

National Conference of State Legislatures ~ Practices in Eyewitness Identification ~

Eyewitness identification can have a powerful impact on the investigation and prosecution of crime. A witness identification of an individual who may have committed a crime helps law enforcement officials to establish, confirm or exclude potential suspects. Prosecutors and defense attorneys may make decisions about how to proceed with a case, including whether to entertain a plea or move forward with a trial, on the basis of eyewitness evidence. Eyewitness testimony can also have a powerful impact on juries' decisions about guilt or innocence.

Although eyewitness identifications play an important role in investigating and prosecuting crime, it may not always be reliable. Research on human memory has revealed that many factors may lead an eyewitness to make an inaccurate identification. For example, studies have shown that memories decay rapidly over time, thus making it more difficult for an eyewitness to accurately identify a suspect days, weeks or months after witnessing a crime. Also, the conditions under which an eyewitness viewed the perpetrator of a crime, including lighting conditions, distance and the presence of a weapon, may influence the accuracy of identification. Even the characteristics of the witness and the perpetrator may impact the accuracy of an identification – studies have shown that individuals may have challenges making accurate cross-race identifications. Because memory is not a perfect recreation of an event it is not possible to completely eliminate mistaken identification by eyewitnesses. However, some researchers have suggested that certain eyewitness procedures, including using a “blind” lineup administrator and instructing the witness that s/he is not required to make identification and the perpetrator may or may not be present in the lineup, may help to reduce the likelihood of an inaccurate eyewitness identification.

Glossary of Terms

Administrator: The individual, often a law enforcement officer, who presents a lineup to a witness.

Blind Administrator: An administrator who does not know the identity of the suspect when presenting a lineup to the witness.

Police Lineup: The process by which an eyewitness to a crime is presented with a group of people (“live lineup”) or photographs (“photo lineup”) that include a law enforcement suspect, as well as people who are not suspected of committing the crime (“fillers”), so that the witness may identify the perpetrator, if he/she is present in the lineup.

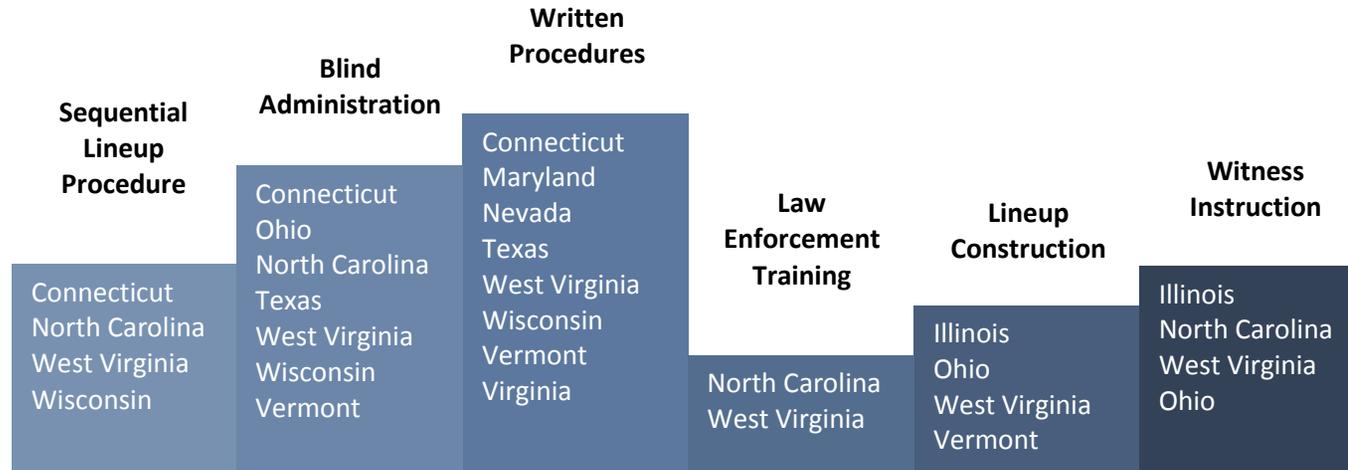
Simultaneous Lineup Presentation: A presentation of individuals or photos that are shown to an eyewitness to consider all at the same time.

Sequential Lineup Presentation: A presentation of a individuals or photos that are shown to an eyewitness to consider one at a time.

