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It is time politicians realize that it is not enough simply to be tough on crime; we have to be smart about crime as well. A prime example of an area in dire need of more brains than brawn is eyewitness identification procedures. Since 1989, almost 200 people have been freed from prison after postconviction DNA testing proved their innocence; mistaken eyewitness identification was a critical factor in 75% of these wrongful convictions. With every misidentification, innocent people are sent to prison and actual perpetrators remain free to commit more crimes.

Eyewitness identification experts have not only documented the perils of eyewitness identification evidence, but thirty years of sound scientific studies have demonstrated that a number of systemic factors within the control of the police increase the rates of misidentification. In response, crucial reform measures have been developed aimed at improving eyewitness identification procedures. Currently, there are a number of bills percolating across the country that would institute many of these critical reforms, including legislatures in West Virginia, Maryland, Vermont, and New York.

An excellent model of one such bill that we are watching with anticipation is Senate Bill 5 in New Mexico. The bill incorporates many of the scientifically documented “best practices” for eyewitness reform, including:

- Conducting lineups double-blind (where the person administering the lineup does not know who the suspect is and therefore cannot give incidental cues to the witness)
- Selecting lineup fillers according to the witness’s description of the perpetrator as opposed to based on their similarity to the police suspect, thereby lessening the chances that the suspect will stand out
- Instructing the witness before the identification procedure that the perpetrator may not be present in the lineup, not to feel compelled to make an identification, and that the investigation will continue regardless of whether or not the witness makes an identification
- Ensuring that witnesses document, in their own words, their degree of confidence in their identification
- Creating an audio and visual recording of the eyewitness procedure

Each of these recommendations has been empirically demonstrated to reduce the number of incorrect identifications. Similar reforms have been recommended by the

National Institute of Justice (a branch of the Department of Justice), the American Bar Association and, most recently, the California Commission on the Fair Administration of Justice. In addition, a number of police departments have, on their own, already implemented many of these reforms, particularly double-blind sequential lineups (showing lineup members one at a time as opposed to the traditional method of showing them all together), including departments in Boston and Northampton, MA, Madison, WI, Winston Salem, NC, Hennepin (Minneapolis-St. Paul) and Ramsey County, MN, Santa Clara County, CA, Virginia Beach, VA, and the entire state of New Jersey.

Delivering on criminal justice reform is important to the progressive community. Our preferred candidates are going to be those who generate good results on this issue. For instance, Barack Obama demonstrated his commitment to criminal justice reform when, in response to an epidemic of wrongful convictions in Illinois and Governor Ryan's moratorium on capital punishment, he carried legislation mandating the audio or visual recording of custodial interrogations and pilot projects to implement eyewitness reform. We need more of this type of leadership.

It's not complicated: mandating reform in eyewitness identification procedures is a win-win situation, resulting in fewer innocent people being sent to prison, more guilty people getting caught, and our communities becoming safer. For years, Democrats and Republicans alike have embraced policies that are tough on crime. Now it is time they get smart about crime, too. In light of the daunting number of wrongful convictions caused by erroneous eyewitness identifications, along with the copious scientific research documenting the factors that enhance its error rate, our leaders must prioritize aggressive reform of police procedures in this arena. Supporting bills like New Mexico Senate Bill 5 is a good place to start.



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