

Virginia State Crime Commission

Law Enforcement Lineups

2010

Law Enforcement Lineups

Executive Summary

There has been considerable attention paid to lineup procedures, since study of DNA exonerations revealed that eyewitness mistaken identification was the leading cause of these wrongful convictions.¹ Research and study on the problem of mistaken identification determined the use of the “sequential method” and “blind administration” in conducting lineups reduced mistakes and strengthened eyewitness identification. These two methods help reduce mistakes by encouraging eyewitnesses to make identifications based on their own memories and limits inadvertent influence by lineup administrators, which could give an eyewitness a false sense of confidence about their identification.

There are only nine states, including Virginia, that regulate lineup procedures by statute. Based on the 2004 Crime Commission mistaken identification study, law enforcement agencies were statutorily required to have a written lineup policy. Only two states, Ohio and North Carolina, have gone so far as adopting comprehensive lineup procedures in code. House Bill 207 (HB 207) is similar to the North Carolina and Ohio statutes, essentially making specific lineup procedures required in Code. The Department of Criminal Justice Services (DCJS) created a general directive for lineup procedures, General Directive 2-39, that is very similar to HB 207 in most respects, with the only significant difference being that HB 207 requires blind administration of lineups, whereas General Directive 2-39 only suggests the use of blind administration.

To assist with this study the Crime Commission formed the Law Enforcement Work Group.² Specifically, staff invited representatives from the following areas to participate in the Law Enforcement Work Group: representatives

from police departments, sheriff’s offices, the Virginia State Police, legislators, DCJS staff, regional criminal justice academy personnel, and Commonwealth’s Attorneys.

As part of the study, a survey was distributed to 134 law enforcement agencies. The primary purpose of the survey was to determine if the agencies had a written lineup policy, were using the “sequential method” or “blind administration,” and the extent and availability of training in conducting lineups. There was a 95% (127 of 134) response rate to the survey. There were two significant findings based on the survey results:

- Only 75% (95 of 127) of agencies responded that they have a written lineup policy as required by Code; and,
- 52% (59 of 114) of agencies reported requiring training associated with conducting lineups.

Based on the study results, the Crime Commission made three recommendations:

- Require DCJS to develop training for law enforcement officers routinely involved in conducting lineups;
- Request that DCJS conduct an audit and report findings to the Crime Commission by fall of 2011 on the status of law enforcement agencies’ adoption of lineup policies; and,
- Request the Virginia Law Enforcement Professional Standards Commission (VLEPSC) to consider revising the accreditation standard for lineups.

Additionally, during the spring of 2011, Crime Commission staff gave presentations to both the Virginia Sheriff’s Association (VSA) and the

Virginia Association of Chiefs of Police (VACP) the results of the study and on best practices for lineup procedures.

Background

Lineup procedures gained significant attention in recent years when close examination of DNA exonerations cases revealed that eyewitness misidentification was involved in a high percentage of wrongful convictions. Currently, there have been 271 DNA exonerations nationally.³ Seventy-five percent of these cases involve eyewitness misidentification, which is the leading cause of wrongful convictions.⁴ There have been 13 DNA exonerations in Virginia,⁵ with 10 of those cases involving an eyewitness misidentification.⁶

Lineups generally follow a standard procedure: approximately six individuals are brought before a witness to a crime.⁷ One of the individuals is a suspect, while the other five are “fillers” that match the physical characteristics of either the suspect or the eyewitness’ description of the perpetrator.⁸ Once the lineup is assembled, the witness is then asked if any of the lineup participants match their recollections of the perpetrator of the crime, and is instructed to identify those participants.⁹ The standard, traditional lineup consists of showing the eyewitness six persons at the same time; this is referred to as a “simultaneous” lineup. Psychological research began identifying a problem with simultaneous lineups, referred to as “relative judgment,” where an individual chooses the person in the lineup that *most* resembles the description of the suspect/perpetrator in the lineup, instead of identifying the actual suspect/perpetrator based on the witnesses’ memory.¹⁰ Researchers introduced an alternative that reduces “relative judgment” by developing the “sequential method,” where a witness is shown one person or photograph at a time.¹¹ Essentially the sequential method prevents the eyewitness from

comparing persons or pictures side-by-side and encourages them to base their decision on each person’s appearance individually against their memory of the perpetrator.¹² Research has indicated that using the sequential method instead of the simultaneous procedure “produces fewer mistaken identifications.”¹³

