



Update on Law Enforcement Lineup Policies

October 21, 2014

Overview



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Background



- In 2004, the Crime Commission studied mistaken identification based on HJR 79.
- The Crime Commission made three formal recommendations that were implemented as a result of the study:
 1. Enact Va. Code § 19.2-390.02, which requires a written lineup policy for each “local police department and sheriff’s office;”
 2. Request that the Department of Criminal Justice Services (DCJS) create a model policy (2-39) for lineups; and,
 3. Require the Virginia State Police to maintain a photo of each individual arrested in the CCRE, per Va. Code § 19.2-390.

Background



- In 2010, Crime Commission staff conducted a survey and reviewed the status of lineup policies.
- 95% (127 of 134) of primary law enforcement agencies responded to the survey.
 - 25% (32 of 127) of responding agencies reported that they did not have a written lineup policy pursuant to Va. Code § 19.2-390.02.
 - 82 of the 95 agencies that reported having a lineup policy submitted their policy for analysis.

Background



- As part of the policy analysis in 2010, staff reviewed specific criteria, such as the use of blind administration, sequential method, and other best practices.
- Blind administration is a procedure where the person administering the lineup is not working on the investigation or is otherwise unaware of the suspect's identity.
 - Reduces the chance of accidental or inadvertent influence on the eyewitness.
 - 6% (5 of 82) required a blind or independent administrator.

Background



- Sequential method is the process of showing photographs to eyewitnesses one at a time, rather than simultaneously.
 - Avoids eyewitnesses using relative judgment as it relies more on the witnesses' own memory of the perpetrator.
 - 66% (54 of 82) used the sequential method.

Background



- In 2010 the Crime Commission endorsed three recommendations:
 1. Require DCJS to develop training for law enforcement officers who regularly perform lineups.
Status: DCJS conducted 5 training sessions in 2012 and made the course available online.
 2. Request DCJS to conduct a policy compliance audit and report findings to the Crime Commission.
Status: DCJS made a presentation to the Commission in November 2011.
 3. Request the Virginia Law Enforcement Professional Standards Commission (VLEPSC) to consider revising the accreditation standard for lineups.
Status: VLEPSC issued the new accreditation standard in January 2014.

Background



- DCJS developed an updated model policy in November 2011, which incorporated the following best practices:
 - Recommended use of blind administration and/or a “blinded” administrator, or use of the folder shuffle method;
 - Documented witness confidence statements at the time of identification; and,
 - Included instructions on show-up procedures.
- The policy has been updated three times - July 2012, September 2013, and March 2014.
- In 2011, staff made presentations to both the Virginia Sheriffs' Association and the Virginia Association of Chiefs of Police on results of the 2010 study.

Background



- Sheriff Brian Roberts recently requested an informal opinion from the Attorney General's Office regarding whether a MOU between a jurisdiction's sheriff's office and its primary law enforcement agency satisfies the requirements Va. Code § 19.2-390.02.
- The informal opinion stated that a MOU with a primary agency is an acceptable way to comply with the statute, as it does not specify what the terms of the policy must be.

Update on Other States



- At the time of the 2010 study, there were 9 states that had addressed lineups by statute or statewide regulation.
- Since the 2010 study, at least 5 more states have added statutory requirements for lineup procedures, including:
 - Connecticut: Adopted Conn. Gen. Stat. § 54-1p in 2012, which requires a model policy be developed that includes blind administration, sequential presentation, instructions, proper filler selection, and certainty statements.

Update on Other States



- Nevada: In 2011, the legislature passed Nev. Rev. Stat. Ann. § 171.1237, which requires all law enforcement agencies to adopt written policies for “live lineups, photo lineups, and show-ups.”
- Rhode Island: In 2011, a legislative task force recommended that a statewide lineup policy be adopted with best practices, including blind administration, per R.I. Gen. Laws § 12-1-16.

Update on Other States



- Texas: In 2011, the legislature enacted Tex. Code Crim. Proc. art. 38.20, which mandates specific procedures that must be contained in agency lineup policies.
- Vermont: In 2014, the legislature passed 13 V.S.A. § 5581, which requires all state law enforcement agencies to adopt a policy that includes blind administration, sequential method, and recording the witness confidence statement.

Recent Studies



- In 2013, Professor Brandon Garrett of the University of Virginia School of Law conducted a study on law enforcement lineups in Virginia.
- Professor Garrett sent a survey and requested lineup policies from over 350 Virginia law enforcement agencies.
- Professor Garrett's study included all law enforcement agencies, including those that are not responsible for primary law enforcement duties.

Recent Studies



- Professor Garrett requested policies from over 350 law enforcement agencies and received 201 responses (approximately 57%).
 - 72% (144 of 201) of responding agencies provided a copy of their lineup policy.
- Some of Professor Garrett's findings include:
 - The revised DCJS model policy is excellent;
 - 40% (58 of 144) of law enforcement agencies either required blind administration lineups or made blind lineup procedures available as an option; and,
 - Only 9 agencies described the folder shuffle method.
- Due to the confidentiality of responses in Professor Garrett's study, it is impossible to make any comparisons to the Crime Commission survey.

