

CCDLA  
"Ready in the Defense of Liberty"  
Founded 1988

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April 10, 2007

Hon. Andrew J. McDonald, Senator  
Hon. Michael P. Lawlor, House Representative  
Chairmen, Judiciary Committee  
Room 2500, Legislative Office Building  
Hartford, CT 06106

Re: Raised Bill No. 1240  
An Act Concerning Eyewitness Identification

Dear Chairmen and Committee Members:

The Connecticut Criminal Defense Lawyers Association (CCDLA) is a statewide organization of 300 lawyers dedicated to defending people accused of criminal offenses. Founded in 1988, CCDLA works to improve the criminal justice system by insuring that the individual rights guaranteed by the Connecticut and United States Constitutions are applied fairly and equally, and that those rights are not diminished.

CCDLA strongly supports and recommends the passage of Raised Bill No. 1240, *An Act Concerning Eyewitness Identification*. Requiring law enforcement to conduct photo lineups or "arrays" and live lineups (hereinafter "identification procedure"), in a "blind" and sequential manner decreases the likelihood that an identification procedure is conducted in an unnecessarily suggestive manner, and enhances the reliability of the identification. Ultimately, this procedure reduces the number of wrongful arrests and convictions.

**1. Mistaken identifications are the leading factor in wrongful convictions.**

Eyewitness identifications are a well-known problem in the American criminal justice system as demonstrated by nearly 200 exonerations brought about by the Innocence Project, a full 75% of which are attributable to false eyewitness identifications. Inaccurate eyewitness identifications may hamper investigations from the earliest stages. Critical time is lost while police are distracted from pursuing the real perpetrator, focusing instead on building a case against an innocent person.

Despite solid and growing proof of the inaccuracy of traditional eyewitness identification procedures and the availability of simple measures to reform them, traditional eyewitness identifications remain among the most commonly used and compelling evidence against criminal defendants.

## **2. Traditional eyewitness identification, practices and problems.**

In a standard lineup, the lineup administrator typically knows who the suspect is. Research shows that this leads administrators to often provide unintentional, or at times deliberate, cues to the eyewitness about which person to pick from the lineup. In a standard lineup, an eyewitness is shown individuals or photographs *simultaneously*. Research shows that this tends to lead eyewitnesses to choose a lineup member based upon a relative judgment (i.e. who *looks most like* the perpetrator?), rather than based on his or her own mental image of the perpetrator.

## **3. How to improve the accuracy of eyewitness identifications.**

*“Sequential double-blind”* is shorthand for a package of reforms recognized by police, prosecutorial and judicial experience, as well as national justice organizations, including the National Institute of Justice and the American Bar Association. The benefits of these reforms are corroborated by over 25 years of peer-reviewed comprehensive research.

### **a. The “Double-blind” procedure/ Use of a “Blind” Administrator.**

A “double-blind” lineup is one in which neither the administrator nor the eyewitness knows who the suspect is. This prevents the administrator of the lineup from providing inadvertent or intentional verbal or nonverbal cues to influence the eyewitness to pick the suspect.

### **b. Sequential presentation**

In a “sequential” presentation, the eyewitness is shown lineup members one at a time and asked to make a decision about each before viewing the next. This allows the eyewitness to examine the image of each suspect separately and reduces the demonstrated likelihood of the witness making a “relative judgment,” i.e. picking the person who may not be, but most *resembles* the witness’s memory of the perpetrator.

*An important note about sequential lineups* is that they can actually *decrease* the likelihood of a correct identification if they are not accompanied by a “blind administrator.” Therefore, *“sequentially” presenting lineups is only a reform when teamed with a blind administrator.*

#### **4. Jurisdictions utilizing “sequential double-blind” procedures:**

The following jurisdictions have implemented “sequential double-blind” as standard procedure: The state of New Jersey; Boston, MA; Northampton, MA; Madison, WI; Winston Salem, NC; Hennepin County (Minneapolis-St. Paul), MN; Ramsey County, MN; Santa Clara County, CA; and Virginia Beach, VA.

The following jurisdictions have promulgated “sequential double-blind” voluntary guidelines and/or incorporated them into law enforcement trainings: North Carolina and Wisconsin.

#### **Case in Point: Anthony Michael Green, Ohio Exoneree**

In June of 1998, a woman convalescing from cancer treatment at the Cleveland Clinic Hospital was raped and robbed by an assailant who identified himself as “Tony” during the attack. Anthony Michael Green, a former employee of the Cleveland Clinic became a suspect in the case after a security officer from the hospital pointed to him based on the description provided by the victim. The victim was shown two photo lineups. Mr. Green was the only person represented in both lineups.

In the first lineup, the victim stated that she saw one person that “resembled [her] attacker, but just not enough.” In the second lineup, the photographs were accompanied by biographical placards, which included the height, weight and age of the lineup members. The card associated with Mr. Green’s photo contained height, weight and age information that matched the description provided by the victim, who this time identified Mr. Green.

It is unlikely that a “blind” administrator would have decided to perform two line-ups and include pedigree information in the second. Mr. Green’s subsequent conviction was based almost exclusively on the eyewitness identification made by the victim. Since the victim lacked confidence in her first identification, it is improbable that Mr. Green would have been identified through a double-blind sequential procedure had it been employed. Instead, Mr. Green served thirteen years in prison for a crime that DNA evidence later proved he did not commit. Since his release, the real perpetrator of this crime confessed and was convicted.

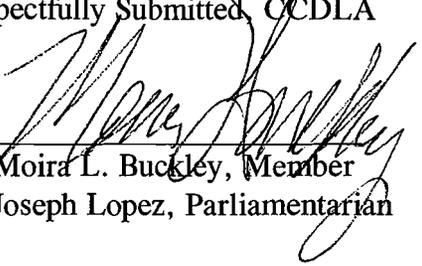
In the event that Raised Bill no. 1240 is not passed, CCDLA recommends the implementation of a pilot program that complies with the substance of the bill. In addition to

the points raised above, CCDLA adopts the recommendations and testimony of the Office of the Chief Public Defender.

Thank you for your consideration.

Respectfully Submitted, CCDLA

By

  
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