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RHODE ISLAND PUBLIC DEFENDER

160 Pine Street, Providence, Rhode Island 02903

TELEPHONE: (401) 222-3492

FAX: (401) 222-3287

Gerald J. Coyne
Deputy Attorney General
Office of the Attorney General
150 South Main Street
Providence, RI 02903

July 8, 2010

**RE: AN ACT RELATING TO CRIMINAL PROCEDURE – IDENTIFICATION
AND APPREHENSION OF CRIMINALS**

**Senate Bill #2010-S-2315-SUBSTITUTE A
House Bill #2010-H-7570-SUBSTITUTE A**

Dear Mr. Coyne:

As you know on Friday, June 25, 2010, the legislation referenced above became law in the form of *Rhode Island Public Law 2010, Chapters 169 & 165* and will eventually be codified as *Rhode Island General Laws Sec. 12-1-16*. Introduced at my request this legislation establishes a task force of our state's criminal justice stakeholders to identify and recommend policies and procedures to improve the accuracy of eyewitness identifications including:

1. Use of blind administration of lineups
2. Specific instructions to be given to the eyewitness before and during the lineup to increase the accuracy of any identification, including that the purpose of the identification procedure is to exculpate the innocent as well as to identify the actual perpetrator
3. Number and selection of fillers to be in lineups
4. Use of sequential lineups versus nonsequential lineups
5. Inclusion of only one suspect in any lineup
6. Value of refraining from providing any confirmatory information to the eyewitness
7. Standards and protocols to be used in the administration and conduct of an identification procedure
8. What training, if any, should be made available to law enforcement personnel in the use of these procedures and
9. Taking a confidence statement from the person viewing the lineup.

The task force is further charged with developing guidelines for policies, procedures, and training with respect to the collection and handling of eyewitness evidence in criminal investigations in order to disseminate these "best practices" to the law enforcement community. Finally, the task force is required to submit a report on the guidelines developed, recommendations concerning their use, and to report its findings to the Governor, the Chief Justice of the Rhode Island Supreme Court, the Speaker of the House of Representatives, the President of the Senate, and the Chairpersons of the Judiciary Committees of both the House of Representatives and the Senate no later than January 1, 2011.

First, let me say how much I am looking forward to cooperating and collaborating with you and the other members of the task force in further enhancing the quality of justice in our state. And I would like to share with you and the other members of the task force the results of the work that we have been doing in this area for the last several years.

As you know in response to the problem of mistaken eyewitness identification cases across the United States a large body of peer-reviewed research and practice has been developed, demonstrating how simple, inexpensive reforms to eyewitness identification procedures can greatly reduce the rate of identification error, particularly by minimizing the inadvertent misleading influences present in traditional procedures. Frequently called "best practices" these reforms have been embraced by the law enforcement community across the country. For example, more than a decade ago, the United States Department of Justice (DOJ) addressed the problem of misidentification in a technical working group, which sought to identify best practices supported by rigorous social science research. The National Institute of Justice, the research arm of the DOJ, formed the "Technical Working Group for Eyewitness Evidence," composed of membership from the scientific, legal and criminal justice communities, which recommended a series of protocols in a report and an attendant training manual.¹

Efforts to address misidentification have also emanated from the law enforcement community on the state level. For example in April 2001, New

¹ Technical Working Group for Eyewitness Evidence. (1999) *Eyewitness evidence: A Guide for Law Enforcement*. Washington, DC. United States Department of Justice, Office of Justice Programs; and Technical Working Group for Eyewitness Evidence. (2003) *Eyewitness evidence: A Trainer's Manual for Law Enforcement*. Washington, DC. United States Department of Justice, Office of Justice Programs. Available at www.ncjrs.gov/pdffiles1/nij/178240.pdf; www.ncjrs.gov/nij/eyewitness/188678.pdf (last visited on July 5, 2010). A comprehensive and timely overview of efforts in this area by social scientists, legislatures, the courts, criminal justice stakeholders and other interested parties nationwide including the law enforcement community is contained in the Report of the Special Master released on June 18, 2010 and ordered by the New Jersey Supreme Court in *State v. Henderson, 2009 N.J. LEXIS 45 (NJ 2/26/09)*. See also, (<http://www.judiciary.state.nj.us/pressrel/pr100621a.htm>). A copy of the Special Master's Report is contained on the CD-ROM covered by this letter.

