 This act would take effect on January 1, 2006.

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