



Policy Statement

Improving Policing to Ensure Accuracy in Arrests and Convictions

Preface

To date, 329 innocent people in prison have been exonerated by DNA evidence. In almost half of these cases, the DNA evidence that exonerated the innocent also identified 141 true perpetrators, many of whom had gone on to commit additional crimes, including more than 70 rapes and 30 murders, and countless other violent felonies, while someone else served time in prison for their crimes.

Wrongful convictions cause tremendous harm, not just to the innocent and their families, but also to crime victims and the general public, and they have a profound negative impact on public safety, public trust in policing, and police legitimacy. When the wrong person – an innocent person – is convicted and imprisoned, the actual perpetrator remains free and a continued threat to the public. In addition, prosecution and imprisonment of the wrong person wastes precious police and other criminal justice resources and robs citizens of their faith in law enforcement and our criminal justice system. The public needs to believe that law enforcement agencies and individual officers are willing to take whatever steps necessary to ensure public safety and the reliability of arrests and convictions of fellow citizens.

Simple improvements to policing and police investigations can significantly reduce the chance of false arrests and wrongful convictions. As such, the Major Cities Chiefs Association adopts the following policy statements and urges law enforcement agencies to adopt best practices to ensure the accuracy of investigations and prevent wrongful convictions.

Policy Positions

Improving Eyewitness Identification Evidence:

Eyewitness identification procedures aim to secure accurate, reliable identification of criminal offenders. In order to ensure the accuracy and reliability of identifications, eyewitness identification procedures must be conducted in a fair, objective, and non-suggestive manner. Otherwise, they may result in an irreparable mistaken identification, which can lead to the arrest and conviction of an innocent person instead of the true offender.

Mistaken eyewitness identification is the single greatest cause of wrongful convictions nationwide, playing a role in approximately 75% of all convictions overturned through DNA testing. Social science research over the past three decades has consistently confirmed the fallibility of eyewitness memory and identifications, as well as the unintentional contamination of witness recall through many traditional eyewitness identification procedures. Over these decades, a large body of peer-reviewed research and practice has shown how simple reforms to the eyewitness identification process can greatly reduce mistaken eyewitness identification.¹

¹*The Causes of Wrongful Conviction: Eyewitness Misidentification*, Innocence Project, <http://innocenceproject.org/causes-wrongful-conviction/eyewitness-misidentification> (last visited April 27, 2015).

The National Academy of Sciences (NAS) recently confirmed the importance of these reforms. NAS examined the extant research and “settled the science” so that law enforcement could confidently implement improvements to their existing identification procedures. In October 2014, the NAS affirmatively endorsed, among other things, the use of a blind or blinded identification procedure; the issuance of instructions to the eyewitness; the taking of a confidence statement at the time of the identification procedure; and the recordation of the identification procedure.²

The President’s Task Force on 21st Century Policing recommended that: 2.4 Law enforcement agencies are encouraged to adopt identification procedures that implement scientifically supported practices that eliminate or minimize presenter bias or influence.

Based on the abundance of scientific research, practitioner experience, and the NAS report, the Major Cities Chiefs Association recommends that all law enforcement agencies implement the following improvements to their eyewitness identification procedures to increase the quality and accuracy of eyewitness evidence:

- Double-blind live lineup and photo array procedures. A lineup administrator can inadvertently convey the suspect’s identity through unintended body gestures, facial expressions, or other nonverbal cues. Using a double-blind procedure, in which neither the witness nor the administrator knows which person in the lineup or photo array is the suspect, and the witness is told that the administrator does not know, can avoid this inadvertent bias.
- Proper composition of the lineup. The optimal composition of a lineup assures more accurate selections. Among the simple reforms: only one suspect should be included in any lineup; suspect photographs should not bring unreasonable attention to the suspect; fillers should be selected based on their resemblance to the description provided by the witness – as opposed to their resemblance to the police suspect. At the same time, the suspect should also not unduly stand out from among the other “fillers.”
- Standardized witness instructions. “Instructions” are a series of statements issued by the lineup administrator to the eyewitness that deter the eyewitness from feeling compelled to make a selection as well as prevent the witness from looking to the administrator for feedback during the procedure. Among other things, witnesses should be instructed that the perpetrator may or may not be in the photo array or lineup and that, regardless of whether the witness identifies a suspect, the investigation will continue.
- Documentation of witness confidence judgments. Scientific research indicates that an eyewitness’s level of confidence in his or her identification at the time of trial is not a reliable predictor of their accuracy. The relationship between confidence and accuracy is strongest at the time of initial identification. Law enforcement should elicit and document the witness’s level of confidence verbatim at the time when she or he first identifies a suspect.