Jersey became the first state in the nation to officially adopt the NIJ recommendations when the Attorney General issued *Guidelines for Preparing and Conducting Photo and Live Lineup Identification Procedures*, mandating implementation of the recommendations – in addition to requiring that lineups be administered blind and presented sequentially – by all law enforcement agencies statewide. In May 2005, the Criminal Justice Standards Division of the North Carolina Department of Justice endorsed recommendations set forth in the North Carolina Actual Innocence Commission's report, *Recommendations for Eyewitness Identification*, which included "blind" and "sequential" lineups.² In September 2005, the Wisconsin Attorney General's Office followed New Jersey's lead and issued a similar set of policies for statewide use, *Model Policy and Procedure for Eyewitness Identification*.³ And it is my understanding that in 2009 the Minnesota Attorney General conducted a statewide training for members of that state's law enforcement community on the use of "best practices" in conducting eyewitness identification procedures. My office is in possession of the CD-ROM containing the materials and other information from this training and I would be happy to make it available to you or any member of the task force who wishes to examine them.

On the local level, these "best practices" have been have been voluntarily embraced by the law enforcement community in order to improve the reliability, accuracy, and evidentiary power of eyewitness identification including the Suffolk County, Massachusetts District Attorney's Office and Boston Police Department; Santa Clara County, California Police Department; and Northampton, Massachusetts Police Department.⁴ Finally several states including Georgia, Illinois, Vermont, and West Virginia have gone the route that Rhode Island now has, by establishing a legislative task force of criminal justice stakeholders or pilot programs to consider the implementation of "best practices" in this area. This letter covers a CD-ROM containing the reports resulting from the work done in Georgia, Illinois, and Vermont as well as other pertinent information.

² North Carolina Department of Justice, Criminal Justice Standards Division. *Recommendations for Eyewitness Identification*, May 19, 2005. The North Carolina Actual Innocence Commission's Report, *Recommendations for Eyewitness Identification* is available at http://www.innocenceproject.org/docs/NC_Innocence_Commission_Identification.html (last visited on July 6, 2010).

³ *New Jersey Attorney General Guidelines for Preparing and Conducting Photo and Live Lineup Identification Procedures (2001)*; State of Wisconsin, Office of the Attorney General. *Model Policy and Procedure for Eyewitness Identification*, 2005; see also State of Wisconsin, Office of the Attorney General. *Response to Chicago Report on Eyewitness Identification Procedures*, 2006. Copies of these written policies are contained on the CD-ROM covered by this letter.

⁴ Report of the Task Force on Eyewitness Evidence, presented to Daniel F. Conley, District Attorney, Suffolk County, MA and Kathleen M. O'Toole, commissioner, Boston Police Department, July 2004 available at <http://www.mass.gov/dasuffolk/docs/120904.html> (last visited on June 30, 2010); eyewitness identification policies adopted by the Santa Clara County, California, and Northampton, Massachusetts, Police Departments are available at <http://www.innocenceproject.org/fix/Eyewitness-Identification.php> (last visited on June 30, 2010).

Thankfully, some of these reforms are now beginning to find their way into Rhode Island. As you may know beginning in January, 2010, the Office of the Public Defender directed an *Access To Public Records Act Request* made pursuant to *RIGL Sec. 38-2-3* to forty-two (42) Rhode Island law enforcement agencies as follows:

Specifically, I am requesting a copy of any of your agency's written policies, procedures, or orders relating to eyewitness identification protocols. If your agency does not possess a written policy, please indicate that in writing.

