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

Introduced and read first time: February 8, 2006

Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Procedure - Eyewitness Identification Evidence - Inadmissible -**  
3 **Exception**

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

13 BY adding to  
14 Article - Courts and Judicial Proceedings  
15 Section 10-921  
16 Annotated Code of Maryland  
17 (2002 Replacement Volume and 2005 Supplement)

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

20 **Article - Courts and Judicial Proceedings**

21 10-921.

22 (A) (1) EYEWITNESS IDENTIFICATION EVIDENCE IS NOT ADMISSIBLE IN  
23 THE STATE'S CASE IN A CRIMINAL PROCEEDING UNLESS A RECORD OF THE  
24 IDENTIFICATION PROCEDURE IS PRESERVED, AND ALL MATERIAL AND  
25 INFORMATION RELATED TO THE IDENTIFICATION PROCEDURE WAS PROVIDED TO  
26 THE DEFENDANT IN A TIMELY MANNER BEFORE THE COMMENCEMENT OF THE  
27 PROCEEDING IN WHICH THE EVIDENCE IS OFFERED.

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

1 (I) ALL IDENTIFICATION AND NONIDENTIFICATION RESULTS  
2 OBTAINED DURING THE PROCEDURE;

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

4 (III) A STATEMENT IN THE EYEWITNESS'S OWN WORDS REGARDING  
5 THE LEVEL OF THE EYEWITNESS'S CERTAINTY OF ANY IDENTIFICATION, MADE  
6 CONTEMPORANEOUSLY WITH THE IDENTIFICATION PROCEDURE;

7 (IV) THE SIGNATURE OF THE WITNESS; AND

8 (V) ANY OTHER RELEVANT INFORMATION.

9 (3) A RECORD OF AN IDENTIFICATION PROCEDURE THAT USES A  
10 PHOTOGRAPHIC LINEUP OR ARRAY SHALL ALSO INCLUDE:

11 (I) THE PHOTOGRAPHS USED IN THE LINEUP OR ARRAY;

12 (II) THE ORDER AND NUMBER OF TIMES IN WHICH THE  
13 PHOTOGRAPHS WERE DISPLAYED TO THE EYEWITNESS; AND

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

15 (4) A RECORD OF AN IDENTIFICATION PROCEDURE THAT USES A LIVE  
16 LINEUP SHALL ALSO INCLUDE A PHOTOGRAPHIC OR OTHER VISUAL RECORDING OF  
17 THE LINEUP THAT:

18 (I) INCLUDES ALL PERSONS WHO PARTICIPATED IN THE LINEUP;  
19 AND

20 (II) REFLECTS THE ORDER IN WHICH THE PERSONS WERE  
21 DISPLAYED TO THE EYEWITNESS.

22 (B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, AN  
23 IN-COURT IDENTIFICATION OF A CRIMINAL DEFENDANT BY AN EYEWITNESS THAT  
24 WAS NOT PREVIOUSLY MADE BY AN EXTRAJUDICIAL IDENTIFICATION PROCEDURE  
25 UNDER SUBSECTION (A) OF THIS SECTION IS INADMISSIBLE.

26 (2) ON MOTION OF THE STATE, AND AFTER A HEARING, A COURT MAY  
27 ADMIT AN IN-COURT EYEWITNESS IDENTIFICATION OF A CRIMINAL DEFENDANT ON  
28 A FINDING THAT THE IDENTIFICATION:

29 (I) IS RELIABLE AND RELEVANT; AND

30 (II) HAS PROBATIVE VALUE THAT SUBSTANTIALLY OUTWEIGHS  
31 THE DANGER OF UNFAIR PREJUDICE TO THE DEFENDANT, CONFUSION OF THE  
32 ISSUES, MISLEADING A JURY, UNDUE DELAY, WASTE OF TIME, OR THE NEEDLESS  
33 PRESENTATION OF CUMULATIVE EVIDENCE.

34 SECTION 2. AND BE IT FURTHER ENACTED, That Section 10-921(a) of the  
35 Courts Article as enacted by this Act shall be construed to apply only prospectively

1 and may not be applied or interpreted to have any effect on or application to any  
2 extrajudicial identifications that occur before the effective date of this Act.

3 SECTION 3. AND BE IT FURTHER ENACTED, That Section 10-921(b) of the  
4 Courts Article as enacted by this Act shall be construed to apply only prospectively  
5 and may not be applied or interpreted to have any effect on or application to any  
6 criminal proceedings commenced before the effective date of this Act.

7 SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect  
8 October 1, 2006.