

Eyewitness Identification Best Practices

**Role in Wrongful Convictions,
National Movement on Best Practices
&
Roadmaps to Reform**

Eyewitness Misidentification & Wrongful Convictions



Name: Jimmy Ray Bromgard

Location: Billings, MT

Convicted: 1987

Exonerated: 2002

Years in Prison: 15

Causes: Eyewitness Mis-ID, Improper Forensic Science

Mis-ID Cases by the Numbers

72% = Percentage of DNA exoneration cases involving witness misidentification.

239 = # of DNA exonerations involving mis-ID.

96 = # of mis-ID cases where real perpetrator was later identified.

102 = # of additional crimes committed by real perpetrators in mis-ID cases, including 64 rapes and 17 murders.

Own-Race Bias

- Meta-analysis of over 5,000 witnesses found that people 50% more likely to misidentify someone of a different race than their own.
- 44% of mis-ID cases involved witness erroneously identifying person of a different race.
- Massachusetts Supreme requires jury instructions on cross racial mis-ID.

Benefits of Reform

For Law Enforcement

- ▶ **Fewer filler picks & fewer witnesses** “burned for future use.”
- ▶ **Focuses law enforcement resources** on the right person during investigations.
- ▶ **Protects officers against defense challenges.**

For the Public

- ▶ **Avoiding civil payouts, which saves taxpayer dollars:**
Jimmy Ray Bromgard settled with state of Montana for \$3.8 million.
- ▶ **Enhances public safety** by helping to convict the guilty and protect the innocent.
- ▶ **Increases public confidence** in the criminal justice system.

Achieving Uniform Statewide Adoption

13 States Adopted 'Core Four' Reforms

Connecticut, Colorado, Georgia, Maryland, New Jersey, North Carolina, Ohio, Oregon, Rhode Island, Texas, Wisconsin, West Virginia, Vermont.

12 States Including Montana Have Statewide Model Policies

Ways of Achieving Uniform Statewide

1. **Voluntary Adoption:** Rhode Island (2010)
2. **Model Policy Statute:** Colorado (2014), Maryland (2014), Texas (2011), Vermont (2014), West Virginia (2014), Wisconsin (2006)
3. **Prescriptive Statute:** Connecticut (2011), Georgia (2015), North Carolina (2008), Ohio (2010).

Elements of Successful Effort

- ▶ Require Written Policies/Development of Model Policy: Requirement that all agencies have a written policy that minimally comports with best practices.
- ▶ Tracking Compliance: In the absence of a law, need an entity that will collect and review agency policies to ensure they are in compliance with best practices.
- ▶ Training in best practices for new recruits & veterans.
- ▶ Roadmap & Timeline for implementation.

Resources that Innocence Project Can Provide

Costs

- Training is the only significant cost.
- Fiscal notes in 11 states with laws estimated costs as “none” or “minimal.”

Resources Provided by Innocence Project

1. Regional training sessions w/Chief Bill Brooks
2. Mailing model policy & implementation tools to agencies
3. Mailing & assessing compliance surveys

Recommendations for Montana

Goal:

Uniform adoption of key practices in MLEA policy throughout the state.

Options:

Model policy legislation for 2017 session

OR

Voluntary adoption plan with legislation as back up.