The results of our request are worth considering. While ten (10) or 24% of Rhode Island law enforcement agencies have a written policy in place, only three (3) (Bristol, Cumberland, and Warwick) have written policies that contain accepted "best practices".⁵ I'm sure that you will agree that an important component of the work of our task force should be to celebrate and disseminate the positive accomplishments of those three (3) preeminent Rhode Island law enforcement agencies that have chosen to take the lead in this area.⁶

The aforementioned "best practices" embraced at the national, state, and local levels including the three (3) Rhode Island police departments previously mentioned, and which will serve as "grist for the mill" for the work of the task force, include the following:

- ***Blind Administration***

Advocating for the use of a blind administrator does not call into question the integrity of law enforcement; rather it acknowledges a fundamental principle of properly conducted experiments – that a person administering an experiment (or an eyewitness identification) should not have any predisposition about what the subject's response should be – and applies it to the eyewitness procedure. This eliminates the possibility – proven to exist in the eyewitness identification process – that a witness could seek, and an administrator might inadvertently provide, cues as to the expected response.

⁵ A copy of the original *Access To Public Records Act Request*, those Rhode Island law enforcement agencies that the request was directed to, and the final compiled results is attached hereto.

⁶ Taken collectively the Bristol, Cumberland, and Warwick Police Departments' written policies received in response to the Office of the Public Defender's *Access To Public Records Act Request* made pursuant to *RIGL Sec. 38-2-3* include the following "best practices": 1. sequential viewing 2. blind administration 3. appropriate instructions to witnesses 4. taking a confidence statement after an identification is made. Copies of these written policies are contained on the CD-ROM covered by this letter.

Jurisdictions that have been concerned about expending any additional manpower have implemented an alternative form of blind administration in which they “blind” the non-blind administrator. This can be done using a “folder shuffle method,” as used in Wisconsin and Minnesota. Implementing blind administration carries the price tag of ten manila folders, so those jurisdictions with limited manpower, unable to use a second administrator to perform an identification procedure, will not experience fiscal strains.⁷

- ***Simultaneous v. Sequential Viewing***

Only one of the “best practices” to be considered by the task force, the sequential viewing of suspects, has caused controversy and that solely from the State of Illinois.⁸ Of course this does not mean that this area is unworthy of continued study and attention. Indeed, the legislation specifically provides that the task force should consider the benefits of both simultaneous and sequential viewing of suspects. And it should also be stated that several states considering this issue have found there are benefits to be had, both in reliability and accuracy, from sequential viewing. For example:

- VERMONT: “...the Committee recommends that where at all possible, law enforcement agencies should employ sequential photo lineups with a blind administrator”. *Report of the (Vermont) Eyewitness Identification and Custodial Interrogation Study Committee (12/14/07)* at p. 8 (emphasis added).
- WISCONSIN: “Scientific research demonstrates that sequential procedures reduce misidentifications, and the results of the Chicago program do not suggest otherwise. *Response to Chicago Report on Eyewitness Identification Procedures, State of Wisconsin, Office of Attorney General, Wisconsin Department of Justice Bureau of Training and Standards For Criminal Justice (7/21/06)* at p. 3. (emphasis added).

- ***Instructing the Eyewitness***

⁷ The “folder shuffle method” of conducting a photo lineup is described in detail at page 13, *et seq.* in the Report of the Wisconsin Attorney General entitled, *MODEL POLICY AND PROCEDURE FOR EYEWITNESS IDENTIFICATION*, and is on the CD-ROM previously mentioned.

⁸ REPORT TO THE LEGISLATURE OF THE STATE OF ILLINOIS: THE ILLINOIS PILOT PROGRAM ON SEQUENTIAL DOUBLE-BLIND IDENTIFICATION PROCEDURES (3/17/06). Despite its difficulty with sequential viewing the Illinois Report acknowledged the value of the following “best practices”: 1. Blind administration 2. Appropriate “fillers” 3. Instructions to witnesses viewing the lineup 4. Taking a confidence statement

In addition to blind lineups, "cautionary instructions," or "witness warnings," are a key component of reform aimed at reducing the rate of mistaken identifications. Indeed, studies have demonstrated the dramatic decrease in mistaken identifications when witnesses understand that they are not required to identify someone at a lineup. See Nancy Steblay, *Social Influence in Eyewitness Recall: A Meta-Analytic Review of Lineup Instruction Effects*, 21 L. and Hum. Behav. 283 (1997) (finding a reduction in misidentifications when the culprit was not present from 78% to 33%, while still resulting in 87% identification of the culprit when the culprit was present).