Another significant discovery by researchers includes instances where lineup administrators could inadvertently reinforce an eyewitnesses’ confidence or even influence their decision.¹⁴ During a lineup procedure, eyewitnesses can receive unintentional feedback, either verbal or nonverbal, from the lineup administrator, which can influence their decision or give the eyewitness false confidence that they correctly identified the perpetrator.¹⁵ The problem of inadvertent influence can be avoided by using “single-blind” or “double-blind” administration of lineup procedures. Both single-blind and double-blind police lineup procedures are adapted from the scientific concepts of single- and double-blind studies.¹⁶ The typical version of a police lineup is a single-blind administration. In a single-blind administration, the witness does not know in advance which individuals in the lineup are suspects, but the officers conducting the lineup know.¹⁷ In a double-blind administration, however, neither the witness *nor* the officer conducting the lineup knows which lineup participants are suspects in the crime.¹⁸ Double-blind lineup procedures can be administered *in lieu* of photo arrays. For example, in the “folder system” method, an eyewitness is shown photos one at a time; the photos are kept in numbered file folders that prevent the administrator from knowing which photo is in which folder.¹⁹ Another method that lowers the chances of mistakenly influencing an eyewitness is giving an instruction, prior to the lineup procedure, that the administrator is not aware of the suspect’s identity in the lineup.²⁰

A double-blind administration has several advantages over the single-blind

technique. Most importantly, the officers in a double-blind administration are unable to suggestively influence the witness' choices, as they themselves do not know which lineup participants are suspects.²¹ This forecloses the possibility of police inadvertently influencing a witness, which can occur during a single-blind lineup.²² Additionally, the percentage of correct eyewitness identifications and the rate of confidence in those identifications are higher in double-blind lineups than in single-blind lineups.²³

Professor Brandon Garrett of the University of Virginia School of Law presented at the September 8, 2010, Crime Commission meeting about his research on DNA exoneration cases.²⁴ In particular, his research concluded that mistaken identification, just as the Innocence Project has indicated, was involved in over 75% of the cases. One of the problems he identified, by review of actual trial transcripts, was the high percentage of eyewitnesses who were absolutely confident at trial that the accused was the perpetrator, even though the accused was later found innocent of the crime. He suggested that the way to avoid situations where eyewitnesses become falsely confident was to use both the sequential method and blind administration.

House Joint Resolution 79 (2004)

In 2004, the Crime Commission studied mistaken identification as a result of Delegate Harry Purkey's House Joint Resolution 79 (HJR 79).²⁵ The study resolution specifically requested the Crime Commission to:

- Review the cases in the United States in which DNA profiling was used to exonerate persons convicted of a crime;
- Examine the procedures used in traditional police lineups or photographic review; and,

- Consider the sequential method as a procedure for identifying suspects.²⁶

As a final result of the HJR 79 study, the Crime Commission adopted six formal recommendations:

Recommendation 1: Amend the Virginia Code to require the Virginia State Police and local police and sheriff's departments to have a written policy for conducting in-person and photographic lineups.

- Implementation - This recommendation was accomplished with the addition of Va. Code § 19.2-390.02 which reads "The Department of State Police and each local police department and sheriff's office shall establish a written policy and procedure for conducting in-person and photographic lineups."

Recommendation 2: Request DCJS, in cooperation with the Crime Commission, to establish a workgroup to develop a model policy for conducting in-person and photographic lineups.

- Implementation - DCJS adopted General Directive 2-39, which is a policy directive for agencies to use when creating their lineup policy.²⁷

Recommendation 3: Request DCJS, through regulation, to amend the entry level and in-service training academy requirements regarding lineups to include only use of the sequential method, by October 1, 2005.

- Implementation - There is an entry level training standard for conducting show-ups or field identifications, but not for formal photographic or in-person lineups, or using the sequential method.²⁸ There is no

mandatory in-service training for conducting lineups or use of the sequential method.

Recommendation 4: Request DCJS to work with VLEPSC to include the sequential method for conducting lineups as part of the accreditation process for law enforcement agencies.

- Implementation – The VLEPSC did adopt a lineup standard for accreditation; however it is limited to the statutory requirement that each agency shall have a written lineup policy.²⁹ It did not adopt a standard that included the sequential method.

