

Memorandum in Support

NYSBA Memorandum #13

June 12, 2015

S. 5875-A
A. 8157-A

By: Senator Nozzolio
By: M. of A. Lentol
Senate Committee: Rules
Assembly Committee: Codes
Effective Date: The 30th day after it shall have become a law

AN ACT to amend the criminal procedure law, the family court act and the executive law, in relation to statements of those accused of crimes and eyewitness identifications, to enhance criminal investigations and prosecutions and to promote confidence in the criminal justice system of this state.

On June 2, 2015, the New York State Bar Association, the District Attorneys Association of the State of New York, and the Innocence Project announced their agreement on a proposal to require the recording of custodial interrogations in certain serious crimes and to allow the admissibility of photographic arrays when enhanced identification procedures are used.

Following this historic three-way agreement between these organizations, all with differing perspectives on the criminal justice system, Senator Michael Nozzolio and Assemblyman Joseph Lentol introduced the bill embodying this agreement.

Numerous studies, including a comprehensive study undertaken by the New York State Bar Association's Task Force on Wrongful Convictions, reveal the root causes of wrongful convictions. The Association's 2009 report identified mistaken eyewitness identification and false confessions as two prevalent causes of wrongful convictions. In New York cases where there have been DNA exonerations, 52% involved eyewitness misidentification and 48% involved a false confession.

Wrongful convictions take a tremendous toll on our society. Innocent people lose their liberty. Victims are further victimized by being forced to relive their ordeals. Taxpayers pay millions of dollars to compensate the wrongfully convicted when they are released from prison. And our communities are less safe, as the guilty are left free to commit more crimes. In effect, we are all touched by wrongful convictions.

Recording of the custodial interrogation of a suspect and requiring blind or double-blind identification procedures when asking a victim or a witness to identify a suspect would protect the innocent and enhance the capability of law enforcement to apprehend and convict the person guilty of a crime. These reforms would improve public trust and confidence in our criminal justice system.

As stated by the leaders of the State Bar Association, the District Attorneys Association, and the Innocence Project:

“The enactment of this single proposal in its entirety will greatly strengthen New York’s criminal justice system by promoting effective and uniform law enforcement, increasing public safety, and helping to address some of the root causes of wrongful convictions. This legislation builds upon statewide procedures already voluntarily adopted by New York’s Police and District Attorneys but now makes many of them required standard practice. It is another step forward in New York’s commitment to ensure that the innocent remain free and that the guilty are not free to commit more crimes. We respectfully call upon the Governor, the Legislative Leaders and the entire Legislature to enact this proposal this year.”

After years of working to address wrongful convictions, the State Bar Association is pleased to join with two organizations that often have divergent views to call on the Legislature to act this session to pass this bill. Now is the time to build upon the momentum of the work of these three leading organizations and enact a meaningful bill that would both enhance law enforcement and address wrongful convictions in New York State.

Based on the foregoing, the New York State Bar Association **SUPPORTS** this legislation.