Recent Studies



- There is an ongoing debate over whether sequential photo lineups or simultaneous photo lineups are more valid or reliable.
- A study issued this month by the National Academy of Sciences has recommended that lineup procedures should include: blind administration, contemporaneous confidence statements, witness instructions, and videotaping of the procedure.
 - However, the study did not take a position on sequential versus simultaneous presentation of photos, indicating the need for further research on the issue.

2014 Lineup Policy Status



- This past spring, the Virginia Sheriff's Association surveyed Sheriff's Offices with primary law enforcement responsibilities (N=86), and found that all offices reported having a written lineup policy.
- The Virginia Association of Chiefs of Police surveyed offices with primary chiefs (N=48), and found that 47 have written lineup policies.

2014 Lineup Policy Status



- Crime Commission staff requested copies of lineup policies from all law enforcement agencies.
 - 90% (122 of 135) responded to the request and submitted their policy.
- Staff completed an analysis of the lineup policies to see how congruent they were with the current DCJS model policy.

2014 Lineup Policy Status



- A number of elements from the DCJS model policy are included in the analysis:
 - Similarity to the DCJS model policy, training, show-up procedures, blind administration, folder shuffle method, requirement for current photograph of suspect, similar fillers, administrators refraining from influencing witnesses, one suspect per lineup, witnesses separated - if more than one, sequential method, witness instructions, document procedure, record confidence/certainty statements, and video recording of identification process.

2014 Lineup Policy Status



- Staff found that:
 - 46% (56 out of 122) have a policy nearly identical to the DCJS model policy.
 - An additional 9% (11 out of 122) are substantially similar to the DCJS model policy.
 - Blind Lineup Administrator:
 - 10% (12 of 122) require this method
 - 69% (83 of 122) use whenever practicable/optional
 - 22% (27 of 122) do not include this method
 - Sequential Method:
 - 97% (117 of 122) use this method
 - 4% (5 of 122) do not use this method

2014 Lineup Policy Status



- Results continued:
 - 41% (50 of 122) encourage the video recording of the identification process;
 - 64% (77 of 122) include the folder shuffle method as an option;
 - 74% (89 out of 122) require training for personnel conducting lineups;
 - 84% (103 out of 122) include a section on show-ups;
 - 84% (102 of 122) separate the witnesses if there are more than one;

2014 Lineup Policy Status



- Results continued:
 - 88% (106 of 122) require confidence/certainty statements from the witness;
 - 88% (106 of 122) provide that administrators must refrain from influencing the witness;
 - 90% (109 of 122) require the use of a current suspect photo;
 - 94% (114 of 122) require only one suspect per lineup;
 - 95% (115 of 122) provide for witness instructions;
 - 95% (116 of 122) require the procedure to be documented; and,
 - 100% (122 of 122) require similar filler photos.

2014 Lineup Policy Status



Update of results from 2010 study:

- 92% (124 of 135) of primary law enforcement agencies currently have a written policy.
 - In 2014, we received 26 policies from agencies that did not have a policy in 2010.
- There are still 8% (11 of 135) of primary law enforcement agencies we are uncertain as to whether they have a lineup policy.

Exonerations



- There have been 321 DNA exonerations nationwide, as of October 20, 2014.
 - At least 72% involved an eyewitness misidentification.
- Of the 321 DNA exonerations, 16 have been in Virginia.
 - 81% (13 of 16) of the cases involved an eyewitness misidentification as a contributing factor.

Summary



- The Crime Commission has studied the issue of law enforcement lineup three times in the past 10 years, recommending:
 - A statutory requirement for agencies to have a written lineup policy;
 - The development of training;
 - The creation of the DCJS model policy; and,
 - The inclusion of lineup policy specifics as part of accreditation standards.
- At least 14 states specify lineup procedures in their statutes.

Summary



- Based on recent survey results, over half of the responding agencies have adopted a lineup policy that is nearly identical or substantially similar to the DCJS model policy.
- It appears that a significant number of responding agencies have adopted several facets of the revised DCJS model policy, including blind administration, show ups, folder shuffle method, witness instructions, and confidence statements.

Policy Options



1. Should law enforcement agencies be required by statute to adopt:
 1. The use of “evidence based practices” in their written lineup policy;
 2. A lineup policy that references certain procedures, such as blind administration;
 3. A lineup policy that is required to have detailed proscriptions on how procedures are to be carried out, such as Connecticut enacted; or,
 4. The DCJS model policy?
- If these were enacted, it would affect many law enforcement agencies that do not have primary law enforcement duties.

Policy Options



2. Should law enforcement agencies be mandated by Code to follow specific procedures for conducting lineups?
 - If so, should there be remedies for not substantially complying with the requirements?

 - *North Carolina, for example, has taken this approach.*



Discussion
