

1 S.184

2 Introduced by Senators Sears, Ashe, and Benning

3 Referred to Committee on Judiciary

4 Date: January 7, 2014

5 Subject: Crimes; innocence protection; eyewitness identification

6 Statement of purpose of bill as introduced: This bill proposes to require all law  
7 enforcement agencies to adopt a model eyewitness identification policy.

8 An act relating to eyewitness identification policy

9 It is hereby enacted by the General Assembly of the State of Vermont:

10 ~~Sec. 1. 13 V.S.A. chapter 182, subchapter 3 of is added to read:~~

11 Subchapter 3. Law Enforcement Practices

12 § 5581. EYEWITNESS IDENTIFICATION POLICY

13 (a) On or before January 1, 2015, each State, county, and municipal law  
14 enforcement agency that employs one or more certified law enforcement  
15 officers shall adopt an eyewitness identification policy.

16 (b) The written policy shall contain, at a minimum, the following essential  
17 elements of the model policy issued by the Law Enforcement Advisory Board:

18 (1) Protocols guiding the use of a show-up identification procedure.

19 (2) The photo or live lineup shall be conducted by a blind administrator

20 who does not know the suspect's identity. For law enforcement agencies with

1 ~~limited staff, this can be accomplished through a procedure in which~~  
2 photographs are placed in folders, randomly numbered, and shuffled, and then  
3 presented to an eyewitness such that the administrator cannot see or track  
4 which photograph is being presented to the witness until after the procedure is  
5 completed.

6 (3) Instructions to the eyewitness, including that the perpetrator may or  
7 may not be among the persons in the identification procedure.

8 (4) In a photo or live lineup, fillers shall possess the following  
9 characteristics:

10 (A) All fillers selected shall resemble the eyewitness's description of  
11 the perpetrator in significant features such as face, weight, build, or skin tone,  
12 including any unique or unusual features such as a scar or tattoo.

13 (B) At least five fillers shall be included in a photo lineup, in addition  
14 to the suspect.

15 (C) At least four fillers shall be included in a live lineup, in addition  
16 to the suspect.

17 (5) If the eyewitness makes an identification, the administrator shall  
18 seek and document a clear statement from the eyewitness, at the time of the  
19 identification and in the eyewitness's own words, as to the eyewitness's  
20 confidence level that the person identified in a given identification procedure is  
21 the perpetrator.

1 ~~(c) The model policy issued by the Law Enforcement Advisory Board shall~~  
2 encourage ongoing law enforcement training in eyewitness identification  
3 procedures for State, county, and municipal law enforcement agencies.

4 Sec. 2. REPORTING EYEWITNESS IDENTIFICATION POLICIES

5 (a) The Department of Public Safety shall report to the General Assembly  
6 on or before February 15, 2015, regarding its compliance with Sec. 1 of this  
7 act. The report shall include a copy of the policy and any issues hindering  
8 adoption or implementation of the policy.

9 (b) The Vermont Association of Police Chiefs and the Vermont Sheriffs'  
10 Association shall individually report to the General Assembly on or before  
11 February 15, 2015, regarding its members' compliance with Sec. 1 of this act.  
12 The report shall include the following:

13 (1) each law enforcement agency that is and is not in compliance with  
14 Sec. 1 of this act;

15 (2) copies of the various policies adopted pursuant to this act that reflect  
16 substantive differences from agency to agency; and

17 (3) any issues hindering adoption or implementation of the policies.

18 Sec. 3. EFFECTIVE DATE

19 ~~This act shall take effect on passage.~~

*Sec. 1. 13 V.S.A. chapter 182, subchapter 3 is added to read:*

*Subchapter 3. Law Enforcement Practices*

*§ 5581. EYEWITNESS IDENTIFICATION POLICY*

(a) On or before January 1, 2015, every State, county, and municipal law enforcement agency and every constable who exercises law enforcement authority pursuant to 24 V.S.A. § 1936a and who is trained in compliance with 20 V.S.A. § 2358 shall adopt an eyewitness identification policy.

(b) The written policy shall contain, at a minimum, the following essential elements as identified by the Law Enforcement Advisory Board:

(1) Protocols guiding the use of a show-up identification procedure.

(2) The photo or live lineup shall be conducted by a blind administrator who does not know the suspect's identity. For law enforcement agencies with limited staff, this can be accomplished through a procedure in which photographs are placed in folders, randomly numbered and shuffled, and then presented to an eyewitness such that the administrator cannot see or track which photograph is being presented to the witness until after the procedure is completed.

(3) Instructions to the eyewitness, including that the perpetrator may or may not be among the persons in the identification procedure.

(4) In a photo or live lineup, fillers shall possess the following characteristics:

(A) All fillers selected shall resemble the eyewitness's description of the perpetrator in significant features such as face, weight, build, or skin tone, including any unique or unusual features such as a scar or tattoo.

(B) At least five fillers shall be included in a photo lineup, in addition to the suspect.

(C) At least four fillers shall be included in a live lineup, in addition to the suspect.

(5) If the eyewitness makes an identification, the administrator shall seek and document a clear statement from the eyewitness, at the time of the identification and in the eyewitness's own words, as to the eyewitness's confidence level that the person identified in a given identification procedure is the perpetrator.

(c) The model policy issued by the Law Enforcement Advisory Board shall encourage ongoing law enforcement training in eyewitness identification procedures for State, county, and municipal law enforcement agencies and constables who exercise law enforcement authority pursuant to 24 V.S.A. § 1936a and are trained in compliance with 20 V.S.A. § 2358.

(d) If a law enforcement agency does not adopt a policy by January 1, 2015 in accordance with this section, the model policy issued by the Law

Enforcement Advisory Board shall become the policy of that law enforcement agency or constable.

*Sec. 2. REPORTING EYEWITNESS IDENTIFICATION POLICIES*

The Vermont Criminal Justice Training Council shall report to the General Assembly on or before April 15, 2015, regarding law enforcement's compliance with Sec. 1 of this act.

*Sec. 3. EFFECTIVE DATE*

This act shall take effect on passage.