



HB 207: Law Enforcement Lineups

September 8, 2010

Overview



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Study Authorization



- HB 207 (lineups) was introduced by Delegate Alexander during the Regular Session of the 2010 Virginia General Assembly.
- The subject matter of the bill was referred to the Crime Commission by the House Courts of Justice Committee.
 - HB 207 proposes to codify lineup procedures for all Virginia law enforcement agencies.

Mistaken ID Study



- In 2004, HJR 79 (Purkey) specifically requested the Crime Commission to:
 - Review the cases in which DNA was used to exonerate persons convicted of a crime;
 - Review the traditional procedures used for both live and photographic lineups; and,
 - Consider the use of the sequential method in lineups.

Mistaken ID Study



As a result of this study, the Commission adopted the following recommendations:

- Legislation requiring police and sheriffs' departments to have written lineup policies;
 - § 19.2-390.02
- DCJS to create a sample directive for conducting lineups using the sequential method;
 - General Order 2-39
- DCJS through regulation, create entry level and in-service training requirements on using the sequential method;
 - There are no entry level or in-service training requirements.

Mistaken ID Study



- Legislation requiring the Virginia State Police to maintain a picture of each individual arrested in the CCRE;
 - § 19.2-390
- DCJS work with the Virginia Law Enforcement Professional Standard Commission to include the sequential method as part of the accreditation process;
 - The sequential method is not part of the accreditation standard.
- DCJS and the Crime Commission work with Sheriffs' and Police Chiefs' associations to understand and use the sequential method.
 - Presentations were made at the Sheriffs' Association and Police Chiefs' annual conferences concerning the sequential method.

HB 207 and DCJS Order 2-39



- HB 207 proposes to make it mandatory for all Virginia law enforcement agencies to follow specific lineup procedures.
 - Order 2-39 is a guideline for law enforcement to create their own lineup policy.
- HB 207 has specific remedies if the requirements are not followed.
 - There are no specific remedies under Order 2-39.

HB 207 and DCJS Order 2-39



- HB 207 would require the sequential method and blind administration.
 - The sequential method is mandatory in Order 2-39, but blind administration is only suggested.
- HB 207 and Order 2-39 have similar requirements for types of photos and lineup composition.

HB 207 and DCJS Order 2-39



- Both include formal witness instructions, with slight differences.
- Both have the same basic requirements for recording the lineup results:
 - HB 207 requires a contemporaneous confidence statement from the witness for a positive ID and preference for a video recording of the procedure.

50 State Survey



- Only 9 states have addressed lineups by statute or statewide regulation.
- Illinois passed 725 Ill. Comp. Stat. 5/107A-5 in 2003 that includes the following requirements for lineups:
 - All lineups to be photographed or recorded;
 - Fillers should not appear “substantially different” from the suspect; and,
 - Witness instructions.

50 State Survey



- In 2007 Maryland passed § 3-506 that requires all law enforcement agencies to adopt a written eyewitness identification policy that complies with the U.S. DOJ guidelines on eyewitness identification.
- New Jersey, through regulation by the Attorney General in 2001, adopted mandatory lineup procedures which include:
 - Preference for blind administration;
 - Use of sequential method; and,
 - Witness confidence statements.

50 State Survey



- North Carolina, in 2008, adopted § 15A-284.52, which is substantially similar to HB 207.
- Ohio passed Ohio Rev. Code Ann. § 2993.83 this year that mandates minimum requirements for lineups that include:
 - Blind administration or equivalent;
 - Use of the sequential method; and,
 - Penalties for noncompliance.

50 State Survey



- Utah adopted § 77-8-4 in 1980 which requires that all lineups must be recorded, including any conversations between the witnesses and law enforcement.
- In 2007, the West Virginia legislature passed W. VA. Code Ann. § 62-1E- 1 that requires:
 - Lineup policies must have instructions, recordation requirements, and confidence statements; and,
 - A committee to study blind administration and the sequential method.

50 State Survey



- Wisconsin adopted § 175.50 that requires law enforcement agencies to have written lineup policies, and the Attorney General provides the best practices to follow, including:
 - Blind administration;
 - Use of the sequential method;
 - Witness instructions; and,
 - Witness confidence statements.



