

# Establishment of an Eyewitness Identification Task Force

## Issue

Should the State Bar of Michigan call for the appointment of an Eyewitness Identification Task Force including State Bar members in the criminal defense, prosecution, judicial and law enforcement communities, to develop and promote legislative and/or court rule changes that advances the improvement and reliability of eyewitness identification procedures?

## Synopsis

- Eyewitness identification procedures are a significant component of the criminal justice system
- Eyewitness identifications can be flawed, depending on many different factors such as inherent biases, duration of exposure, and unintentional feedback from administrators
- Many situations exist that make the likelihood of an eyewitness misidentification more likely, such as cross racial identifications and identifications made after a traumatic event
- There is a significant body of literature and empirical data which discern that best practices can reduce the incidences of inaccurate identifications
- Misidentification from eyewitnesses has garnered national attention and has prompted State and Federal commissions to examine the subject, and over half a dozen states to enact legislation that regulates the practice
- The justice system has the ability to make system-wide practices more uniform in order to garner higher quality and more accurate feedback from eyewitnesses
- Best practices in the area of eyewitness identification procedures will promote the credibility and efficiency of the criminal justice system by helping law enforcement accurately focus on persons of interest and reduce wrongful convictions

## Background

In 1973 the Michigan Supreme Court recognized the importance of law enforcement procedures pertaining to witness identification. In *People v. Anderson*, the Court explicitly identified four fundamental assertions: 1) acknowledging the importance of eyewitness identification, 2) the judicially and scientifically recognized limitations of these identifications, 3) the potential for law enforcement procedures to generate misidentifications and 4) the demonstrable fact that errors in the justice system can and have led to wrongful convictions of innocent citizens.

Since this 1973 ruling, a body of case law has developed addressing issues outlined in *Anderson*, from the time at which a suspect is first guaranteed counsel, to the admissibility of eyewitness identifications collected as evidence through potentially suggestive police procedures. In the past three decades, Michigan Courts have been held responsible for forming opinions on the appropriateness of a corporeal line-up versus a photographic line-up (*People v. Anderson*, 1973), a suspect's right to counsel during either form of line-up (*People v. Anderson*, 1974), when the use of a line-up is appropriate (*People v. Dixon*, 1978) or when a show-up identification is warranted instead (*People v. Winters*, 1997), and the admissibility of identifications, those made in court (*People v. Kachar*, 1977), on the scene (*People v. Turner*, 1982) or elicited by an organized line-up (*People v. Kurylczyk*, 1993).

Currently, there exists no statewide set of policy, procedures, standards, guidelines or recommended best practices for obtaining eyewitness identifications. Nevertheless, the scientific literature on eyewitness identifications has been rapidly developing since the early 1970's. A recent decision

handed down by the Supreme Court of New Jersey presented an extensive 30 page overview of this scientific literature, representing over 2,000 studies on eyewitness identifications.

A number of interested communities, from law enforcement agencies to expert witnesses, courts to state legislatures, have investigated the recommendations made by relevant scientific literature. More than a half dozen states have adopted legislation implementing such procedures. In addition, dozens more State and Federal commissions have examined this literature and offered their own recommendations for ameliorative procedures in the eyewitness identification process.

Michigan courts currently bear the responsibility of determining both the reliability of eyewitness identifications and the appropriateness of law enforcement procedures in each individual case. Through developing a procedural system for obtaining witness identifications, based on scientific findings, Michigan will be taking steps toward ensuring a fair, uniform practice of eyewitness identification procedures.

### **Opposition**

None known. This proposal has support from the Criminal Jurisprudence and Practice Committee, the Committee on Justice Initiatives, and the Criminal Issues Initiative.

### **Prior Action by Representative Assembly**

None known.

### **Fiscal and Staffing Impact on State Bar of Michigan**

Existing staff resources will be allocated for efforts.

## **STATE BAR OF MICHIGAN POSITION By vote of the Representative Assembly on September 15, 2011**

Should the State Bar of Michigan call for the appointment of an Eyewitness Identification Task Force including State Bar members in the criminal defense, prosecution, judicial and law enforcement communities, to develop and promote legislative and/or court rule changes that advances the improvement and reliability of eyewitness identification procedures?

(a) Yes  
or

(b) No