

HOUSE No. 4024

The Commonwealth of Massachusetts

House of Representatives, February 24, 2016.

The committee on Ways and Means to whom was referred the Bill improving the accuracy of eyewitness identification procedures (House, No. 3861), reports recommending that the same ought to pass with an amendment substituting therefor the accompanying bill (House, No. 4024).

For the committee,

BRIAN S. DEMPSEY

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

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. Chapter 41 of the General Laws is hereby amended by adding the following
2 new section:-

3 Section 98H. (a) The transit police of the Massachusetts Bay Transportation Authority
4 and the police department of any city or town serving a population of two thousand residents or
5 more shall have a written policy consistent with the model policy on eyewitness identification
6 developed by the Massachusetts chiefs of police association.

7 (b) The policy shall include, but not be limited to, the following elements consistent with
8 general accepted science and evidence-based practice:

9 (i) A show-up, or any identification procedure in which law enforcement officials
10 present an eyewitness with a single suspect for identification, should not be conducted more than
11 two hours after the witness's observation of the offender;

12 (ii) The department shall not employ multiple identification procedures featuring
13 any one suspect with the same witness;

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

17 (iv) In addition to the suspect, there shall be at least four non-suspects in any live
18 lineup and at least five non-suspects in any photo array; provided, that all non-suspect photos or
19 individuals in an array or lineup shall match the description of the perpetrator provided by the
20 eyewitness and no photo or lineup member shall stand out;

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

24 (vi) At the time an identification is made, the eyewitness shall be asked to
25 articulate in the eyewitness's own words, the level of certainty the eyewitness feels in the
26 identification; provided, that the statement of the eyewitness shall be documented verbatim.

27 (c) 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 supreme judicial court.

30 SECTION 2. Chapter 22C of the General Laws is hereby amended by adding the
31 following section:-

32 Section 36B. (a) The state police shall have a written policy on eyewitness identification
33 developed and promulgated by the colonel of state police. The policy shall include, but not be

34 limited to, the following elements consistent with general accepted science and evidence-based
35 practice:

36 (i) A show-up, or any identification procedure in which law enforcement officials
37 present an eyewitness with a single suspect for identification, should not be conducted more than
38 2 hours after the witness's observation of the offender;

39 (ii) The department shall not employ multiple identification procedures featuring
40 any 1 suspect with the same witness;

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

44 (iv) In addition to the suspect, there shall be at least 4 non-suspects in any live
45 lineup and at least 5 non-suspects in any photo array; provided, that all non-suspect photos or
46 individuals in an array or lineup shall match the description of the perpetrator provided by the
47 eyewitness and no photo or lineup member shall stand out;

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

51 (vi) At the time an identification is made, the eyewitness shall be asked to
52 articulate in the eyewitness's own words, the level of certainty the eyewitness feels in the
53 identification; provided, that the statement of the eyewitness shall be documented verbatim.

54 (b) The policy described herein shall be revisited biennially by the colonel and, if
55 necessary, modified to ensure its consistency with jury instructions related to system variables
56 issued by the supreme judicial court.