Policymakers and criminal justice stakeholders around the country have recognized that when an eyewitness incorrectly identifies someone as a suspect, an innocent person may go to jail, a guilty individual remains free to commit future crimes and citizens' tax dollars must be used to compensate the exonerated. Thus, improving eyewitness identification procedures and ensuring that eyewitness evidence is used appropriately in the investigation and prosecution of crime can support the fair administration of justice and effective use of limited public safety resources. To that end, many states have taken a variety of actions to address eyewitness identification issues including convening committees to issue reports on these issues, drafting model policies and procedures and passing legislation.

At least 11 states have laws that address procedures for eyewitness identification. State actions addressing eyewitness evidence have recommended the use of blind administration, recommended the sequential presentation of lineups, provided specific instructions for eyewitnesses, set requirements for constructing lineups (including how to identify appropriate lineup fillers), provided training for law enforcement and created study committees. Issues addressed in each state by statute are identified in **Figure 1**.

Figure 1 - States with Laws Addressing:



Eight states—California, Connecticut, Georgia, Florida, Illinois, Pennsylvania, Rhode Island, Vermont and Virginia—have studied eyewitness identification procedures and issued reports detailing their findings. Links to these reports are included in the chart below.

State executive and judicial branches also have addressed identification procedures. For example, New Jersey, the first state to address identification procedures, did so through regulations issued by the state Attorney General, which incorporated recommendations on eyewitness evidence published by the United States Department of Justice (available at <https://www.ncjrs.gov/pdffiles1/nij/178240.pdf>). The regulations also required that, whenever practical, police departments conduct sequential lineups with blind administrators. In *State v. Henderson*, New Jersey's Supreme Court, reviewed scientific evidence on human memory and the various factors that can affect the reliability of eyewitness identifications for admissibility as evidence. The *Henderson* decision also directed that revised jury instructions be prepared to help jurors better understand potential issues with eyewitness identification. Similarly, in *State v. Lawson*, Oregon's Supreme Court revised the state's legal framework for admitting eyewitness evidence and enabled courts to permit case-specific expert testimony and/or jury instructions on the factors that may impact the reliability of eyewitness evidence. In the *Lawson* decision, the Oregon Supreme Court noted that identification procedures should be conducted by a blind administrator, witnesses should receive specific instructions before reviewing a lineup (including that it is permissible not to make an identification and the lineup may or may not include a suspect), and certain protocols should be followed in constructing a lineup.

State & Statute	History of State Action													
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Maryland Public Safety Code Ann. § 3-506							HB 103 Requires written law enforcement rules							SB 860;HB 1200 Requires written law enforcement policy
Nevada Rev. Stat. § 171.1237											AB 107 Requires written law enforcement rules			
New Jersey	Guidelines for Preparing Photo & Live Lineup										State v. Henderson 27 A.3d 872*			
North Carolina Gen. Stat. §§ 15A-284.50 to .53							HB 1625 Provides ID standards	Eyewitness ID Reform						
Ohio Rev. Code Ann. § 2933.83 ; Rev. Code Ann. § 2933.831										SB 77 Provides ID standards and requires agency to develop procedures				
Oregon												State v. Lawson 291 P.3d 673*		
Pennsylvania						SR 381 Creates task force					Wrongful Convictions			
Rhode Island Gen. Laws § 12-1-16										HB 7570 Creates task force	HB 5090 Creates task force			
										Policies & Procedures to Improve Eyewitness ID				

State & Statute	History of State Action													
	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Texas Crim. Pro. code Ann § 38.20											HB 215 Requires written law enforcement rules			
Vermont						2007 VT. Acts, Act 60 Creates task force	Eyewitness ID & Custodial Interrogation							SB 184 Requires written law enforcement policy
Virginia Code § 19.2-390.02				HJR 79 Creates task force	Mistaken Eyewitness ID	HB 2632;SB 1164 Requires agency to develop procedures								
West Virginia Code §§ 62-1E-1 to 3							SB 82 Creates task force and requires training for law enforcement							SB 200 Creates task force
Wisconsin Wis. Stat. § 175.50					AB 648 Requires written law enforcement rules					Model Policy for Eyewitness ID				

Source: National Conference of State Legislatures, 2013