

1 TO THE HONORABLE SENATE:

2 The Committee on Judiciary to which was referred Senate Bill No. 184  
3 entitled “An act relating to eyewitness identification policy” respectfully  
4 reports that it has considered the same and recommends that the bill be  
5 amended by striking out all after the enacting clause and inserting in lieu  
6 thereof the following:

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

8 Subchapter 3. Law Enforcement Practices

9 § 5581. EYEWITNESS IDENTIFICATION POLICY

10 (a) On or before January 1, 2015, every State, county, and municipal law  
11 enforcement agency and every constable who exercises law enforcement  
12 authority pursuant to 24 V.S.A. § 1936a and who is trained in compliance with  
13 20 V.S.A. § 2358 shall adopt an eyewitness identification policy.

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

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

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

1 which photograph is being presented to the witness until after the procedure is  
2 completed.

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

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

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

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

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

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

19 (c) The model policy issued by the Law Enforcement Advisory Board shall  
20 encourage ongoing law enforcement training in eyewitness identification  
21 procedures for State, county, and municipal law enforcement agencies and

1 constables who exercise law enforcement authority pursuant to 24 V.S.A.  
2 § 1936a and are trained in compliance with 20 V.S.A. § 2358.

3 Sec. 2. REPORTING EYEWITNESS IDENTIFICATION POLICIES

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

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

11 The report shall include the following:

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

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

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

17 Sec. 3. EFFECTIVE DATE

18 This act shall take effect on passage.

19

20

21

1 (Committee vote: \_\_\_\_\_)

2

\_\_\_\_\_

3

Senator [surname]

4

FOR THE COMMITTEE