

Missouri Association of Prosecuting Attorneys

Suspect/Witness Statements Best Practices Subcommittee (Custodial Line-ups) (Approved April 2014)

Note: A best practices recommendation of the Missouri Association of Prosecuting Attorneys is the product of careful consideration by experienced prosecuting attorneys. However, it is only a recommendation. A best practices recommendation may or may not be feasible in every case or in every county. There may be other methods in local jurisdictions to reach the same or similar objectives.

RECOMMENDATION #1: Suspects in photo array line-ups should be pictured in non-custodial garb, and photos should not draw undue attention to any particular person.

Commentary: This recommendation is consistent with modern-day investigative practices and techniques and is consistent with case law on the topic which shows that court is the proper gatekeeper and arbiter of whether or not line-up procedures are constitutional. See State v. Parker, 458 S.W.2d 241 which held “[f]rom the innumerable cases on ‘identification,’ it is obvious that the courts jealously guard against any chance of error. For this reason, even the approved investigative methods, be it confrontation or photographic comparison, may be found improper if ‘so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification.’” (citing Simmons v. United States, 390 U.S. 377 at 384)

RECOMMENDATION #2: All custodial interrogations involving crimes against persons should be audio recorded and preferably video recorded as well.

Commentary: Section 590.700 encourages recorded custodial interrogations for certain offenses. Prosecutors should work with their local law enforcement agencies to develop strategies to comply with this statute.