- **Proper Composition of the Lineup**

Clearly, the optimal composition of a lineup assures more accurate selections. There has been a tremendous amount of social science and other research conducted as well as law enforcement recommendations in this area. *E.g. see*, Wells, G.L., Rydell, S.M. and Seelau, E.P., *On the selection of distractors for eyewitness lineups*, 78 J. of Applied Psychol. 835 (1993); National Institute of Justice, *Eyewitness Evidence: A Guide for Law Enforcement* and *Eyewitness Evidence: A Trainer's Manual for Law Enforcement*; New Jersey Attorney General's *Guidelines for Preparing and Conducting Photo and Live Lineup Identification Procedures*; and the Wisconsin Department of Justice's *Model Policy and Procedure for Eyewitness Identification*.

- **Obtaining a Confidence Statement**

A significant body of peer-reviewed research clearly indicates that post-identification feedback to the eyewitness at the time the identification is made both artificially inflates the confidence of a witness in his or her identification and also contaminates the witness's memory of the event.⁹ In other words, in addition to the danger of confidence inflation and false certainty, when post-identification confirming feedback is provided to an eyewitness who has incorrectly identified an innocent person, it can produce "strong effects" on witnesses' memory, including recollection of their opportunity to view the perpetrator and their degree of attention on the perpetrator.¹⁰ This contaminating effect of confirming feedback, therefore, confounds the efforts of courts to assess the reliability of identification evidence, since it distorts and renders untrustworthy three of the five "reliability" factors enunciated in *Neil v. Biggers*, 409 U.S. 188 (1972) (a witness's degree of certainty, opportunity to view

⁹ See, e.g., Bradfield, A. L., Wells, G. L., & Olson, E. A. (2002). The damaging effect of confirming feedback on the relation between eyewitness certainty and identification accuracy. *Journal of Applied Psychology*, 87, 112-120. and Wright, D. B., & Skagerberg, E. M. Post-identification feedback affects real eyewitnesses. *Psychological Science*, 18, 172-178 (2007).

¹⁰ Wells, G.L., & Bradfield, A.L. (1998). "Good, You Identified the Suspect": Feedback to Eyewitnesses Distorts Their Reports of the Witnessing Experience," *Journal of Applied Psychology*, 83, 360-376.

the perpetrator at the time of the incident, and degree of attention on the perpetrator).

Again, let me say how much I am looking forward to working with you and the other members of the task force in order to accomplish a goal that I know we all share and hold dear – enhancing the quality of justice in our state.

Thank you.

Very truly yours,



John J. Hardiman
Public Defender

CC:

- Legislative Stakeholders: Task Force
 1. Colonel Brendan P. Doherty, Superintendent, Rhode Island State Police
 2. Colonel Joseph P. Moran, III, President, Rhode Island Police Chief's Association
 3. Chief Anthony J. Silva, Executive Director, Rhode Island Municipal Police Training Academy
 4. Lise M. Iwon, Esq., President, Rhode Island Bar Association
 5. Professor Andrew Horwitz, President-Elect, Rhode Island Association of Criminal Defense Lawyers
 6. Michael D. Evora, Executive Director, Rhode Island Commission for Human Rights
- Legislative Sponsors
 1. Senator Harold M. Metts
 2. Representative Edith H. Ajello

Enclosures

- *Rhode Island Public Law 2010, Chapters 169 & 165*
- *Office of the Public Defender's Access To Public Records Act Request*, those Rhode Island law enforcement agencies that the request was directed to, and final compiled results
- Resource CD-ROM & Table of Contents

Resource CD-ROM Table of Contents

- Overview: A comprehensive and timely overview of efforts in this area by social scientists, legislatures, the courts, criminal justice stakeholders and other interested parties nationwide including the law enforcement community is contained in the Report of the Special Master released on June 18, 2010 and ordered by the New Jersey Supreme Court in *State v. Henderson, 2009 N.J. LEXIS 45 (NJ 2/26/09)*. See also, (<http://www.judiciary.state.nj.us/pressrel/pr100621a.htm>).

