

# Model Policy

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## I. PURPOSE

It is the purpose of this policy to establish guidelines for eyewitness identifications using showups, photo arrays, and lineups.

## II. POLICY

Eyewitness identification is a frequently used investigative tool. However, erroneous eyewitness identifications have been cited as the most frequent cause of wrongful convictions. As such, officers shall strictly adhere to the procedures set forth herein, in order to maximize the reliability of identifications, minimize erroneous identifications, and gather evidence that conforms with contemporary eyewitness identification protocols.

## III. DEFINITIONS

*Showup:* The presentation of a suspect to an eyewitness in a short time frame following commission of a crime to confirm or eliminate him or her as the perceived perpetrator. Showups, sometimes referred to as field identifications, are conducted in a contemporaneous time frame and setting with the crime.

*Photo Array:* Showing photographs to an eyewitness for the purpose of identifying or eliminating suspects.

*Independent Administrator:* The officer administering a lineup or a photo array who has no knowledge of the suspect's identity.

*Functional Equivalent (FE) Procedures:* Used when an independent administrator is not available, FE procedures permit the investigative officer to conduct a photo array, using procedures that preclude him or her from knowing when the suspect is presented to the witness.

*Lineup:* Live presentation of individuals, before an eyewitness, for the purpose of identifying or eliminating suspects.

*Sequential:* Presentation of photos or individuals in a live lineup to a witness one at a time rather than all at once.

## IV. PROCEDURES

### A. Showups

The use of showups should be avoided whenever possible in preference for the use of a photo array or a lineup. However, when circumstances require the prompt display of a suspect to a witness, the following guidelines shall be followed to minimize potential suggestiveness.

1. Document the witness's description of the perpetrator prior to conducting the showup.
2. Use showups only when the suspect is detained within a reasonably short time frame following the offense.
3. Do not use single suspect showups if probable cause to arrest the suspect has already been established.
4. Transport the witness to the location of the suspect whenever possible, rather than bringing the suspect to the witness.
5. Do not conduct showups when the suspect(s) are in patrol cars, handcuffed, or physically restrained by police officers, unless necessary due to safety.
6. Do not take suspects to the witness's residence unless it is the scene of the crime.
7. Caution the witness that the person he or she is about to see, may or may not be the perpetrator.
8. Separate witnesses and do not allow communi-

cation between them before or after conducting a showup.

9. If one witness identifies the suspect, use a lineup or photo array for remaining witnesses.
10. Do not present the same suspect to the same witness more than once.
11. Do not require showup suspects to put on clothing worn by, speak words uttered by, or perform other actions of the perpetrator.
12. Officers should scrupulously avoid words or conduct of any type that may suggest to the witness that the individual is or may be the perpetrator.
13. Ask the witness how certain he or she is of any identification that is made of a suspect. Document the exact words used by the witness without prompting the witness to elaborate.
14. Remind the witness not to talk about the showup to other witnesses until police or prosecutors deem it permissible.
15. Videotape the identification process using an in-car camera or other recording device where available.
16. Document the time and location of the showup, the officers present, and the outcome of the procedure.

#### B. Photographic Identifications

##### 1. Creating a Photo Array

- a. The photo array should consist of a minimum of six photographs. Use a minimum of five filler photos together with only one suspect. It is recommended that a filler be used as the lead photo and that two blank photos be introduced following the sixth photo. Number all photos and blanks.
- b. Use contemporary photographs of individuals who are reasonably similar in age, height, weight and general appearance and are of the same sex and race, in accordance with the witness's description of the suspect. Do not mix color and black and white photos; use photos of the same size and basic composition; never mix mug shots with other snapshots; and do not include more than one photo of the same suspect.
- c. Cover any portions of mug shots or other photos that provide identifying information on the subject, and similarly cover other photos used in the array.

##### 2. Conducting the Photo Array

- a. An investigator or officer who is unaware of the identity of the suspect, acting as an independent administrator, shall present the photos. No one who is aware of the suspect's identity may be present during the administration of the photo array.
- b. If an independent administrator is not

available, the investigative officer shall follow FE procedures.

- (1) Place the suspect and filler photos in a folder. Include four blank folders, for a total of ten.
  - (2) Shuffle the folders before giving them to the witness.
  - (3) The officer administering the array should position himself or herself so that he or she cannot see inside the folders as they are viewed by the witness..
- c. Whenever reasonably possible, videotape and audiotape the photo array identification procedure.
  - d. Give the witness a copy of the following instructions prior to presenting the photo array and read the instructions aloud before the identification procedure.

