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By: **Delegates Rosenberg, Anderson, Carter, Dumais, Gutierrez, Kelley, Lee,  
Marriott, McComas, and Menes**

Introduced and read first time: February 10, 2005

Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure - Eyewitness Identification Evidence and Eyewitness**  
3 **Testimony**

4 FOR the purpose of establishing the admissibility of expert testimony in a criminal  
5 proceeding relating to the reliability of certain eyewitness identification  
6 evidence or eyewitness testimony under certain circumstances; establishing that  
7 certain eyewitness identification evidence is not admissible unless a certain  
8 record of the identification procedure which produced the eyewitness evidence  
9 was preserved and certain information related to the procedure was provided to  
10 the defendant in a certain manner; requiring that records of certain  
11 identification procedures include certain information; providing that, with a  
12 certain exception, the in-court identification of a defendant which was not  
13 previously obtained by a certain identification procedure is inadmissible;  
14 providing for the application of this Act; and generally relating to eyewitness  
15 identification evidence and testimony in a criminal proceeding.

16 BY adding to  
17 Article - Courts and Judicial Proceedings  
18 Section 10-921  
19 Annotated Code of Maryland  
20 (2002 Replacement Volume and 2004 Supplement)

21 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
22 MARYLAND, That the Laws of Maryland read as follows:

23 **Article - Courts and Judicial Proceedings**

24 10-921.

25 (A) ON INTRODUCTION BY THE STATE OF EYEWITNESS IDENTIFICATION  
26 EVIDENCE OR EYEWITNESS TESTIMONY IN A CRIMINAL PROCEEDING, EXPERT  
27 TESTIMONY RELATING TO THE RELIABILITY OF EYEWITNESS IDENTIFICATION  
28 EVIDENCE OR EYEWITNESS TESTIMONY IS ADMISSIBLE ON MOTION OF THE  
29 DEFENDANT.

1 (B) (1) EYEWITNESS IDENTIFICATION EVIDENCE IS NOT ADMISSIBLE IN  
2 THE STATE'S CASE UNLESS A RECORD OF THE IDENTIFICATION PROCEDURE THAT  
3 PRODUCED THE EYEWITNESS EVIDENCE WAS PRESERVED, AND ALL MATERIAL AND  
4 INFORMATION RELATED TO THE IDENTIFICATION PROCEDURE WAS PROVIDED TO  
5 THE DEFENDANT IN A TIMELY MANNER BEFORE THE COMMENCEMENT OF THE  
6 PROCEEDING IN WHICH THE EVIDENCE IS OFFERED.

7 (2) A RECORD OF AN IDENTIFICATION PROCEDURE SHALL INCLUDE:

8 (I) ALL IDENTIFICATION AND NONIDENTIFICATION RESULTS  
9 OBTAINED DURING THE PROCEDURE;

10 (II) THE DATE AND TIME OF THE PROCEDURE;

11 (III) A STATEMENT IN THE EYEWITNESS'S OWN WORDS REGARDING  
12 THE LEVEL OF THE EYEWITNESS'S CERTAINTY OF ANY IDENTIFICATION; AND

13 (IV) THE SIGNATURE OF THE EYEWITNESS.

14 (3) A RECORD OF AN IDENTIFICATION PROCEDURE THAT USES A  
15 PHOTOGRAPHIC LINEUP SHALL ALSO INCLUDE:

16 (I) THE PHOTOGRAPHS USED IN THE LINEUP;

17 (II) THE ORDER IN WHICH THE PHOTOGRAPHS WERE DISPLAYED  
18 TO THE EYEWITNESS; AND

19 (III) THE SOURCES OF ALL PHOTOGRAPHS USED IN THE LINEUP.

20 (4) A RECORD OF AN IDENTIFICATION PROCEDURE THAT USES A LIVE  
21 LINEUP SHALL ALSO INCLUDE A PHOTOGRAPHIC OR OTHER VISUAL RECORDING OF  
22 THE LINEUP THAT:

23 (I) INCLUDES ALL PERSONS WHO PARTICIPATED IN THE LINEUP;  
24 AND

25 (II) THE ORDER IN WHICH THE PERSONS WERE DISPLAYED TO THE  
26 EYEWITNESS.

27 (C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, AN  
28 IN-COURT IDENTIFICATION OF A CRIMINAL DEFENDANT BY AN EYEWITNESS THAT  
29 WAS NOT PREVIOUSLY OBTAINED BY AN EXTRAJUDICIAL IDENTIFICATION  
30 PROCEDURE UNDER SUBSECTION (B) OF THIS SECTION IS INADMISSIBLE.

31 (2) ON MOTION BY THE STATE, AND AFTER A HEARING, A COURT MAY  
32 ADMIT AN IN-COURT EYEWITNESS IDENTIFICATION OF A CRIMINAL DEFENDANT ON  
33 A FINDING THAT THE IDENTIFICATION:

34 (I) IS RELIABLE AND RELEVANT; AND

1 (II) HAS PROBATIVE VALUE THAT SUBSTANTIALLY OUTWEIGHS  
2 THE DANGER OF UNFAIR PREJUDICE TO THE DEFENDANT, CONFUSION OF THE  
3 ISSUES, MISLEADING A JURY; UNDUE DELAY, WASTE OF TIME, OR THE NEEDLESS  
4 PRESENTATION OF CUMULATIVE EVIDENCE.

5 SECTION 2. AND BE IT FURTHER ENACTED, That Section 10-921(a) and (c)  
6 of the Courts Article as enacted by this Act shall be construed prospectively to apply  
7 only to criminal proceedings commenced on or after the effective date of this Act.

8 SECTION 3. AND BE IT FURTHER ENACTED, That Section 10-921(b) of the  
9 Courts Article as enacted by this Act shall be construed prospectively to apply only to  
10 extrajudicial identifications that occur on or after the effective date of this Act.

11 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect  
12 October 1, 2005.