Recommendation 5: Require DCJS, in conjunction with the Crime Commission, to work with VSA and VACP to assist members in using and understanding the benefits of the sequential method of lineups; presentations to each association’s annual meeting will occur.

- Implementation – Crime Commission staff presented to the VSA, VACP, and the Virginia Commonwealth’s Attorneys Association in 2005.

Recommendation 6: Amend the Virginia Code to designate the Virginia State Police, through their oversight of the Central Criminal Records Exchange (CCRE), as a repository for all mug shots and queries for photographic lineups.

- Implementation – Va. Code § 19.2-390 was amended to require the addition of arrest pictures to the CCRE.

DCJS General Directive 2-39

The purpose of HB 207 was to codify lineup procedures in a far more meaningful way

than is currently required in Va. Code § 19.2-390.2. Essentially, this bill would require very specific procedures to be followed by every law enforcement agency in the Commonwealth. As discussed in the previous section, DCJS created General Directive 2-39 as a lineup policy guideline for agencies to adopt in order to meet the requirement to have a written policy. House Bill 207 and General Directive 2-39 have several similarities:

- Require the use of the sequential method for presenting lineups;
- Have formal instructions for witnesses;³⁰
- Have requirements for types of photos and lineup composition;³¹ and,
- Require the results of the procedure to be recorded.³²

However, there are also some significant differences. The first and most significant difference between the two is that General Directive 2-39 is a policy directive, and is intended as a guideline for law enforcement agencies in drafting their own policies.³³ House Bill 207, on the other hand, creates a statutory mandate for all law enforcement agencies to follow.³⁴ The other significant difference is that HB 207 requires “blind administration” of the lineup procedure.³⁵

While HB 207 requires the use of blind administration, there are substitutes permitted to achieve neutral administration that are self administered.³⁶ On the other hand, General Directive 2-39 recommends the use of neutral administration, but it does not require its use in every circumstance.³⁷ Additionally, HB 207 specifies three statutory remedies that are available if the requirements are not followed by law enforcement.³⁸ There are no remedies available for lack of compliance with General Directive 2-39.

Model Polices and Accreditation

CALEA

The Committee of Law Enforcement Accreditation (CALEA) is a “credentialing authority” as part of a joint effort between four major law enforcement organizations.³⁹ The Committee of Law Enforcement Accreditation’s stated purpose is to “improve the delivery of public safety services, primarily by: maintaining a body of standards, developed by public safety practitioners, covering a wide range of up-to-date public safety initiatives; establishing and administering an accreditation process; and recognizing professional excellence.”⁴⁰ One of the standards required as part of their accreditation program is a requirement that each agency seeking accreditation must adopt a lineup policy that addresses the following topics:

- Lineup composition;
- Video or audio recording;
- Witness instructions;
- Witness confidence statements;
- Prohibition of feedback to the witness; and,
- Documentation of lineup results.⁴¹

IACP

The International Association of Chief’s of Police (IACP) is a professional organization made up of members representing law enforcement agencies from around the globe. Generally, this organization supports law enforcement with professional training, educational conferences, and the development of model policies. The IACP has developed a model policy for lineups,⁴² which recommends the following:

- Use of 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,
- Formal witness instructions.

VLEPSC

The Virginia equivalent of CALEA, VLEPSC, is an organization that is part of DCJS, dedicated to improving the “effectiveness and efficiency” of law enforcement, cooperation within the criminal justice system, and to “ensure the appropriate level of training for law enforcement.” The primary means for accomplishing these goals is by managing a system of agency accreditation. Agencies apply for accreditation and are approved based on compliance with accreditation standards found in the Virginia Law Enforcement Accreditation Program Manual.⁴³ The program manual has a requirement for agencies to have a “written directive” that establishes procedures for conducting in-person and photographic lineups.⁴⁴

Training

Currently, there is no statutory or regulatory requirement for training in conducting lineups. During the study, it was brought to the attention of Crime Commission staff that Crater Regional Training Academy was working on a one hour lineup training class. In December of 2010, Crime Commission staff attended this training class at the Crater Regional Training Academy. The training was a lecture for current law enforcement officers covering the problems with eyewitness testimony, and using the sequential method and blind administration to help reduce error and strengthen eyewitness identification evidence.

