

Boston Herald

Push for justice: City makes sweeping moves to stop wrongful imprisonments

By **Maggie Mulvihill**

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Triggered by a shocking string of high-profile cases in which innocent men were wrongfully imprisoned for rape and murder, Suffolk County prosecutors and Boston police will tomorrow unveil a sweeping overhaul in their handling of eyewitness identifications of suspects.

“We are earnestly seeking justice here,” Suffolk County District Attorney Daniel Conley said yesterday. “It serves no end when the wrong person goes to prison for a crime he or she didn't commit.”

“The reforms that we have agreed upon will go a long, long way to ensure that we do a much better job in prosecuting these kinds of cases.”

A Herald/Fox 25 investigative report in May documented the cases of at least 21 Massachusetts men - mostly minorities - who had spent needless years in prison for brutal crimes such as rape or murder they didn't commit.

Several of those were convicted through flawed eyewitness testimony gathered by Boston police, including Marlon Passley, 31, who served four years in prison for a 1995 gangland-style murder and Donnell Johnson, 26, who served five years in prison for a 1994 murder of a 9-year-old Roxbury boy.

Under the proposed reforms, witnesses will now be shown a suspect's photograph or view a suspect in a lineup one at a time, instead of grouping the photos together or having the suspects file out in a lineup together.

An officer completely unconnected to the criminal case with no knowledge of the true suspect will now handle all of the witness's identifications, the report is expected to state.

“It's a completely different test of recognition,” said Boston attorney James M. Doyle, a task force member and an adviser to the Department of Justice on its 1999 guidelines.

“It is just the way scientists are doing drug testing where the doctor and the patient will be unaware of which drug is the real drug and which is the placebo.”

Doyle said this new method of doing photo arrays and lineups will also prevent officers from consciously or subconsciously exhibiting body language about which suspect to choose.

“The problem is even when you are playing it straight the tendency is to give cues even if you are not aware you are doing it,” Doyle said. “And the witness - if they think you know the answer - may be trying to read cues even if you aren't giving them.”

Other proposed reforms include the recording of all criminal suspects during interrogations - not just homicide suspects.

Eyewitnesses will also now be asked to sign a form expressing their level of confidence in their choice of suspect as well as acknowledge they understand eyewitness identification is meant to clear the innocent as well as convict the guilty, the report is expected to state.

Police Commissioner Kathleen O'Toole said she believes the BPD is the first major metropolitan department to adopt such substantive changes in police handling of eyewitness identification.

``If we set the gold standard here in Boston on this issue, I'm very pleased with that," she said.

The reforms are included in a 24-page draft report titled: ``Report on the Task Force on Eyewitness Evidence." The report is expected to be issued tomorrow by Conley and O'Toole.

The task force comprises senior prosecutors in Conley's office, members of the criminal defense bar in Boston, police supervisors and an international expert on the perils of eyewitness identification, Iowa State University psychology professor Gary L. Wells.

The reforms are modeled on 1999 Department of Justice recommendations aimed at improving the accuracy of the identification of criminal suspects.