In *Henderson* the New Jersey Supreme Court remanded for a plenary hearing "to consider and decide whether assumptions and other factors reflected" in the two-part test for admissibility of eyewitness identification evidence under *Manson v. Braithwaite* "remain valid and appropriate in light of recent scientific and other evidence." An extensive hearing was held and on June 18, 2010 the Special Master issued this 88 page report. It provides a comprehensive review of all the factors social scientists have identified that can undermine the reliability of eyewitness identifications (witness/situational and procedural), as well as a survey of science-based, state and local procedures for the collection of eyewitness evidence and a survey of legislative action and state court decisions incorporating the scientific findings regarding the potential unreliability of eyewitness identifications.

- Nationwide: Reports of the study committee, task force, and "best practice" recommendations of the following states.
 - Georgia
 - Illinois
 - New Jersey
 - Vermont
 - Wisconsin
- Rhode Island: Written policies incorporating recognized "best practices" received in response to the Office of the Public Defender's Access To Public Records Act Request made pursuant to RIGL Sec. 38-2-3
 - Bristol Police Department
 - Cumberland Police Department
 - Warwick Police Department

Legislative Status Report

Condition: {List Bills: 2315, 7570}

Senate Bill No. 2315 SUB A

Chapter 169

BY Metts, Levesque C

ENTITLED, AN ACT RELATING TO CRIMINAL PROCEDURE -- IDENTIFICATION AND APPREHENSION OF CRIMINALS

(would establish procedures for identification lineups in criminal investigations, specifically including requirements of photographing or otherwise recording the identification, providing information regarding the lineup identification in discovery)

{LC329/1/A}

02/11/2010 Introduced, referred to Senate Judiciary
04/06/2010 Scheduled for hearing and/or consideration
04/06/2010 Committee recommended measure be held for further study
05/27/2010 Scheduled for hearing and/or consideration
05/27/2010 Committee recommends passage of Sub A
06/01/2010 Placed on Senate Calendar
06/03/2010 Senate passed Sub A
06/04/2010 Referred to House Judiciary
06/08/2010 Scheduled for hearing and/or consideration
06/08/2010 Committee recommends passage of Sub A in concurrence
06/08/2010 Placed on House Calendar
06/08/2010 House passed Sub A in concurrence
06/17/2010 Transmitted to Governor
06/25/2010 Effective without Governor's signature

House Bill No. 7570 SUB A

Chapter 165

BY Ajello, Lally, O'Neill JP, Rice M, Williams

ENTITLED, AN ACT RELATING TO CRIMINAL PROCEDURE -- IDENTIFICATION AND APPREHENSION OF CRIMINALS

(would improve lineup procedures during criminal investigations by creating a taskforce to recommend policies and procedures to improve accuracy of eyewitness identification.)

{LC882/1/A}

02/24/2010 Introduced, referred to House Judiciary
03/09/2010 Scheduled for hearing
03/09/2010 Committee heard and continued
05/26/2010 Scheduled for hearing and/or consideration
05/26/2010 Committee recommends passage of Sub A
05/26/2010 Placed on House Calendar
06/01/2010 House passed Sub A
06/02/2010 Referred to Senate Judiciary
06/03/2010 Scheduled for hearing and/or consideration
06/03/2010 Committee recommends passage of Sub A in concurrence
06/09/2010 Placed on Senate Calendar
06/10/2010 Senate passed Sub A in concurrence
06/17/2010 Transmitted to Governor
06/25/2010 Effective without Governor's signature

Total Bills:2

Legislative Data System Room 1
State House, Providence, Rhode Island

07/06/2010
11:22 AM

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2010 -- S 2315 SUBSTITUTE A

LC00329/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2010

A N A C T

RELATING TO CRIMINAL PROCEDURE -- IDENTIFICATION AND APPREHENSION OF
CRIMINALS

Introduced By: Senators Metts, and C Levesque

Date Introduced: February 11, 2010

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 12-1 of the General Laws entitled "Identification and Apprehension
2 of Criminals" is hereby amended by adding thereto the following sections:

3 12-1-16. Improvement of lineup procedures task force. -- (a) In order to: (1) Prevent
4 the injustice of a wrongful conviction caused by mistaken eyewitness identification; (2) Improve
5 lineup procedures during criminal investigations; and (3) Further improve the already high quality
6 of criminal justice in our state, the general assembly creates a taskforce to identify and
7 recommend policies and procedures to improve the accuracy of eyewitness identifications.