Other State Laws

There are only nine states, including Virginia, that have statutory or regulatory requirements for lineup procedures. Most of

these states have passed requirements within the past ten years, as there has been a growing understanding, based on DNA exonerations, of the problems that can occur with eyewitness identification.

Illinois

Illinois had numerous perceived problems with their system of capital prosecution. Governor Ryan put a temporary moratorium on the death penalty.⁴⁵ Additionally, the Illinois legislature passed requirements for lineup procedures. These changes in procedure included:

- All lineups should be recorded;
- Witnesses should be instructed that the perpetrator may not be in the lineup;
- The eyewitness should not expect the administrator to know the suspects identity; and,
- The suspect should not stand out from the fillers.⁴⁶

Additionally, the prosecution is required to disclose the lineup results “to the accused and his or her defense counsel during discovery proceedings as provided in Illinois Supreme Court Rules.”⁴⁷

Maryland

In 2007, Maryland added a statute⁴⁸ that requires all law enforcement agencies to adopt a written eyewitness identification policy that complies with the U.S. Department of Justice guidelines on eyewitness identification.⁴⁹

New Jersey

New Jersey was the first state to address lineup procedures and in 2001 adopted, through

regulation by the New Jersey Attorney General, mandatory lineup procedures.⁵⁰ These procedures include preference for the use of blind administration, the sequential method, and witness confidence statements.⁵¹

North Carolina and Ohio

Both North Carolina⁵² and Ohio⁵³ passed comprehensive statutory lineup procedures, nearly identical to HB 207, in 2008. Both statutes require blind administration or the equivalent, use of the sequential method, and remedies for non-compliance.⁵⁴

Utah

In 1980, the Utah legislature adopted a simple requirement for lineups, mandating that all lineups must be recorded, including any conversations between the witnesses and law enforcement.⁵⁵

West Virginia

In 2007, the West Virginia legislature passed, in statute, requirements that must be addressed in every law enforcement lineup policy.⁵⁶ At a minimum, the policies must include that the agency provide formal witness instructions, recordation requirements, and confidence statements.⁵⁷ Additionally, the legislature statutorily created a committee to study blind administration and the sequential method,⁵⁸ and a requirement for mandatory training in lineups.⁵⁹

Wisconsin

In 2009, the Wisconsin General Assembly adopted a bifurcated approach to lineup reform.⁶⁰ The statute requires that law

enforcement agencies shall adopt policies that contain best practices to be developed by the Wisconsin Attorney General. The statute further requires that the best practices must include the following: blind administration, sequential method, witness instructions, and witness confidence statements.⁶¹

Law Enforcement Work Group

In order for Crime Commission staff to obtain a full understanding of the issues surrounding lineups, staff requested help from practitioners and individuals familiar with the subject. Specifically, staff invited representatives from the following areas to participate in the Law Enforcement Work Group: representatives from both police departments and sheriff's offices, Virginia State Police, legislators, representatives from DCJS, regional criminal justice academy personnel, and Commonwealth's Attorneys.⁶² One meeting was held in June of 2010. Commission staff requested feedback from Work Group members on a draft copy of the survey. There was a general reluctance among the Work Group members to endorse any policy changes concerning HB 207 until the Crime Commission survey had been disseminated and analyzed.

Crime Commission Lineup Survey and Findings

Staff disseminated a survey to all 134 law enforcement agencies with primary law enforcement responsibility to determine:

- How many agencies have a written lineup policy;
- How many agencies use the sequential method;
- How many agencies use an independent lineup administrator;
- Approximately how many lineups were carried out in Calendar Year (CY) 2009;

- If any lineup training is required;
- Steps taken to ensure compliance to policy; and,
- Any other issues or problems encountered with lineups.⁶³

There was a 95% (127 of 134 agencies) response rate to the survey request. Of the responding agencies, 75% (95 of 127) indicated that they had a written lineup policy. The total number of lineups conducted in CY09 varied widely from agency to agency, ranging from 0 to 750 lineups. Further, at least 20 agencies indicated that they did not keep a formal record of how many lineups are carried out each year.

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; and,
- 14 agencies left this question blank.

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; and,
- 32 agencies left this question blank.

