

RESOLUTION 04-10-2007

DIGEST

Criminal Procedure: Admissibility of Expert Testimony on Eyewitness Identification

Adds Evidence Code section 806 to allow expert testimony regarding factors affecting the reliability of eyewitness identification.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

Substantially related to Resolution 03-16-2007.

Reasons:

This resolution adds Evidence Code section 806 to allow expert testimony regarding factors affecting the reliability of eyewitness identification. This resolution should be approved in principle because it provides increased procedural and evidentiary protections for accused parties.

The California Commission on the Fair Administration of Justice (“Commission”) was established by Senate Resolution No. 44 (2003-2004 Reg. Sess.) to study and review the administration of criminal justice in California, determine the extent to which that process has failed in the past, examine safeguards and improvements, and recommend proposals to ensure that the administration of criminal justice in California is just, fair and accurate. The Commission has conducted hearings and identified factors leading to injustice in California, including misidentification by eyewitnesses and false confessions. In April 2006, the Commission released its report and recommendations regarding eyewitness identification procedures.

In 2006, the Legislature passed Senate Bill No. 1544 (2005-2006 Reg. Sess.), which would have required the Department of Justice (“DOJ”) and the Commission on Peace Officer Standards and Training (“POST”) to develop guidelines for eyewitness identification procedures. The Governor vetoed the legislation, stating that while its goals were laudable, eyewitness identification process was too important to the criminal justice process for the legislature to abdicate its responsibilities by empowering DOJ and POST to enact mandatory guidelines without legislative action.

Resolution 03-16-2007 would address pending legislation to establish procedural safeguards. This resolution would codify existing case law so as to allow expert testimony on factors affecting the reliability of eyewitness identification.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates of California Bar Associations recommends that legislation be sponsored to add Evidence Code section 806 to read as follows:

1 §806
2 Consistent with existing law, expert testimony is admissible regarding factors that
3 affect the reliability of eyewitness identifications upon a showing that it is relevant.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Los Angeles County Bar Association

STATEMENT OF REASONS

Existing Law: In California there are no uniform procedures governing the use of an eyewitness to identify persons suspected of committing crimes. The only limitation is that the identification procedure must have been fair in the Constitutional sense. Testimony related to eyewitness identification is made admissible by case law and has not been codified.

This Resolution: This resolution requires law enforcement agencies to adopt written policies governing the use of an eyewitness to identify a person suspected of committing a crime. The policies apply to practices under which an eyewitness identifies a suspect upon viewing him or her in person, such as in a line-up or field show-up, and to practices under which an eyewitness identifies a suspect upon viewing a representation of the suspect, as by viewing a photograph array. The policies must be designed to reduce the potential of erroneous identifications by eyewitnesses. The legislation also makes admissible expert testimony regarding factors that affect the reliability of eyewitness identification, including factors present in the particular case.

The Problem: The problem is well known - innocent persons are convicted of crimes they did not commit based in large part upon an identification made by a crime victim or witness. Scientific research has identified the factors that contribute to eyewitness identification error and has identified changes in procedure which must be made to reduce the chance of erroneous identification. This resolution causes the justice system to change by adopting procedures empirically determined to improve the likelihood of accurate eyewitness identifications.

IMPACT STATEMENT

This resolution does not affect any other statute, law, or rule.

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