

HOUSE No. 1290

The Commonwealth of Massachusetts

PRESENTED BY:

John V. Fernandes and 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:
<i>John V. Fernandes</i>	<i>10th Worcester</i>
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Diana DiZoglio</i>	<i>14th Essex</i>
<i>Russell E. Holmes</i>	<i>6th Suffolk</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>
<i>Harold P. Naughton, Jr.</i>	<i>12th Worcester</i>
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>
<i>Jeffrey N. Roy</i>	<i>10th Norfolk</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>

HOUSE No. 1290

By Representative Fernandes of Milford and Senator Brownsberger, a joint petition (accompanied by bill, House, No. 1290) of John V. Fernandes and others improving the accuracy of eyewitness identification procedures. The Judiciary.

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:

1 SECTION 1. The General Laws are hereby amended by inserting after Chapter
2 41, Section 98G, the following new section: -

3 Section 98H

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

10 2. The model policy shall include the following minimal elements consistent with
11 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
17 know the suspect's identity or shall be conducted in a manner that prevents the administrator
18 from 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
20 lineup and at least five non-suspects in any photo array. All non-suspect photos or individuals in
21 an 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,
24 that 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
27 his or her own words, the level of certainty he or she feels in the identification. This statement
28 shall be documented verbatim.

29 3. Each written policy shall include the minimal elements identified in Section 1(2)
30 and 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
32 Police Association and Massachusetts State Police and, if necessary, modified to ensure its

- 33 consistency with jury instructions related to system variables issued by the Massachusetts
- 34 Supreme Judicial Court.