Training and Compliance

About half, 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. It appears that most agencies determine lineup policy

compliance primarily by supervisor oversight. However, some agencies did report consulting with their local Commonwealth's Attorney's Offices. Finally, the most commonly identified problem by responding agencies, roughly a third of those who commented, were difficulties associated with obtaining photos for lineups.

Lineup Policy Analysis

As discussed above, of the responding agencies, 75% (95 of 127) indicated that they had a written lineup policy. Eighty-six percent (82 of 95) of agencies that indicated they had a written policy submitted their policy for review. Staff conducted an analysis of the agency lineup policies that were submitted as part of the study. Figure 1 below illustrates the findings of this analysis:

Figure 1: Lineup Policy Analysis Findings

Type of Requirement or Preference	Total Agencies	%
Require that fillers similar to the suspect be used	77	94%
Use the sequential method	54	66%
Require the use of a current picture of the suspect	51	62%
Require administrators to refrain from influencing the witness	48	59%
Provide formal instructions for witnesses	47	57%
Mandate only one suspect per lineup	45	55%
Require documented results of the lineup	45	55%
Separate the witnesses if there are more than one	38	46%
Preference for a video or audio recording of the lineup	17	21%
Have policies that are substantially similar to DCJS Order 2-39	17	21%
Require independent administrators	5	6%

Source: Virginia State Crime Commission Lineup Survey, 2010.
n=82

Conclusion

Lineups have received considerable attention due to the high incidence of eyewitness mistaken identification associated with DNA exoneration cases. Only nine states, including Virginia, have addressed lineup procedures in statutes and only two of these states have implemented comprehensive, statutory lineup procedures. Research has shown that implementing improved lineup procedures, such as the sequential method and blind administration, will decrease the chances of mistaken identification.

The Crime Commission made the following recommendations based on the study:

Recommendation 1: Require DCJS to develop mandatory training for law enforcement officers who regularly perform lineups.

- Senator Janet Howell introduced Senate Bill 944 during the 2011 Session of the General Assembly based on this recommendation. The bill passed the Senate of Virginia as introduced. In the Virginia House of Delegates, the bill was slightly amended,⁶⁴ and was signed by the Governor on May 2, 2011.⁶⁵

Recommendation 2: Request DCJS to conduct a policy compliance audit and report findings to the Crime Commission by fall of 2011 on the status of law enforcement agencies' adoption of lineup policies in accordance with Va. Code § 19.2-390.02.

- In December of 2010, Crime Commission staff sent a letter to DCJS to inform them of the Crime Commission's recommendation. The Crime Commission plans to hear an update on this issue at a fall 2011 Commission meeting.

Recommendation 3: Request the VLEPSC to consider revising the accreditation standard for lineups.

- Crime Commission staff sent a letter to DCJS⁶⁶ in December 2010, concerning the recommendation. Staff recently made a presentation to the VLEPSC Executive Board meeting on June 16, 2011.

Study Follow-up Activities

In an effort to inform Virginia law enforcement agencies of the Crime Commission recommendations, staff was requested to make presentations concerning the study results and recommendations that will affect law enforcement. In April of 2011, Crime Commission staff made presentations to both the VACP and the Virginia Sheriff's Association, on the 2004 study, DNA exonerations, survey results, and best practices for lineup procedures.⁶⁷

facthttp://www.innocenceproject.org/Content/Facts_on_PostConviction_DNA_Exonerations.php.

⁵ As of April 2011, there have been two other exonerations not included in the Innocence Project's nationwide tally. The cases of Calvin Cunningham and Thomas Haynesworth are both from Virginia and involve at least one eyewitness misidentification. It is expected that their cases will join the nationwide total within the next few months. In Haynesworth's case, he has already been exonerated of two of his rape convictions, based on DNA samples. There is a petition for a writ of actual innocence before the Virginia Court of Appeals for his other three convictions, which had no biological evidence to test. It is expected that he will be exonerated by the petition or the Governor will grant him a full pardon.

⁶ *Id.* at note 5.

⁷ Gary L. Wells, *Eyewitness Identification: Systematic Reforms*, 2006 WIS. L. REV. 615, 617-18 (2006).

⁸ *Id.* at 618.

⁹ *Id.*

¹⁰ H.D. 40, REPORT ON MISTAKEN EYEWITNESS IDENTIFICATION, Virginia State Crime Commission, 9-10 (2005), *available at* <http://leg2.state.va.us/DLS/H&SDocs.NSF/4d54200d7e28716385256ec1004f3130/cece4e476d79218985256ec500553c3b?OpenDocument>.

