

STANDARDS FOR FLORIDA STATE AND LOCAL LAW ENFORCEMENT AGENCIES IN DEALING WITH PHOTOGRAPHIC OR LIVE LINEUPS IN EYEWITNESS IDENTIFICATION

Issued March 1, 2011 and revised June 15, 2011

***DEVELOPED AND ENDORSED BY THE FLORIDA DEPARTMENT OF LAW ENFORCEMENT, THE
FLORIDA SHERIFFS ASSOCIATION, AND THE FLORIDA POLICE CHIEFS ASSOCIATION
IN COLLABORATION WITH THE FLORIDA PROSECUTING ATTORNEYS ASSOCIATION***



STANDARDS FOR FLORIDA STATE AND LOCAL LAW ENFORCEMENT AGENCIES IN DEALING WITH PHOTOGRAPHIC OR LIVE LINEUPS IN EYEWITNESS IDENTIFICATION

Issued March 1, 2011 and revised June 15, 2011

Developed and endorsed by the Florida Department of Law Enforcement, the Florida Sheriffs Association, and the Florida Police Chiefs Association in collaboration with the Florida Prosecuting Attorneys Association.

I. Policy Statement and Purpose of These Standards

The collection of reliable eyewitness identification evidence and the avoidance of erroneous eyewitness identification evidence are essential in assuring that justice is obtained in our criminal justice system. Current studies have not conclusively established that either of the two popular methods of photographic or live eyewitness identification (simultaneous or sequential presentation) is superior to the other. However, Any eyewitness identification method can include safeguards to minimize the possibility of erroneous identification. These Standards identify the key factors that an agency's eyewitness identification policy should consider and are intended to promote consistency in how an agency's investigators deal with photographic or live lineups.

These Standards are consistent with the standards applicable to photographic and live lineups adopted by the Florida Commission on Law Enforcement Accreditation in February, 2011. Those standards are reflected in Standards "A" through "E". Two additional items appear as Standards "F" and "G". The entities endorsing these Standards believe that each Florida law enforcement agency should have a written policy regarding the conduct of photographic and live lineups that conforms to the standards described herein.

These Standards are not intended to mandate specific language that must be utilized in a particular policy or procedure. Each agency shall develop its own policy and procedures conforming with these Standards in a manner consistent with agency practice, needs, and available resources. Any policy being implemented should also be consistent with the practices and expectations of the local state attorney's office since eyewitness identification is often the basis of motions to suppress evidence and is an area subjected to intense scrutiny by defense counsel in criminal prosecutions.

Nothing herein is intended to create new rights of parties or to grant a right or privilege not otherwise provided by law. Each state and local law enforcement agency should, in a manner consistent with these standards, develop its own written policy and procedures related to eyewitness identification.

As a companion to these Standards, a separate document, "Commentary and Instructional Suggestions To Accompany Standards For Florida State And Local Law Enforcement Agencies In Dealing With Photographic Or Live Lineups In Eyewitness Identification" has been prepared by the endorsing entities to help explain the rationale behind the stated Standards and to define concepts each agency should consider as it develops its written policy and implements its own procedures. The "Commentary and Instructional Suggestions" document simply provides suggestions and is not intended to mandate certain practices or be used as a "standard" to be applied to an agency's policy. It is intended to assist agencies as they prepare, implement, and train their personnel on their eyewitness identification policies. The June 15 revision takes into account information and issues identified during the 2011 Legislative Session and in meetings of the Florida Innocence Commission.

II. Key Concepts

1. An agency's instructions utilized in conducting a photographic array or live lineup shall be standardized, using a standardized "script" to assure instructions provided at each such event are complete and consistent¹;
2. The investigator conducting the photographic array or live lineup shall scrupulously avoid any conduct that directly or indirectly influences the witness's decision;
3. Filler photographs used for photographic arrays or persons used for live lineups shall be proper and shall be representative of the physical characteristics of the suspect in question in order to promote a fair and unbiased review by the witness; and
4. When a witness views the photo array or live lineup, the words and actions of the witness and the process of the identification used shall be documented for proper and accurate presentation in future court proceedings.

III. Standards for Florida State and Local Law Enforcement Agencies in Dealing with Photographic or Live Lineups in Eyewitness Identification

By November 1, 2011, each Florida state and local law enforcement agency should have in place a written policy regarding photographic or live lineups to be utilized in eyewitness identification. A copy of the current policy shall be filed with the State Attorney's Office in the circuit in which the agency is located, and in the case of state agencies, in the Office of the State Attorney of the Second Judicial Circuit. The policy should address at a minimum the following:²

- A. The creation, composition, and utilization of the photo array or lineup, including documenting how the witness indicated any positive identification has been made and how the witness acknowledged the standard instructions noted at "B".
- B. Standard instructions to be used to instruct the witness prior to a photographic or live lineup, which include indications that the person of interest might or might not be in the photo array or lineup, that the witness is not required to make an identification, that it is as important to exclude innocent persons as it is to identify the perpetrators and that the investigation will continue with or without an identification.
- C. Directions to the investigator conducting the photographic or live lineup to avoid any conduct that might directly or indirectly influence the witness's decision; and to avoid comments or actions that suggest the witness did or did not identify the suspect.
- D. How to discern the level of confidence in an identification as expressed by the witness.
- E. How to document the procedure and outcome of the photographic or live lineup, including noting the witness's response and exact words.
- F. The method(s) of presenting the lineup.
- G. Required training on the agency policy by any agency personnel who will be administering a photographic or live lineup.

¹ An example of such a "script" appears in Section B of the companion document, "Commentary and Instructional Suggestions."

² Items "A" through "E" include the mandatory standards required for state accreditation by the Florida Commission on Law Enforcement Accreditation, Inc. as adopted February 3, 2011.