

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Judiciary to which was referred Senate Bill No. 184 entitled
3 “An act relating to eyewitness identification policy” respectfully reports that it
4 has considered the same and recommends that the House propose to the Senate
5 that the bill be amended by striking out all after the enacting clause and
6 inserting in lieu 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 (d) If a law enforcement agency does not adopt a policy by January 1, 2015
4 in accordance with this section, the model policy issued by the Law
5 Enforcement Advisory Board shall become the policy of that law enforcement
6 agency or constable.

7 Sec. 2. REPORTING EYEWITNESS IDENTIFICATION POLICIES

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

11 Sec. 3. 20 V.S.A. § 2366 is amended to read:

12 § 2366. LAW ENFORCEMENT AGENCIES; BIAS-FREE POLICING
13 POLICY; RACE DATA COLLECTION

14 (a) ~~No later than January 1, 2013~~ On or before September 1, 2014, every
15 State, local, county, and municipal law enforcement agency ~~that employs one~~
16 ~~or more certified law enforcement officers~~, and every law enforcement officer
17 who exercises law enforcement authority pursuant to 24 V.S.A. § 1936a and
18 who is trained in compliance with section 2358 of this title, shall adopt a
19 bias-free policing policy. The policy shall contain ~~the following essential~~
20 substantially the same elements of ~~such a policy as determined by the Law~~
21 ~~Enforcement Advisory Board after its review of~~ either the current Vermont

1 State Police ~~Policy and~~ bias-free policing policy or the most current model
2 policy issued by the Office of the Attorney General.

3 (b) ~~The policy shall encourage ongoing bias-free law enforcement training~~
4 ~~for State, local, county, and municipal law enforcement agencies~~ If a law
5 enforcement agency or officer that is required to adopt a policy pursuant to
6 subsection (a) of this section fails to do so on or before September 1, 2014, that
7 agency or officer shall be deemed to have adopted, and shall follow and
8 enforce, the model policy issued by the Office of the Attorney General.

9 (c) On or before September 7, 2014, and annually thereafter as part of their
10 annual training report to the Council, every State, local, county, and municipal
11 law enforcement agency, and every law enforcement officer who exercises law
12 enforcement authority pursuant to 24 V.S.A. § 1936a and who is trained in
13 compliance with section 2358 of this title, shall report to the Council whether
14 the agency or officer has adopted a bias-free policing policy in accordance
15 with subsections (a) and (b) of this section and which policy has been adopted.
16 The Criminal Justice Training Council shall determine, as part of the Council's
17 annual certification of training requirements, if current officers have received
18 training on bias-free policing.

19 (d) On or before October 15, 2014, and annually thereafter on April 1, the
20 Criminal Justice Training Council shall report to the House and Senate
21 Committees on Judiciary which departments and officers have adopted a

1 bias-free policing policy, which policy has been adopted, and whether officers
2 have received training on bias-free policing.

3 (e) On or before September 1, 2014, every State, local, county, and
4 municipal law enforcement agencies that employ one or more certified law
5 enforcement officers are encouraged to work with the Vermont Association of
6 Chiefs of Police to extend the collection of roadside stop race data uniformly
7 throughout state law enforcement agencies, with the goal of obtaining uniform
8 roadside stop race data for analysis agency shall collect roadside stop data,
9 including the age, gender, race, and ethnicity of drivers. Law enforcement
10 agencies shall work with the Vermont Criminal Justice Training Council with
11 the goals of collecting uniform data, adopting uniform storage methods and
12 periods, and ensuring that data can be analyzed. Roadside stop data shall be
13 public.