¹¹ *Id.* at 10.

¹² *Id.*

¹³ Wells, *supra* at note 7, 626.

¹⁴ *Id.* at 629.

¹⁵ *Id.* at 630-31.

¹⁶ A single-blind study is one in which test participants do not know whether they are in an experimental or control group. In a double-blind study, neither the test participants, nor the researchers performing the experiment know which participants are in the experimental group. Without the knowledge of which subjects are in which experimental group, the researchers' "blindness" prevents them from improperly suggesting results to subjects. Therefore, while both single- and double-blind studies control for *participant* bias, only the double-blind study additionally controls for *researcher*-induced bias. See U.S. Nat'l Inst. of Health, *Glossary of Clinical Trial Terms*, Clinicaltrials.gov, <http://clinicaltrials.gov/ct2/info/glossary> (last updated Mar. 18, 2008) (select definitions of "single-blind" and "double-blind").

¹⁷ Gary L. Wells, *The Double-Blind Lineup. General Comments and Observations*, GARY WELLS,

¹ Innocence Project, "Facts on Post-Conviction DNA Exonerations," *available at* [facthttp://www.innocenceproject.org/Content/Facts_on_PostConviction_DNA_Exonerations.php](http://www.innocenceproject.org/Content/Facts_on_PostConviction_DNA_Exonerations.php).

² See page xi for the membership of the Law Enforcement Work Group.

³ As of June 6, 2011.

⁴ Innocence Project, "Facts on Post-Conviction DNA Exonerations," *available at*

http://www.psychology.iastate.edu/~glwells/Meet_the_Double-Blind_Lineup.doc (last visited Feb. 18, 2011).

¹⁸ *Id.*

¹⁹ INNOCENCE PROJECT, “THE FOLDER SYSTEM”: A RECOMMENDED PRACTICE FOR THE ‘BLIND’ ADMINISTRATION OF EYEWITNESS PROCEDURES FOR SMALL POLICE DEPARTMENTS WITH LIMITED RESOURCES (2006), *available at* [http://www.nacdl.org/sl_docs.nsf/freeform/eyeID_attachments/\\$FILE/IP_Folder.pdf](http://www.nacdl.org/sl_docs.nsf/freeform/eyeID_attachments/$FILE/IP_Folder.pdf).

²⁰ Wells, *supra* note 5. “This instruction promotes a situation where “the eyewitness will not be monitoring the lineup administrator for verbal and nonverbal cues that could affect their selection or affect the confidence the eyewitness expresses in that selection.” *Id.*

²¹ *Id.*

²² *Id.* (noting that in single-blind lineup administrations, the potential for an administrator to unintentionally influence a witness’ perception and memory through unconscious cues is high).

²³ Memorandum from Brandon L. Garrett, Associate Professor of Law, University of Virginia School of Law, and Steven Sun, Second-Year Student, University of Virginia School of Law, to Thomas E. Cleator, Senior Staff Attorney, Virginia State Crime Commission 2-3 (July 23, 2010) (on file with the Virginia State Crime Commission); *see also* Susan Gaertner & John Harrington, *Successful Eyewitness Identification Reform: Ramsey County’s Blind Sequential Lineup Protocol*, 76 THE POLICE CHIEF 130 (2009), *available at* http://policechiefmagazine.org/magazine/index.cfm?fuseaction=display&article_id=1776&issue_id=42009 (noting that after the completion of a double-blind lineup pilot program in Ramsey County, Minnesota, participating police officers found that their confidence in the eyewitness identifications increased, without any concurrent increase in additional costs or administrative burdens).

²⁴ Brandon Garrett, *CONVICTING THE INNOCENT: WHERE CRIMINAL PROSECUTION GO WRONG*, Harvard University Press (2011).

²⁵ H.J.Res. 79 Va. General Assemb (2004).

²⁶ *Id.*

²⁷ DCJS, GENERAL ORDER 2-39, SUSPECT LINEUP PROCEDURE (2005) *available at* <http://www.dcjs.virginia.gov/cple/sampleDirectives/index.cfm>.

