# State of Connecticut

OFFICE OF CHIEF PUBLIC DEFENDER

30 TRINITY STREET – 4TH FLOOR
HARTFORD, CONNECTICUT 06106
TEL: 860-509-6403
FAX: 860-509-6495

ATTORNEY BRIAN S. CARLOW
DEPUTY CHIEF PUBLIC DEFENDER

**TESTIMONY OF**
**BRIAN C. CARLOW, DEPUTY CHIEF PUBLIC DEFENDER**
**AND**
**KAREN A. GOODROW, DIRECTOR,**
**CONNECTICUT INNOCENCE PROJECT**
**OFFICE OF CHIEF PUBLIC DEFENDER**

**Raised Bill No. 5832**
***An Act Concerning Eyewitness Identification***

**Judiciary Committee Public Hearing**
**March 20, 2008**

The Office of Chief Public Defender supports RB No. 5832, An Act Concerning Eyewitness Identification which would mandate the use of "double-blind, sequential" live and photographic lineups in connection with the investigation of crimes. "Double–blind" refers to a lineup administrator who is not aware of who the actual suspect is, and to a witness who is informed that the perpetrator may or may not be in the array. Sequential refers to the presentation of subjects to the witness one at a time for a determination, rather than presenting all subjects simultaneously as part of a group.

**As has been demonstrated by the recent exoneration of James Calvin Tillman, misidentification by eyewitnesses accounts for a large majority of the wrongful convictions occurring in our justice system.**

Significant research in the field of eyewitness identification, particularly by Professor Gary Wells of the University of Iowa, indicates that the risks of mistaken eyewitness identification are reduced when these techniques are used. Without the "double-blind" procedures, it has been shown that awareness of the actual suspect by the administrator can result in inadvertent verbal and non-verbal cues that influence the witness to select the actual suspect. Simultaneous presentation of the subjects frequently results in identification of the subject who most closely resembles the perpetrator, regardless of whether or not it is the right person.

Although several years ago the Chief State's Attorney implemented a new eyewitness identification protocol that is an improvement over past practices, the new protocol is neither double-blind nor sequential. Furthermore, the protocol is not an adequate substitute for these procedures and is still susceptible to the risks that double-blind, sequential procedures are designed to minimize. As such, the Office of Chief Public Defender urges that these procedures be statutorily required

**See Attached Document**

**In June, 2006, DNA technology freed James Calvin Tillman from eighteen and a half years of imprisonment for crimes which he did not commit. His wrongful conviction was the result largely of misidentification. In January, 2008, through the same DNA technology, the real perpetrator was identified and arrested.**

In the wake of hundreds of post-conviction DNA exonerations nationwide, it is poignantly clear that misidentification accounts for the vast majority of wrongful convictions. Eyewitness research has linked two basic factors with misidentifications: unintentional suggestion to the witness and "relative judgment process", which refers to the tendency when viewing a simultaneous photo array for the witness to pick out the photo of the person who looks most like the real perpetrator relative to the other people in the array. States have begun to pass legislation which will reduce the likelihood of misidentification through the use of "best practices" in identification procedures. These best practices include two basic components: sequential photo arrays and double-blind administration.

**Sequential Photo Arrays:** photos are presented to the witness one at a time, rather than simultaneously. Research demonstrates that sequential photo arrays discourage relative judgment and encourage absolute judgments of each person presented, because eyewitnesses are unable to see the subjects all at once and are unable to know when they have seen the last subject.

**"Double Blind" Procedure:** the person administering the photo array does not know who the suspect is, and is not in a position to unintentionally influence the witness's selection. Research demonstrates that persons conducting experiments of any kind in which they know the desired or correct outcome, often unwittingly cue the subject of the experiment or misinterpret the results based on their knowledge or desired outcome. If the administrator of a photo array does not know the identity of the suspect, he/she cannot provide any cues to eyewitnesses. It is important to understand that this recommendation does not presume any deliberate impropriety by law enforcement.

The following additional best practices are also recommended:

1. **Non-suspect fillers:** photos of individuals in the array who are not the suspect are called "fillers"; these photos should be chosen to minimize suggestiveness that might point toward the suspect. In other words, the photos of non-suspects should generally be chosen to resemble the witness's description of the perpetrator.

2. **Advisement to the witness:** consistent with the Chief State's Attorney's voluntary changes to eyewitness protocols, each witness should be instructed that the real perpetrator may or may not be present in the array and that the administrator does not know which person is the suspect. Research shows that telling the witness that the perpetrator may or may not be present reduces mistaken identification rates. Telling witnesses that the administrator does not know who the suspect is will also help prevent witnesses from mistakenly looking to the administrator for cues.

3. **Eyewitness confidence:** an eyewitness's statement of confidence should be assessed immediately after the identification, and prior to any information given to the witness about the identification to protect against artificially inflated confidence levels.

4. **Multiple identification procedures:** avoid multiple identification procedures in which the same witness views the same suspect more than once. Research demonstrates that multiple procedures create the potential for suggestiveness and the potential to contaminate the witness's memory.