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**COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING**

*The mission of the California Commission on Peace Officer Standards and Training is to continually enhance the professionalism of California law enforcement in serving its communities.*



April 30, 2007

APR 30 2007

The Honorable Mark Ridley-Thomas  
California State Senate  
Sacramento, CA 95814

Re: SB 756 (Eyewitness Identification)

Arnold Schwarzenegger  
Governor

Jerry Brown  
Attorney General

Dear Senator Ridley-Thomas:

On April 19, 2007, an analysis of Senate Bill 756 was presented to the Commission on Peace Officer Standards and Training (POST). POST staff recommended that a neutral position be taken on this legislation, recognizing that it has been the historic role of POST to develop peace officer training curriculum periodically mandated by the Legislature. By a 13-0 vote, the Commission voted to OPPOSE this legislation.

Since 1959, POST has met the responsibility to develop training curriculum involving complex or controversial topics. Sexual harassment, cultural diversity, pursuit policy guidelines, and racial profiling are just a few of the topics POST has developed for peace officer training.

SB 756 has met a phalanx of opposition from the criminal justice community for a variety of reasons, including concerns of increased operational costs among law enforcement agencies to follow procedures unlikely to be the sole cause or significant contributing factor to false convictions.

One misidentification resulting in a criminal conviction in California is one too many. However, criminal exonerations in California caused *solely* by one-on-one identifications are extremely rare. Additionally, the National Institute of Justice (NIJ) "recognizes a very small incidence of misidentifications nationwide and does not credit eyewitness testimony as the sole or dominant cause of known misidentifications, (e.g. circumstantial evidence)," stating "the vast majority of eyewitness identifications are accurate and provide trustworthy evidence for the trier of fact."

Upon review of this proposed legislation, it was the conclusion of the Commission on POST that this bill did not address a significant public policy issue and that the resources of POST could be more effectively directed toward other training needs.

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I must add that you have my assurance that if SB 756 is enacted, POST will provide an objective, comprehensive, and timely development of eyewitness identification guidelines.

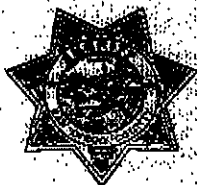
Should you have any questions, please contact Bureau Chief Bob Stresak, Legislative Advocate, at (916) 227-2085 or [Bob.Stresak@post.ca.gov](mailto:Bob.Stresak@post.ca.gov).

Sincerely,

A handwritten signature in cursive script that reads "Hal Snow".

HAL SNOW  
Interim Executive Director

HS:bs:dar



# San Diego County Sheriff's Department

Post Office Box 939062 • San Diego, California 92193-9062



William B. Kolender, Sheriff

William D. Gore, Undersheriff

April 11, 2007

The Honorable Mark Ridley-Thomas  
Senator, 26<sup>th</sup> District  
State Capitol Building  
Sacramento, CA 95814

**POSITION: OPPOSE – SB 756: Criminal investigations: eyewitness identifications**

Dear Senator Ridley-Thomas,

I must respectfully oppose your bill SB 756 Criminal investigations: eyewitness identifications. This bill declares a legislative intent that law enforcement officials study and consider adoption of new procedures recommended by the National Institute of Justice and the California Commission on the Fair Administration of Justice regarding eyewitness lineup identifications to ensure a decrease in the number of misidentifications.

The current procedures that law enforcement uses for lineups are time-tested and court approved. All of our criminal investigative reports are seriously scrutinized by the District Attorney's office prior to formally charging a defendant. It is not necessary to change the investigative procedures for identifying an alleged suspect. It is for these reasons that I must oppose your bill.

If I can be of assistance to you on this issue, please do not hesitate to call me or Marla Marshall, my Special Assistant of Legislative Affairs, at (858) 974-2270

Sincerely,

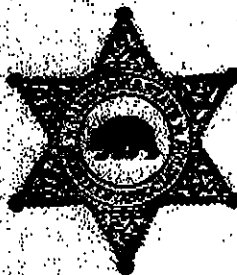
  
William B. Kolender, Sheriff

WBK:sj

Cc: Senate Committee on Public Safety  
The Honorable Gloria Romero, Chair  
The Honorable Dave Coghill, Vice chair

Kaye Bassett, Governor's Office of Planning & Research

APR 12 2007



# California State Sheriffs' Association

Organization Founded by the Sheriffs in 1896

## Officers

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Sheriff, San Bernardino County

**1st Vice President**  
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Sheriff, Santa Clara County

**2nd Vice President**  
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**Immediate Past President**  
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Sheriff, Monterey County

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## Presidents' Counsel

Robert Doyle  
Sheriff, Marin County

Warren Ruff  
Sheriff, Contra Costa County

Steve Szalay  
Executive Director

Nick Warner  
Legislative Director

Martin J. Mayer  
General Counsel

April 12, 2007

The Honorable Mark Ridley-Thomas  
Senator, 26<sup>th</sup> District  
State Capitol Building, Room 5050  
Sacramento, CA 95814

Re: SB 756 (Ridley-Thomas) - OPPOSE

Dear Senator Ridley-Thomas,

On behalf of the California State Sheriffs' Association, we regret to inform you that we must oppose your SB 756, which declares a legislative intent that law enforcement officials study and consider adoption of new procedures recommended by the National Institute of Justice and the California Commission on the Fair Administration of Justice regarding eyewitness lineup identifications to ensure a decrease in the number of misidentifications.

