

**Department of Legislative Services**  
Maryland General Assembly  
2007 Session

**FISCAL AND POLICY NOTE**

Senate Bill 157

(Senator Kelley, *et al.*)

Judicial Proceedings

Judiciary

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**Public Safety - Eyewitness Identification - Written Policies**

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This bill requires each law enforcement agency in the State to adopt a written policy relating to eyewitness identification by December 1, 2007. The policies must comply with the U.S. Department of Justice standards on obtaining accurate eyewitness identification.

Law enforcement agencies must file copies of these policies with the State Police by January 1, 2008. The State Police must compile the policy of each law enforcement agency by February 1, 2008 and allow public inspection of each policy compiled.

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**Fiscal Summary**

**State Effect:** Development of written eyewitness identification policies by the State law enforcement agencies could be handled with existing resources.

**Local Effect:** Development of written eyewitness identification policies by the local law enforcement agencies could be handled with existing local resources.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** Eyewitness identification testimony and in-court identification of a criminal defendant are generally admissible.

Lineups and other extrajudicial identifications that are “unnecessarily suggestive and conducive to irreparable mistaken identification” violate a criminal defendant’s due process rights. *See Stovall v. Deno*, 388 U.S. 293, 302 (1967). When confronting due process challenges to identification procedures, courts evaluate whether the identification was reliable in spite of the suggestive procedures under a totality of the circumstances.

**Background:** In 1999, the U.S. Department of Justice released a report titled *Eyewitness Evidence: A Guide for Law Enforcement*, detailing recommended procedures for obtaining reliable eyewitness evidence through line-ups, field identifications, mug shot books, and other methods. Since the release of this document, Wisconsin, Illinois, and Virginia have passed eyewitness identification reform laws adopting some or all of these recommendations. In 2005 and 2006, a total of 17 states introduced bills proposing similar reforms.

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### Additional Information

**Prior Introductions:** SB 863 of 2006 as amended, an identical bill, was adopted by the Senate. The bill received a favorable report in the House Judiciary Committee but was never acted upon by the House.

**Cross File:** HB 103 (Delegate Rosenberg, *et al.*) – Judiciary.

**Information Source(s):** State’s Attorneys Association; Washington County; Montgomery County; Prince George’s County; Kent County; Worcester County; Judiciary (Administrative Office of the Courts); Office of the Public Defender; Department of State Police; National Association of Criminal Defense Lawyers; United States Department of Justice; *Criminal Procedure Handbook*, Fifth Amendment § 2:28, Thomson West (2006); Department of Legislative Services

**Fiscal Note History:** First Reader - January 31, 2007  
ncs/jr

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