8 (b) The task force shall be comprised of the following or their designees:

9 (1) Attorney general;

10 (2) Public defender;

11 (3) Superintendent of the Rhode Island state police;

12 (4) President of the Rhode Island police chiefs' association;

13 (5) Head of the municipal police training academy;

14 (6) President of the Rhode Island bar association;

15 (7) President of the Rhode Island association of criminal defense lawyers;

16 (8) A representative from a Rhode Island university with expertise in the relevant social

17 sciences as demonstrated by teaching, publication and other scholarly applications; and

18 (9) Executive director of the Rhode Island commission for Human Rights.

1 (c) The task force, in consultation with eyewitness identification practitioners and
2 experts, shall develop guidelines for policies, procedures and training with respect to the
3 collection and handling of eyewitness evidence in criminal investigations by law enforcement
4 agencies in Rhode Island. The purpose of the guidelines is to provide law enforcement agencies
5 with information regarding policies and procedures proven to increase the accuracy of the crime
6 investigation process, thus also reducing the possibility of wrongful convictions.

7 (d) Guidelines for policies, procedures and training that may be considered and
8 recommended by the task force include, but are not limited to:

9 (1) Use of blind administration of lineups;
10 (2) Specific instructions to be given to the eyewitness before and during the lineup to
11 increase the accuracy of any identification, including that the purpose of the identification
12 procedure is to exculpate the innocent as well as to identify the actual perpetrator;

13 (3) Number and selection of fillers to be in lineups;

14 (4) Use of sequential lineups versus nonsequential lineups;

15 (5) Inclusion of only one suspect in any lineup;

16 (6) Value of refraining from providing any confirmatory information to the eyewitness;

17 (7) Standards and protocols to be used in the administration and conduct of an
18 identification procedure;

19 (8) Training, if any, should be made available to law enforcement personnel in the use of
20 these procedures; and

21 (9) Taking a confidence statement from the person viewing the lineup.

22 (e) The task force shall submit a report on the guidelines developed and
23 recommendations concerning their use. Minority reports may also be issued. These reports shall
24 be presented to the governor, the chief justice of the Rhode Island supreme court, the speaker of
25 the house of representatives, the president of the senate, and the chairpersons of the judiciary
26 committees of both the house of representatives and the senate no later than January 1, 2011. The
27 task force shall terminate on the date that it submits its report.

28 SECTION 2. This act shall take effect upon passage.

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LC00329/SUB A
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EXPLANATION

BY THE LEGISLATIVE COUNCIL

OF

A N A C T

RELATING TO CRIMINAL PROCEDURE -- IDENTIFICATION AND APPREHENSION OF
CRIMINALS

1 This act would establish additional procedures for identification lineups in criminal
2 investigations, by including the director of the Rhode Island Commission of Human Rights in the
3 task force and by taking a confidence statement from the person viewing the lineup.

4 This act would take effect upon passage.

LC00329/SUB A

2010 -- H 7570 SUBSTITUTE A

LC00882/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY
JANUARY SESSION, A.D. 2010

AN ACT

RELATING TO CRIMINAL PROCEDURE -- IDENTIFICATION AND APPREHENSION OF
CRIMINALS

Introduced By: Representatives Ajello, Lally, JP O'Neill, M Rice, and Williams

Date Introduced: February 24, 2010

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 12-1 of the General Laws entitled "Identification and Apprehension
2 of Criminals" is hereby amended by adding thereto the following section:

3 12-1-16. Improvement of lineup procedures task force. – (a) In order to: (1) Prevent
4 the injustice of a wrongful conviction caused by mistaken eyewitness identification; (2) Improve
5 lineup procedures during criminal investigations; and (3) Further improve the already high quality
6 of criminal justice in our state, the general assembly creates a taskforce to identify and
7 recommend policies and procedures to improve the accuracy of eyewitness identifications.