- As part of the accreditation program, CALEA provides Law Enforcement Standard 42.2.11, which addresses creating a lineup policy.
 - 42.2.11 recommends policies include the following:
 - Lineup composition;
 - Video or audio recording;
 - Witness instructions;
 - Witness confidence statements;
 - Prohibiting feedback to the witness; and,
 - Documenting lineup results.



- The IACP has issued a model policy for lineups that covers the following:
 - Recommends using a blind administrator;
 - Use of the sequential method;
 - Preference for video recording of procedure;
 - One suspect per lineup;
 - Fillers that are similar;
 - Avoid influencing the witness; and,
 - Witness instructions.

Lineup Survey



- Staff disseminated a survey to all law enforcement agencies to determine:
 - How many have a written lineup policy;
 - How many use the sequential method;
 - How many use an independent lineup administrator;
 - Approximately how many lineups were carried out in CY2009;
 - If any lineup training is required;
 - Steps taken to ensure compliance to policy; and,
 - Any other issues or problems encountered with lineups.

Lineup Survey



- Response Rate:
 - 95% (127 of 134) agencies responded to the survey request.
- Agencies with Written Policy:
 - 75% (95 of 127) of responding agencies indicated they had a written lineup policy.
- Agencies Utilizing the Sequential Method:
 - 56% (63 of 113) of responding agencies always use the sequential method for lineups.
 - 24% (27 of 113) use the sequential method whenever possible.
 - 20% (23 of 113) do not use the sequential method.
 - 14 agencies left this question blank.

Lineup Survey



- Agencies Utilizing an Independent Lineup Administrator:
 - 7% (7 of 95) of responding agencies always use an independent administrator for lineups.
 - 25% (24 of 95) use an independent administrator whenever possible.
 - 67% (64 of 95) do not use independent administrators.
 - 32 agencies left this question blank.

Lineup Survey



- Number of Lineups Conducted in CY2009:
 - Numbers vary widely from agency to agency
 - Anywhere from 0 to 750 lineups.
 - At least 20 agencies indicated that they do not keep record of how many lineups are carried out each year.
- Training:
 - 52% (59 of 114) of responding agencies indicated that they require training in lineups.
 - 48% (55 of 114) indicated that they did not require training.
 - 13 agencies left this question blank.

Lineup Survey



- Policy Compliance:
 - Primarily via supervisor oversight.
 - Some consult with Commonwealth's Attorneys' Offices.
- Problems or Issues Identified by Agencies:
 - The most commonly identified problem by respondents, roughly a third of those who commented, were difficulties associated with obtaining photos for lineups.

Lineup Policy Analysis



Staff also conducted an analysis of agency lineup policies submitted as part of the survey.

- 86% (82 of 95) of agencies who indicated they had a written policy submitted their policy for review.
 - 94% (77) require that fillers similar to the suspect be used.
 - 66% (54) use the sequential method.
 - 62% (51) require the use of a current picture of the suspect.

Lineup Policy Analysis



- 59% (48) provide that administrators must refrain from influencing the witness.
- 57% (47) provide formal instructions for witnesses.
- 55% (45) mandate only one suspect per lineup.
- 55% (45) require documented results of the lineup.

Lineup Policy Analysis



- 46% (38) separate the witnesses if there are more than one.
- 21% (17) have a preference for a video or audio recording of the lineup.
- 21% (17) have policies that are substantially similar to DCJS Order 2-39.
- 6% (5) require independent administrators

Policy Considerations



- Amend § 19.2-390.02 to require:
 - That lineup policies should reflect “best practices;” or,
 - Specific lineup procedures.
- Request DCJS to update Order 2-39, to include some or all of the additional requirements of HB 207.
- Provide an additional update to the Sheriffs, Police Chiefs, and Commonwealth's Attorneys on the results of the study and/or best practices.

Policy Considerations



- Provide a memo detailing study results to Virginia law enforcement agencies and Commonwealth's Attorneys .
- Require training in best practices for conducting lineups for law enforcement officers routinely involved in investigations.
- Recommend Virginia Law Enforcement Professional Standard Commission to include “best practices” in the standard for lineups.



Discussion