²⁸ DCJS, “Performance Outcomes, Training Objectives, Criteria and Lesson Plan Guides for Compulsory

Minimum Training for Law Enforcement Officers” Section 5 (Investigations), *available at* <http://www.dcjs.virginia.gov/standardsTraining/documents/performanceOutcomes/section5.pdf>.

²⁹ Virginia Law Enforcement Accreditation Program Manual, OPR.02.03 (e), 6th Edition, 2010, *available at* <http://www.dcjs.virginia.gov/accred/documents/6th-EditionProgramManual-V4.pdf>.

³⁰ These instructions are: the perpetrator may not be in the lineup, witness shouldn’t feel compelled to make identification, and the investigation will continue regardless if identification is made.

³¹ These requirements are as follows: photo should resemble suspect at time of the offense, fillers should match witnesses description of perpetrator, suspect should not “unduly” stick out, and five fillers per lineup.

³² HB 207 requires video or audio, if practical; 2-39 has a preference of video or audio recording of the lineup procedure.

³³ DCJS General Directive 2-39 *available at* <http://www.dcjs.virginia.gov/cple/sampleDirectives/index.cfm>.

³⁴ H.B. 207 Va. General Assemb. (2010).

³⁵ Blind administration simply requires that the administrator of the lineup procedure is not involved in the investigation or does not know the identity of the suspect in the lineup.

³⁶ H.B. 207 Va. General Assemb. (2010), Section C, lines 96-104.

³⁷ General Directive 2-39 at page 2.

³⁸ The remedies allow that evidence of noncompliance “shall be considered by the court in adjudicating motions to suppress,” “shall be admissible in support of claims of eyewitness misidentification,” and for the jury to consider the “reliability of eyewitness identifications.”

³⁹ *Available at*

<http://www.calea.org/content/commission>. The four organizations include the International Association of Chiefs of Police, National Organization of Black Law Enforcement Executives, National Sheriffs’ Association, and the Police Executive Research Forum. *Id.*

⁴⁰ *Id.*

⁴¹ *Available at* <http://www.calea.org/content/law-enforcement-program-standards>.

⁴² *Available at*

<http://www.theiacp.org/PublicationsGuides/ModelPolicy/tabid/135/Default.aspx>.

⁴³ Available at

<http://www.dcjs.virginia.gov/accred/documents/6th-EditionProgramManual-V5.pdf>.

⁴⁴ OPR.02.03 (e) (f), available at

<http://www.dcjs.virginia.gov/accred/documents/6th-EditionProgramManual-V5.pdf>.

⁴⁵ James S. Liebman, The New Death Penalty Debate: What's DNA Got to Do with It?, 33 Colum. Hum. Rts.L. Rev. 527 (2002).

⁴⁶ 725 Ill. Comp. Stat. 5/107A-5 (2003).

⁴⁷ *Id.*

⁴⁸ MD. CODE ANN., PUB. SAFETY § 3-506 (West).

⁴⁹ These guidelines are available at

<http://www.ncjrs.gov/pdffiles1/nij/178240.pdf>.

⁵⁰ The Attorney General in NJ has authority over all law enforcement and prosecutors, and can create rules and regulation on all aspects of operation and procedure.

⁵¹ See NJ Reg. available at

<http://www.state.nj.us/lps/dcj/agguide/photoid.pdf>.

⁵² § 15A-284.52 (2008).

⁵³ OHIO REV. CODE ANN. § 2933.83 (2008).

⁵⁴ The remedies are virtually the same as available to HB 207 and include that noncompliance with the provisions of the statute can be considered at a suppression hearing, a claim of misidentification, and as an instruction to the jury.

⁵⁵ U.C.A. 1953 § 77-8-3.

⁵⁶ W. VA. CODE ANN. § 62-1E- 1 (2010).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ W. VA. CODE ANN. § 62-1E-3 (2010).

⁶⁰ WIS. STAT. ANN. § 175.50 (West 2010).

⁶¹ *Id.*

⁶² See page xi for the membership of the Law Enforcement Work Group

⁶³ Survey available by request to the Crime Commission.

⁶⁴ In the House the phrase “comply with” best practices was replaced with “embody current” best practices.

⁶⁵ 2011 Va. Acts ch. 635.

⁶⁶ DCJS is the state government agency that oversees and staffs VLEPSC.

⁶⁷ Specifically, the sequential method, blind administration, and eyewitness instructions were presented to each group.