*You will be asked to view a series of photos of individuals.*

*It is just as important to clear innocent persons from suspicion as to identify guilty parties.*

*I don't know whether the person being investigated is included in this series.*

*Individuals present in the series may not appear exactly as they did on the date of the incident because features such as head hair and facial hair are subject to change.*

*You should not feel that you have to make an identification. If you do identify someone, I will ask you to describe in your own words how certain you are.*

*The photos will be shown to you one at a time and are not in any particular order. Take as much time as you need to examine each photo. If you make an identification, I will continue to show you the remaining photos in the series.*

*Regardless of whether you make an identification, we will continue to investigate the incident.*

*Since this is an ongoing investigation, you should not discuss the identification procedures or results.*

- e. Position the photos so that the witness does not know the number of photos that will be shown.
- f. Show the photo array to only one witness at a time; separate witnesses so they will not be aware of the responses of other witnesses.
- g. Avoid multiple identification procedures in which the same witness views the same suspect more than once.
- h. Do not comment on selections or outcomes of the procedures in any way.

- i. Ask the witness to describe his or her certainty about any identification that is made. Document the witness's response.
- j. Ask the witness to complete and sign the sequential photo display form.<sup>1</sup>
- k. Preserve the photo array, together with full information about the identification process, for future reference.

### C. Lineups

The basic principles for conducting a photo array apply equally to live lineups.

#### 1. Creating the Lineup

- a. Use a minimum of six persons who are reasonably similar in age, height, weight and general appearance and are of the same sex and race.
- b. If there is more than one suspect, include only one in each lineup.

#### 2. Conducting the Lineup

- a. An independent administrator shall conduct the lineup whenever reasonably possible. Other than the suspect's attorney, who should attend the lineup, no one who is aware of the suspect's identity may be present during the administration of the lineup.
- b. If an independent administrator is unavailable, the investigating officer must take all reasonable precautions to avoid giving any unintentional cues to the witness.
- c. Present a copy of the instructions contained in section IV.B.2.d. of this policy to the witness and read them aloud before proceeding with the identification process.
- d. Present each individual one at a time to a single witness. In the case of multiple witnesses, present the lineup to each witness separately.
- e. Whenever possible, preserve the lineup and identification process by videotape and audiotape. If not possible, take and preserve a still photograph of each individual in the lineup and document all persons present during the lineup.
- f. Upon completion of the lineup, ask the witness to sign and date the record of results.

#### 3. The primary investigating officer is responsible for the following:

- a. Scheduling the lineup on a date and at a time that is convenient for all concerned parties, to include the prosecuting attorney, defense counsel, and all witnesses.
- b. Fulfilling the necessary legal requirements for transfer of the subject to the lineup location should he or she be incarcerated at a detention center. The officer shall make arrangements for picking up the prisoner,

to include a timely notice to the detention center concerning the pickup.

- c. Making arrangements to have persons act as fill-ins at the lineup who are of the same race, sex, approximate height, weight, age, and physical appearance and who are similarly clothed.
- d. Avoiding the use of fill-ins who so closely resemble the suspect that a person familiar with the suspect might find it difficult to distinguish the suspect from the fillers.
- e. Creating a consistent appearance between the suspect and the fillers with respect to any unique or unusual feature (e.g., scars, tattoos, facial hair) used to describe the perpetrator by artificially adding or concealing that feature.
- f. Placing suspects in different positions in each lineup, both across cases and with multiple witnesses in the same case.
- g. Ensuring that the prisoner has been informed of his or her right to counsel if formal charges have been made against him or her and that he or she has the opportunity to retain counsel or request that one be provided.
- h. Obtaining a written waiver on the prescribed departmental form should the prisoner waive his or her right to counsel.
- i. Allowing counsel representing the accused sufficient time to confer with his or her client prior to the lineup and to observe the manner in which the lineup is conducted.
- j. Ensuring that all persons in the lineup are numbered consecutively and are referred to only by number.
- k. Ensuring that a complete written record and a videotape recording, if possible, of the lineup proceedings are made and retained.
- l. Ensuring that witnesses are not permitted to see or be shown any photos of the accused immediately prior to the lineup.
- m. Ensuring that only one witness views the lineup at a time and that witnesses are not permitted to speak with one another during lineup proceedings.
- n. Scrupulously avoiding the use of statements, clues, and casual comments or providing unnecessary or irrelevant information that in any manner may influence the witnesses' decision-making process or perception.

## ENDNOTE

<sup>1</sup> For an example, please refer to the Sequential Photo Display Form from Ramsey County, MN. This form can be accessed at <http://www.co.ramsey.mn.us/NR/rdonlyres/CFF14C4-0F44-4BD9-9995-0186E9C17085/15277/SEQUENTIALPHOTODISPLAYFORM1018091.pdf>.

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