One of the recommendations is that an officer not involved in the investigation, and who is unaware of the suspect's identity, conduct the lineup. This presents a problem in that our law enforcement agencies immediately put out a broadcast describing the suspect's physical appearance and name if known, last known location or direction of travel and the vehicle (if applicable) description. Every officer on duty will learn the suspect's description and a brief synopsis of the crime that occurred. This ensures swift capture of the alleged suspect. We would have to call in an officer that was not on duty to conduct the lineup, and this would pose an overtime issue, which can be costly. Also, it would delay securing witness information while we're trying to determine if we caught the right person. This is disruptive to the witnesses and very inefficient in most jurisdictions. In the event of multiple suspects, there would be a need for multiple "unaware" investigators to conduct the lineups.

Another recommendation by the Commission addresses the situation where two or more witnesses are available for an in-field lineup (where an alleged suspect in a recent crime is detained in the field for prompt identification or elimination by drive-by viewing).

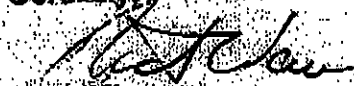
Fax from :

The Commission's recommendation is that once a single witness has made a lineup identification, that the other witnesses may not view the suspect, but must await a lineup at a later time. This procedure increases the chances that an innocent person might be wrongly arrested, because a mistaken identification by the first witness was not allowed to be promptly disclaimed by the other witnesses. In this case, a wrong person may be taken into custody while the actual suspect got away. It is very important to secure witness information as soon as possible and to ensure their availability to testify in court.

The current procedures that law enforcement uses for lineups are time-tested and court approved. All of our criminal investigative reports are seriously scrutinized by the District Attorney's office prior to formally charging a defendant. It is not necessary to change the investigative procedures for identifying an alleged suspect. It is for these reasons that I must oppose your bill.

If I can be of assistance in this matter please feel free to contact me.

Cordially,



Nick Warner  
Legislative Director

cc: The Honorable Gloria Romero, Chair, Senate Public Safety Committee  
The Honorable Bob Margett, Vice Chair, Senate Public Safety Committee



## Government Relations Oversight Committee

1455 Response Road, Suite 198, Sacramento, CA 95815

Telephone Number: (916) 263-8541 Fax: (916) 263-6090



Government Relations Manager, John Lovell

Telephone Number: (916) 447-3820 Fax: (916) 441-1974

April 12, 2007

Honorable Mark Ridley-Thomas  
Member of the California Senate  
State Capitol, Room 4061  
Sacramento, CA 95814

Dear Senator Ridley-Thomas:

The California Peace Officers' Association, which represents the entire scope of the law enforcement profession, and the California Police Chiefs Association, whose members protect over 70% of Californians, regrets that they must oppose Senate Bill 756.

Although all of us in law enforcement support the objective of reliable identification procedures, we would respectfully suggest that reliance on the procedures outlined by the California Commission on the Fair Administration may be placing too much faith in protocols that have achieved dubious results. In fact, the opposite may be true. A year-long Illinois pilot project in 2004 in the police departments of Chicago, Joliet and Evanston demonstrated that *"the sequential double-blind method led to a lower rate of suspect identifications as well as a higher rate of known false errors."* (Report to the Legislature of the State of Illinois, Mecklenburg, March 17, 2006.) A similar program in Minnesota came to the same conclusion, and adoption of the "new" procedures was subsequently rejected on the basis of the demonstrated results. If California agencies were obliged to adopt these apparently discredited procedures, clearance and conviction rates would decline, with concomitant crime rate increases caused by those who escaped conviction.

The double-blind procedure recommended by the Commission (requiring that the officers showing photos or conducting a lineup not be the case investigators, but be additional officers who are unaware of the suspect's identity) creates numerous problems. This procedure assumes that every agency has the personnel to accommodate such a procedure. In fact, however, many police and sheriff's departments have between 5 and 15 sworn officers to cover the entire jurisdiction on all shifts and all days of the week. In these departments, every officer is likely to know who the suspect in a given case is. Using a "double-blind administrator" to show pictures or to run a line would often mean calling in the next shift, or getting a deputy from a distant town to leave his or her post in order to assist with the ID. This would be grossly inefficient and disruptive in most jurisdictions. If, as often happens, multiple suspects commit a crime, the need for multiple blind administrators would multiply the problems.