8 (b) The task force shall be comprised of the following or their designees:

9 (1) Attorney general;

10 (2) Public defender;

11 (3) Superintendent of the Rhode Island state police;

12 (4) President of the Rhode Island police chiefs' association;

13 (5) Head of the municipal police training academy;

14 (6) President of the Rhode Island bar association;

15 (7) President of the Rhode Island association of criminal defense lawyers;

16 (8) A representative from a Rhode Island university with expertise in the relevant social
17 sciences as demonstrated by teaching, publication and other scholarly applications; and

18 (9) Executive director of the Rhode Island commission for human rights.

1 (c) The task force, in consultation with eyewitness identification practitioners and
2 experts, shall develop guidelines for policies, procedures and training with respect to the
3 collection and handling of eyewitness evidence in criminal investigations by law enforcement
4 agencies in Rhode Island. The purpose of the guidelines is to provide law enforcement agencies
5 with information regarding policies and procedures proven to increase the accuracy of the crime
6 investigation process, thus also reducing the possibility of wrongful convictions.

7 (d) Guidelines for policies, procedures and training that may be considered and
8 recommended by the task force include, but are not limited to:

9 (1) Use of blind administration of lineups;

10 (2) Specific instructions to be given to the eyewitness before and during the lineup to
11 increase the accuracy of any identification, including that the purpose of the identification
12 procedure is to exculpate the innocent as well as to identify the actual perpetrator;

13 (3) Number and selection of fillers to be in lineups;

14 (4) Use of sequential lineups versus nonsequential lineups;

15 (5) Inclusion of only one suspect in any lineup;

16 (6) Value of refraining from providing any confirmatory information to the eyewitness;

17 (7) Standards and protocols to be used in the administration and conduct of an
18 identification procedure;

19 (8) Training, if any, should be made available to law enforcement personnel in the use of
20 these procedures; and

21 (9) Taking a confidence statement from the person viewing the lineup.

22 (e) The task force shall submit a report on the guidelines developed and
23 recommendations concerning their use. Minority reports may also be issued. These reports shall
24 be presented to the governor, the chief justice of the Rhode Island supreme court, the speaker of
25 the house of representatives, the president of the senate, and the chairpersons of the judiciary
26 committees of both the house of representatives and the senate no later than January 1, 2011. The
27 task force shall terminate on the date that it submits its report.

28 SECTION 2. This act shall take effect upon passage.

LC00882/SUB A

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T
RELATING TO CRIMINAL PROCEDURE -- IDENTIFICATION AND APPREHENSION OF
CRIMINALS

1 This act would improve lineup procedures during criminal investigations by creating a
2 taskforce to recommend policies and procedures to improve accuracy of eyewitness
3 identification.

4 This act would take effect upon passage.

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LC00882/SUB A
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RHODE ISLAND PUBLIC DEFENDER

160 Pine Street, Providence, Rhode Island 02903

TELEPHONE: (401) 222-3492

FAX: (401) 222-3287

January 19, 2010

BY FAX & BY MAIL

Colonel [REDACTED]
Chief of Police

Dear Chief [REDACTED]

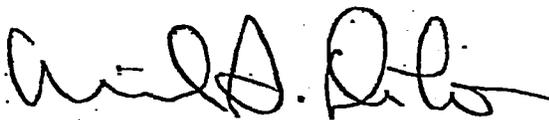
Please consider this a request pursuant to the Access to Public Records Act, R.I.G.L. §38-2-1 et seq.

Specifically, I am requesting a copy of any of your agency's written policies, procedures or orders relating to eyewitness identification protocols. If your agency does not possess a written policy, kindly indicate that in writing.

As provided for by the Act, we look forward to receiving the requested documents within 10 business days. We are willing to pay reasonable copying costs for the information in accordance with the Act. If you have any questions about the nature and scope of this request, please feel free to let me know.

Thank you for your prompt attention to this request.