² *Identifying the Culprit: Assessing Eyewitness Identification*, National Academy of Sciences Committee on Scientific Approaches to Understanding and Maximizing the Validity and Reliability of Eyewitness Identification in Law Enforcement and the Courts, Committee on Science, Technology, and Law; Policy and Global Affairs; Committee on Law and Justice; Division of Behavioral and Social Sciences and Education; National Research Council (2014), available at <http://www.nap.edu/catalog/18891/identifying-the-culprit-assessing-eyewitness-identification>.

Improving Interrogation Evidence:

False confessions are a serious problem and have occurred in nearly a quarter of the 329 wrongful convictions proven by DNA evidence.³ Electronically recording custodial interrogations removes serious questions about the circumstances of such “confessions” by preserving the truest account of the interrogation, improving the quality and reliability of the interrogation evidence, and thus reducing the possibility of false arrest and wrongful conviction.

By recording the interrogation, disputes about the circumstances of the interrogation and conduct of investigators will be grounded in evidence available to all parties, protecting both the innocent and the investigators. Moreover, investigators will not have to focus upon writing up a meticulous account of the statements provided by the suspect and may instead focus attention on small details, such as subtle changes in the narrative, which might otherwise have been missed. Finally, having a record of good interrogation techniques can also provide a valuable training tool for police departments, particularly as cases with distinctive characteristics come to light.

Mandatory electronic recording of interrogations is now embraced by an estimated 1,000 law enforcement agencies across the country. Twenty-one states and the District of Columbia require recording by law or court action in serious cases, and many others have voluntarily implemented recording as a best practice, including large metropolitan cities, such as Philadelphia, Boston, San Diego, San Francisco, Denver, Portland, and Austin. In 2004, Former U.S. Attorney Thomas P. Sullivan published a report detailing police experiences with the recording of custodial interrogations. Researchers interviewed 238 law enforcement agencies that implemented mandatory recording of interrogations and concluded, “virtually every officer with whom we spoke, having given custodial recordings a try, was enthusiastically in favor of the practice.”⁴

Based on the findings from this research and on practitioner experience, the Major Cities Chiefs Association recommends that all law enforcement agencies implement the mandatory recording of custodial interrogations to increase the quality and accuracy of interrogation evidence.

Preserving Biological Evidence:

Preserved evidence can help solve open or “cold” cases, as well as remedy a miscarriage of justice in a case deemed to be solved but in which the wrong person was convicted. Preserving biological evidence from crime scenes is critically important because DNA can provide the best evidence of innocence – or guilt – upon review of a case. None of the nation’s DNA exonerations would have been possible had the biological evidence not been available to test. Had the evidence been destroyed, tainted, contaminated, mislabeled, or otherwise corrupted, the innocence of these individuals - and identity of the true perpetrators - would never have been discovered.

³ *The Causes of Wrongful Convictions: False Confessions or Admissions*, Innocence Project, <http://innocenceproject.org/causes-wrongful-conviction/false-confessions-or-admissions> (last visited April 27, 2015).

⁴ Thomas P. Sullivan, Center on Wrongful Convictions Special Report: Police Experiences with Recording Custodial Interrogations at 6 (2004), available at http://mcadams.posc.mu.edu/Recording_Interrogations.pdf.

The national Technical Working Group on Biological Evidence Preservation recently issued a handbook with specific guidelines and recommendations for law enforcement agencies.⁵ Based on this handbook, the Major Cities Chiefs Association recommends that law enforcement agencies preserve all biological evidence in the following five crime categories, regardless of whether the case involved a plea agreement: homicides, sexual assault offenses, serious assaults, kidnapping/abductions, and robberies. Biological evidence from these cases should be retained, at a minimum, for the period of time that any person remains incarcerated, on probation or parole, involved in civil litigation in connection with the case, or subject to registration as a sex offender.

Adopted by MCCA Members on June 3, 2015

⁵ *The Biological Evidence Preservation Handbook: Best Practices for Evidence Handlers*, National Institute of Standards and Technology Technical Working Group on Biological Evidence Preservation (2013), available at <http://nvlpubs.nist.gov/nistpubs/ir/2013/NIST.IR.7928.pdf>.