Agencies must give comp time or overtime pay to officers who are subpoenaed or placed on-call as witnesses. If the prosecutor is forced to subpoena not only the handling officer but also one or more double-blind administrators, agency overtime costs could quickly increase exponentially.

Moreover, committing additional officers to identification procedures means pulling those officers away from other duties. This would impact public safety by putting more officers in the station and fewer officers on the streets, thereby lowering clearance rates. Making witnesses wait for the arrival of another officer to

conduct an ID procedure would be a source of frustration for the citizen-witness and adversely affect the working relationship between the officers and victims or witnesses, as shown in the Illinois study.

Another unintended consequence could be caused by forbidding officers who routinely work cooperatively on cases from discussing their cases and suspects with each other for fear of "tainting" a double-blind administrator. This would deprive the department of the collective knowledge and experience of all of its officers in solving crimes, and reduce the communication and collegiality among officers that are important to morale and operational efficiency.

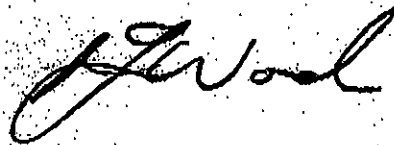
Finally, officers and prosecutors would have to be retrained on new procedures, and in meeting the new objections brought by defense attorneys who would inevitably question the reliability and fairness of "new" procedures (especially the more suggestive sequential presentation of photos and suspects) that have not received the time-tested courtroom validation that existing ID procedures already enjoy. This will mean increased trial and appellate litigation of these issues for years to come, greatly increasing the delays and expense of final adjudication.

For these reasons, both the California Peace Officers' Association and the California Police Chiefs Association are obliged to respectfully oppose Senate Bill 756. Thank you for considering our views.

Sincerely,

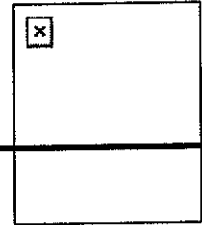
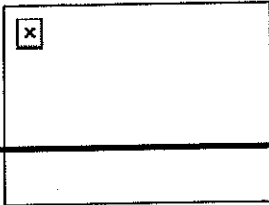


Paul Capotelli  
President  
California Peace Officers' Association



Richard Word  
President  
California Police Chiefs Association

CC: Alison Anderson, Chief Counsel, Senate Committee on Public Safety



GARY PENROD, SHERIFF-CORONER

April 9, 2007

The Honorable Mark Ridley-Thomas  
Senator, 26<sup>th</sup> District  
State Capitol Building  
Sacramento, CA 95814

POSITION: **OPPOSE** – SB 756: Criminal investigations: eyewitness identifications

Dear Senator Ridley-Thomas,

As the Sheriff of San Bernardino County I must respectfully oppose your bill SB 756. This bill declares a legislative intent that law enforcement officials study and consider adoption of new procedures recommended by the National Institute of Justice and the California Commission on the Fair Administration of Justice regulating eyewitness lineup identifications to ensure a decrease in the number of misidentifications.

One of the recommendations is that an officer not involved in the investigation, and who is unaware of the suspect's identify, conduct the lineup. This presents a problem in that our agency immediately puts out a broadcast describing the suspect's physical appearance and name if known, last known location or direction of travel and the vehicle (if applicable) description. Every officer on duty will learn the suspect's description and a brief synopsis of the crime that occurred. This ensures swift capture of the alleged suspect. We would have to call in an officer that was not on duty to conduct the lineup, and this would pose an overtime issue, which can be costly. Also, it would delay securing witness information while we're trying to determine if we caught the right person. This is disruptive to the witnesses and very inefficient in most jurisdictions. In the event of multiple suspects, there would be a need for multiple "unaware" investigators to conduct the lineups.

Another recommendation by the Commission addresses the situation where two or more witnesses are available for an in-field lineup (where an alleged suspect in a recent crime is detained in the field for prompt identification or elimination by drive-by viewing). The Commission's recommendations is that once a single witness has made a lineup identification, that the other witnesses may not view the suspect, but must await a lineup at a later time. This procedure increases the chances that an innocent person might be wrongly arrested, because a mistaken identification by the first witness was not allowed to be promptly disclaimed by the other witnesses. In this case, a wrong person may be taken into custody while the actual suspect got away. It is very important to secure witness information as soon as possible and to ensure their availability to testify in court.

The current procedures that law enforcement uses for lineups are time-tested and court approved. All of our criminal investigative reports are seriously scrutinized by the District Attorney's office prior to formally charging a defendant. It is not necessary to change the investigative procedures for identifying an alleged suspect. It is for these reasons that I must oppose your bill.

If I can be of assistance in this matter please feel free to contact me.

Best Regards,

GARY S. PENROD, Sheriff

By: Barbara Ferguson, Lieutenant  
Legislative Liaison

Cc: Senate Committee on Public Safety  
The Honorable Gloria Romero, Chair  
The Honorable Dave Cogdill, Vice-chair

Kaye Bassett, Governor's Office of Planning & Research