14 Sec. 4. 13 V.S.A. chapter 182, subchapter 3 of is added to read:

15 Subchapter 3. Law Enforcement Practices

16 § 5581. ELECTRONIC RECORDING OF A CUSTODIAL
17 INTERROGATION

18 (a) As used in this section:

19 (1) “Custodial interrogation” means any interrogation:

20 (A) involving questioning by a law enforcement officer that is
21 reasonably likely to elicit an incriminating response from the subject; and

1 (B) in which a reasonable person in the subject’s position would
2 consider himself or herself to be in custody, starting from the moment a person
3 should have been advised of his or her Miranda rights and ending when the
4 questioning has concluded.

5 (2) “Electronic recording” or “electronically recorded” means an audio
6 and visual recording that is an authentic, accurate, unaltered record of a
7 custodial interrogation, or if law enforcement does not have the current
8 capacity to create a visual recording, an audio recording of the interrogation.

9 (3) “Place of detention” means a building or a police station that is a
10 place of operation for the State police, a municipal police department, county
11 sheriff department, or other law enforcement agency that is owned or operated
12 by a law enforcement agency at which persons are or may be questioned in
13 connection with criminal offenses or detained temporarily in connection with
14 criminal charges pending a potential arrest or citation.

15 (4) “Statement” means an oral, written, sign language, or nonverbal
16 communication.

17 (b)(1) A custodial interrogation that occurs in a place of detention
18 concerning the investigation of a felony violation of chapter 53 (homicide) or
19 72 (sexual assault) of this title shall be electronically recorded in its entirety.

20 (2) In consideration of best practices, law enforcement shall strive to
21 record simultaneously both the interrogator and the person being interrogated.

1 (c)(1) The following are exceptions to the recording requirement in
2 subsection (b) of this section:

3 (A) exigent circumstances;

4 (B) a person’s refusal to be electronically recorded;

5 (C) interrogations conducted by other jurisdictions;

6 (D) a reasonable belief that the person being interrogated did not
7 commit a felony violation of chapter 53 (homicide) or 72 (sexual assault) of
8 this title and, therefore, an electronic recording of the interrogation was not
9 required;

10 (E) the safety of a person or protection of his or her identity; and

11 (F) equipment malfunction.

12 (2) If law enforcement does not make an electronic recording of a
13 custodial interrogation as required by this section, the prosecution shall prove
14 by a preponderance of the evidence that one of the exceptions identified in
15 subdivision (1) of this subsection applies. If the prosecution does not meet the
16 burden of proof, the evidence is still admissible, but the Court shall provide
17 cautionary instructions to the jury regarding the failure to record the
18 interrogation.

1 Sec. 5. LAW ENFORCEMENT ADVISORY BOARD

2 (a) The Law Enforcement Advisory Board (LEAB) shall develop a plan for
3 the implementation of Sec. 1 of this act, 13 V.S.A. § 5581 (electronic recording
4 of a custodial interrogation).

5 (b) The LEAB, in consultation with practitioners and experts in recording
6 interrogations, including the Innocence Project, shall:

7 (1) assess the scope and location of the current inventory of recording
8 equipment in Vermont;

9 (2) develop recommendations, including funding options, regarding how
10 to equip adequately law enforcement with the recording devices necessary to
11 carry out Sec. 1 of this act, 13 V.S.A. § 5581 (electronic recording of a
12 custodial interrogation); and

13 (3) develop recommendations for expansion of recordings to questioning
14 by a law enforcement officer that is reasonably likely to elicit an incriminating
15 response from the subject regarding any felony offense.

16 (c) On or before October 1, 2014, the LEAB shall submit a written report to
17 the Senate and House Committees on Judiciary with its recommendations for
18 the implementation of Sec. 1 of this act, 13 V.S.A. § 5581 (electronic recording
19 of a custodial interrogation).

1 Sec. 6. EFFECTIVE DATES

2 This act shall take effect on passage except for Sec. 4 which shall take
3 effect on October 1, 2015.

4 and that after passage the title of the bill be amended to read: “An act relating
5 to law enforcement policies on eyewitness identification and bias-free policing
6 and on recording of custodial interrogations in homicide and sexual assault
7 cases”.

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10 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE