

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

Subchapter 3. Law Enforcement Practices

§ 5581. EYEWITNESS IDENTIFICATION POLICY

- (a) On or before January 1, 2015, every State, local, county, and municipal law enforcement agency, and any law enforcement officers, including but not limited to constables who exercise law enforcement powers, who are not attached to a law enforcement agency but are trained in accordance with the rules and regulations adopted by the Vermont Criminal Justice Training Council pursuant to State law, ~~that employs one or more certified law enforcement officers~~ shall adopt an **eyewitness identification** policy.
- (b) The written policy shall contain, at a minimum, the following essential elements of the model policy issued as identified by the Law Enforcement Advisory Board:
- (1) Protocols guiding the use of a show-up identification procedure.
 - (2) The photo or live line-up 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, 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, local, county, and municipal law enforcement agencies, and any other law enforcement officers, including but not limited to constables who exercise law enforcement powers, who are not attached to a law enforcement agency but are trained in accordance with the rules and regulations adopted by the Vermont Criminal Justice Training Council pursuant to State law.

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Sec. 2. REPORTING EYEWITNESS IDENTIFICATION POLICIES

- (a) The Department of Public Safety shall report to the General Assembly on or before February 15, 2015, regarding its compliance with Sec. 1 of this act. The report shall include a copy of the policy and any issues hindering adoption of the policy.
- (b) The Vermont Association of Police Chiefs and the Vermont Sheriffs' Association, [in cooperation with the Vermont League of Cities and Towns](#), shall individually report to the General Assembly on or before February 15, 2015, regarding members' compliance with Sec. 1 of this act. The report shall include the following:
 - (1) each law enforcement agency that is and is not in compliance with Sec. 1 of this act;
 - (2) copies of the various policies adopted pursuant to this act that reflect substantive differences from agency to agency; and
 - (3) any issues hindering adoption or implementation of the policies.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.