

SENATE No. 1716

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to eyewitness identification procedures..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. The General Laws are hereby amended by inserting after Chapter 276A,
2 the following new chapter:--

3 Chapter 276B Relative to Eyewitness Identification Procedures

4 Section 1. As used in this chapter the following words shall have the following
5 meanings:

6 “Law Enforcement Agency” shall refer to any state, county, or local law police
7 organization that has the power to make arrests pursuant to GL ch. 22c or GL ch. 147 sec. 8.

8 “Eyewitness Identification” shall refer to the process by which an eyewitness views
9 individuals or representations of individuals with the aim of identifying a suspect.

10 “Administrator” shall refer to a duly authorized person who oversees an eyewitness
11 identification.

12 “Blind Administration” shall refer to the administration of an eyewitness identification by
13 an administrator who does not know the suspect’s identity.

14 “Folder System” shall mean the administration of the eyewitness’s viewing of a photo-
15 array by an administrator who may be aware of the suspect’s identity but does not know when
16 the eyewitness views the suspect’s representation as per the following procedure: the suspect’s
17 representation is inserted in one of ten folders; five folders contain representations of fillers; and
18 the remaining three folders remain empty. The administrator then shuffles the folders without
19 looking at the contents and labels each folder with a number, 1 through 10. Each folder is then
20 viewed individually and returned to the administrator. If the witness identifies a suspect, the
21 administrator records the order in which the folders were presented in addition to the law
22 enforcement agency’s regular eyewitness identification documentation procedure.

23 “Filler” shall refer to an individual used in an eyewitness identification who is known to
24 be innocent but fits the description of the suspect.

25 “Sequential Administration” shall refer to an eyewitness identification in which
26 individuals or representations of individuals are presented to the eyewitness sequentially in order
27 to minimize the potential for relative judgment.

28 “Photo-array” shall refer to an eyewitness identification using visual representations of
29 individuals.

30 “Neutral Instructions” shall mean guidelines given to the eyewitness prior to the
31 identification procedure that do not lead him or her to assume that the suspect is present.

32 “Confidence Judgment” shall mean a written statement by the witness after he or she has
33 made an identification as to how certain he or she is of the identification.

34 Section 2 (a) Every law enforcement agency shall, by January 1, 2010, adopt written
35 policies for using an eyewitness to identify a suspect.

36 (b) In developing and revising eyewitness identification policies under this section, a law
37 enforcement agency shall consider social scientifically sound procedures and established best
38 practices to enhance the objectivity and reliability of eyewitness identifications and to minimize
39 the possibility of mistaken identifications. Law enforcement agencies shall consider policies that
40 include but are not limited to:

41 (1) Blind administration of an eyewitness identification or, in the case of a photo-array,
42 using the folder system.

43 (2) Procedures to minimize factors that could influence an eyewitness in his or her
44 identification of a suspect or to overstate his or her confidence in an identification, including
45 verbal or nonverbal cues from the administrator.

46 (3) Sequential administration of an eyewitness identification.

47 (4) Administering neutral instructions to the witness prior to an identification procedure.

48 (5) Collecting a confidence judgment from the eyewitness after he or she has made an
49 identification.

50 (6) Documenting the procedure by which the eyewitness views the suspect or a
51 representation of the suspect and documenting the results or outcome of the procedure.

52 (c) Each law enforcement agency shall review and, if necessary, revise their eyewitness
53 identification policies biennially.

54 Section 3. To assist in the adoption of enhanced eyewitness identification procedures, the
55 executive office of public safety shall:

56 (1) promulgate regulations to ensure that all full-time municipal police officers are
57 trained in eyewitness identification best practices by certified instructors, under a set, uniform
58 curriculum.

59 (2) collect the eyewitness identification policies adopted or revised pursuant to section 2
60 of this chapter and make such policies available to other law enforcement agencies.