Sincerely,



Michael A. DiLauro
Assistant Public Defender
Director of Training & Legislative Liaison
Office of the Public Defender

Providence Island Law Enforcement Agencies

County/Agency	Title	Agency Head
Bristol County		
Barrington PD	Chief of Police	John M. LaCross
Bristol PD	Chief of Police	Josue D. Canario
Warren PD	Chief of Police	Peter T. Achilli
Kent County		
Coventry PD	Colonel	Ronald Da Silva
East Greenwich PD	Police Chief	David Desjarlais
West Greenwich PD	Chief of Police	Ronald P. Lepre
Warwick PD	Chief of Police	Colonel Stephen M. McCartney
West Warwick PD	Chief of Police	Colonel Paul A. Villa
Newport County		
Janet Town	Chief of Police	Thomas Tighe
Little Compton	Chief of Police	Sydney Wordell
Middletown	Chief of Police	Anthony M. Pesare
Newport	Chief of Police	Michael McKenna
Portsmouth	Chief of Police	Colonel Lance E. Hebert
Riverton	Chief of Police	Thomas Blakey
Providence County		
Burrillville	Chief of Police	Colonel Bernard E. Gannon
Central Falls	Chief of Police	Colonel Joseph P. Moran III
Cranston	Chief of Police	Colonel Marco Palombo, Jr.
Dorchester	Chief of Police	John Desmarais
East Providence	Chief of Police	Joseph Tavares
Easton	Chief of Police	Robert E. Coyne, Jr.
Foxcroft	Chief of Police	Jaime A. Hainsworth
Johnston	Chief of Police	Richard Tamburini
North Providence	Chief of Police	Brian W. Sullivan
North Smithfield	Chief of Police	Colonel John J. Whiting
Providence	Chief of Police	Steven E. Reynolds
Warwick	Chief of Police	George E. Kelley III
West Warwick	Chief of Police	Colonel Dean Esserman

Rhode Island Capital PD	Lieutenant	Joseph Habershaw
Scituate	Chief of Police	Colonel David Randall
Smithfield	Chief of Police	Richard St. Sauveur
Woonsocket	Chief of Police	Thomas S. Carey
Washington County		
Charlestown	Chief of Police Same as / Governed by RI	Colonel Jack Shippe
Exeter	State PD	Colonel Brendan P. Doherty
Hopkinton	Chief of Police	John S. Scuncio
Narrangsett	Chief of Police	Joseph T. Little Jr.
New Shoreham	Chief of Police	Vincent Carlone
North Kingstown	Chief of Police	Edward A. Charboneau
Richmond	Chief of Police	Raymond Driscoll
South Kingstown	Police Chief	Vicent Vespia Jr.
Westerly	Police Chief	Edward A. Mello
Rhode Island State Sheriff's Department	Executive High Sheriff	Gary P. Dias
	Superintendent/ Comssioner, Department of	
RI STATE POLICE	Public Safety	Colonel Brendan P. Doherty
RI Environmental Police (DEM)	Chief of Police	Steven H. Hall

RHODE ISLAND PUBLIC DEFENDER

160 Pine Street, Providence, Rhode Island 02903

TELEPHONE: (401) 222-3492

FAX: (401) 222-3287

Summary Of Responses To Access To Public Records Request Made By

The Office of the Public Defender

Request: "...your agency's written policies, procedures, or orders relating to eyewitness identification protocols. If your agency does not possess a written policy, please indicate that in writing.")

Total # of agencies from which records were sought: 42

Best written policies: Bristol, Cumberland, and Warwick

Number of agencies with written policies: 10

% of agencies with written policy: 24%

Number of agencies w/o written policies: 31

% of agencies w/o written policy: 76%

Number of agencies that responded: 41

Number of agencies that did not respond: 1; East Providence

% of agencies that responded: 98%

[Percentages were calculated by using the number of departments that replied, now 41, as the denominator]

Number of agencies with an ambiguous response: Woonsocket, Little Compton

Woonsocket provided a photocopy of a training key issued by the International Association of Chiefs of Police and list of attendees at "roll call" training where this key was used. This information was sent in response to a *subpoena duces tecum* served upon it in connection with pending criminal litigation. Little Compton provided considerations and guidelines for police personnel to follow when interviewing the witness.

Number of agencies waiting for AG to reply: 2; Charleston, Barrington

Number of agencies that specifically requested information about well-written policies in this area: 1; Portsmouth

After original request was sent the number of agencies that Public Defender provided sample "best practices" at their request: 4; Charlestown, Cranston, Hopkinton, Portsmouth

Revised, 4/21/10