SENATE DOCKET, NO. 652 FILED ON: 1/15/2015

SENATE . . . . . No. 1237

The Commonwealth of Massachusetts

PRESENTED BY:

William N. Brownsberger

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act improving the accuracy of eyewitness identification procedures.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
William N. Brownsberger	*Second Suffolk and Middlesex*
John V. Fernandes	*10th Worcester*

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SENATE . . . . . No. 1237

By Mr. Brownsberger, a petition (accompanied by bill, Senate, No. 1237) of William N. Brownsberger and John V. Fernandes improving the accuracy of eyewitness identification procedures. Public Safety and Homeland Security.

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:

SECTION 1. The General Laws are hereby amended by inserting after Chapter 41, Section 98G, the following new section: -

Section 98H

1. The Massachusetts State Police, the Transit Police of the Massachusetts Bay Transportation Authority and the police department of any city or town serving a population of two thousand residents or more shall have a written policy consistent with the model policy on eyewitness identification developed by the Massachusetts Chiefs of Police Association and the Massachusetts State Police and promulgated by the Executive Office of Public Safety and Security (EOPSS).

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

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

14 b. The Department shall not employ multiple identification procedures featuring any
15 one suspect with the same witness.

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

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

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

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

29 3. Each written policy shall include the minimal elements identified in Section 1(2) and
30 be submitted for approval to EOPSS to ensure conformity with the model policy.

31 4. The model policy shall be revisited biennially by the Massachusetts Chiefs of Police
32 Association and Massachusetts State Police and, if necessary, modified to ensure its consistency

with jury instructions related to system variables issued by the Massachusetts Supreme Judicial Court.