

# **HOUSE . . . . . No. 3861**

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## The Commonwealth of Massachusetts

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HOUSE OF REPRESENTATIVES, November 18, 2015.

The committee on the Judiciary to whom was referred the joint petition (accompanied by bill, House, No. 1290) of John V. Fernandes, William N. Brownsberger and others improving the accuracy of eyewitness identification procedures, reports recommending that the accompanying bill (House, No. 3861) ought to pass.

For the committee,

JOHN V. FERNANDES.

**HOUSE . . . . . No. 3861**

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**The Commonwealth of Massachusetts**

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**In the One Hundred and Eighty-Ninth General Court  
(2015-2016)**  
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An Act improving the accuracy of 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 adding after Chapter 41 , Section  
2 98G , the following new section: -

3           Section 98H

4           1. The Transit Police of the Massachusetts Bay Transportation Authority and the police  
5 department of any city or town serving a population of two thousand residents or more shall have  
6 a written policy consistent with the model policy on eyewitness identification developed by the  
7 Massachusetts Chiefs of Police Association.

8           2. The policy shall include the following minimal elements consistent with general  
9 accepted science and evidence-based practice:

10           a. A show-up should not be conducted more than two hours after the witness's  
11 observation of the offender;

12           b. The department shall not employ multiple identification procedures featuring any one  
13 suspect with the same witness.

14           c. Any lineup or photo array shall be conducted by an administrator who does not know  
15 the suspect's identity or shall be conducted in a manner that prevents the administrator from  
16 knowing which member of the array is being viewed by the eyewitness at any given time.

17           d. In addition to the suspect, there shall be at least four non-suspects in any live lineup  
18 and at least five non-suspects in any photo array. All non-suspect photos or individuals in an  
19 array or lineup shall match the description of the perpetrator provided by the eyewitness. No  
20 photo or lineup member shall stand out.

21           e. Each witness shall be instructed that the perpetrator may or may not be present, that the  
22 investigation will continue regardless of whether an identification is made, and that the  
23 administrator is not aware of which lineup or array member is the suspect.

24           f. At the time an identification is made, the eyewitness shall be asked to articulate in his  
25 or her own words, the level of certainty he or she feels in the identification. This statement shall  
26 be documented verbatim.

27           3. The policy described herein shall be revisited biennially by the Massachusetts Chiefs  
28 of Police Association and, if necessary, modified to ensure its consistency with jury instructions  
29 related to system variables issued by the Massachusetts Supreme Judicial Court.

30           SECTION 2. The General Laws are hereby amended by adding after Chapter 22C,  
31 Section 36A, the following: -

32           Section 36B

33           The state police shall have a written policy on eyewitness identification developed and  
34 promulgated by the colonel of state police. The policy shall include the following minimal  
35 elements consistent with general accepted science and evidence-based practice:

36           a. A show-up should not be conducted more than two hours after the witness's  
37 observation of the offender;

38           b. The department shall not employ multiple identification procedures featuring any one  
39 suspect with the same witness.

40           c. Any lineup or photo array shall be conducted by an administrator who does not know  
41 the suspect's identity or shall be conducted in a manner that prevents the administrator from  
42 knowing which member of the array is being viewed by the eyewitness at any given time.

43           d. In addition to the suspect, there shall be at least four non-suspects in any live lineup  
44 and at least five non-suspects in any photo array. All non-suspect photos or individuals in an  
45 array or lineup shall match the description of the perpetrator provided by the eyewitness. No  
46 photo or lineup member shall stand out.

47           e. Each witness shall be instructed that the perpetrator may or may not be present, that the  
48 investigation will continue regardless of whether an identification is made, and that the  
49 administrator is not aware of which lineup or array member is the suspect.

50           f. At the time an identification is made, the eyewitness shall be asked to articulate in his  
51 or her own words, the level of certainty he or she feels in the identification. This statement shall  
52 be documented verbatim.

53           The policy described herein shall be revisited biennially by the colonel and, if necessary,  
54 modified to ensure its consistency with jury instructions related to system variables issued by the  
55 Massachusetts Supreme Judicial Court.