

EYEWITNESS IDENTIFICATION POLICY & PROCEDURES

I. PURPOSE

The purpose of this policy is to establish guidelines for eyewitness identification procedures using photographic lineups, live lineups and showups.

II. POLICY

The XX Police Department's eyewitness identification procedures reflect best practices in evidence gathering. Law enforcement officials shall adhere to these guidelines to improve the accuracy of eyewitness identifications, and to increase the ability of police and prosecutors to convict the guilty and protect the innocent.

III. DEFINITIONS

Live lineup- Live presentation of individuals, before an eyewitness, for the purpose of identifying or eliminating suspects.

Photo lineup- Showing photographs to an eyewitness for the purpose of identifying or eliminating suspects.

Showup- The presentation of a live person in the field shortly after a crime is committed, to confirm or eliminate him or her as a suspect. Sometimes referred to as a field identification.

Blind Presentation – Both the law enforcement official administering the identification procedure and the witness do not know the suspect's identity.

Blinded Presentation- The administrator may know who the suspect is, but does not know which lineup member is being viewed by the eyewitness.

Filler- A person or photograph of a person, that is included in a line-up or photo array, but who is not a suspect.

Sequential Lineup – Persons or photographs are presented one at a time, and the law enforcement official retrieves one before presenting another.

Simultaneous Lineup- Persons or photographs are presented at the same time.

Confidence Statement- A statement in the witness's own words taken immediately after an identification is made stating his or her level of certainty in the identification.

IV. PROCEDURES

The steps below outline the procedures that shall be followed when administering eyewitness identifications. Law enforcement officials shall avoid any suggestive language or behavior regarding the identity of the suspect throughout the entire process.

Sequential lineups and blind administration shall be used whenever possible. However, if blind administration of a live or photographic lineup is not possible, investigators may administer a blinded photographic lineup, as described below. A sequential presentation should never be conducted without a blind or blinded administrator.

1. Obtaining a Description of the Perpetrator.

Prior to any lineup, law enforcement shall record a thorough description of the perpetrator from each eyewitness, taken separately for each eyewitness, in her or her own words.

2. Witness Instructions

Prior to the start of the identification procedure, the officer shall read the witness instructions. Specific instructions for photographic lineups, live lineups, showups and blinded photo lineups are included on the forms in Section V. The witness shall sign the form to indicate that he or she understands the instructions.

3. Photographic Lineup

Organizing a Photographic Lineup

- Include only one suspect in each identification procedure, with a minimum of five fillers.
- Fillers shall match the witness's description of the perpetrator in significant features, including any unique or unusual features.
- All photographs shall be contemporary and similar in size. There should be consistency in personal features across all pictures.
- The photographs shall be numbered and placed in individual folders.
- When conducting a single lineup for multiple witnesses, renumber photographs for each witness.
- If the witness has previously viewed a photo lineup in connection with the offense, use different fillers.

Conducting a Photographic Lineup

- Whenever possible, use the blind administration technique, in which the officer conducting the lineup does not know the suspect's identity. (See "Blinded Administration of Lineup (Folder System)" for use by a law enforcement agency with limited manpower or for use when all members of service in a police agency know the suspect's identity.)

- Prior to the presentation, read instructions to the witness on the form in Section V, ensuring and documenting that they understand the instructions. Present each photograph to the witness sequentially, with one photograph replacing another, so that no two are presented at the same time.
- After each photograph is presented, ask if the witness recognizes the person. Even if the witness identifies a previous photograph as the suspect, present each photograph in the series.
- At the request of the witness, the law enforcement official may present the photographs one more time. Witnesses shall be allowed to take as much time as needed before moving on.
- If an identification is made, record a statement of confidence on the form in Section V, which shall be signed by the witness.

Blinded Administration of Lineup (Folder System): A Photo Lineup Alternative for the Small Law Enforcement Agency

The “Folder System” was devised to address concerns surrounding limited resources while allowing for blind administration. Should the investigating officer of a particular case be the only law enforcement personnel available to conduct a photo lineup, the following instructions are recommended:

- Use one suspect photograph that resembles the description of the perpetrator provided by the witness, five filler photographs that match the description, and ten folders (four of the folders will not contain any photos and will serve as ‘dummy folders’).
- Affix one filler photo to Folder #1 and number the folder.
- The individual administering the lineup shall place the suspect photograph and the other four filler photographs into Folders #2-6 and shuffle the photographs so that he is unaware of which folder the suspect is in, and then number the remaining folders, including Folders #7-10, which will remain empty (this is done so that the witness does not know when he has seen the last photo).
- Prior to the presentation, read instructions to the witness from the form in Section V, ensuring and documenting that they understand the instructions.
- Without looking at the photo in the folder, the administrator is to hand each folder to the witness individually. Each time the witness has viewed a folder, the witness should indicate whether or not this is the person the witness saw and the degree of confidence in this identification, and return the photo to the administrator. The order of the photos should be preserved, in a facedown position, in order to document.
- The administrator should then document and record the results of the procedure, including the order of the folders used.
- If an identification is made, record a statement of confidence on the form in Section V, which shall be signed by the witness.

4. Live Lineups

Organizing a Live Lineup

- Determine when a live lineup is appropriate by considering the availability of witnesses and lookalikes.
- Include only one suspect in each identification procedure, with a minimum of four fillers.
- Select fillers who generally fit the witness's description of the suspect. No participant should stand out in the lineup.
- When conducting more than one lineup due to multiple witnesses, consider placing the suspect in different display positions.
- When showing a new suspect, avoid reusing fillers in lineups shown to the same witness.

Conducting a Live Lineup

- Whenever possible, use the blind administration technique.
- Prior to the presentation, read instructions to the witness from the form in Section V, ensuring and documenting that they understand the instructions.
- Begin with all lineup participants out of view of the witness.
- Present each individual to the witness separately, in a previously determined order, removing those previously shown.
- Present each participant to the witness, even if the witness identifies a previous participant as the suspect. Witnesses may view the lineup a second time if they request to do so.
- Any identifying actions, such as speech, gestures, or other movements, shall be performed by all eyewitness participants.
- If an identification is made, record a statement of confidence on the form in Section V, which shall be signed by the witness.

5. Showups

Consider if a photo lineup can be conducted instead of a showup for: increased control, minimizing observable nervousness, and improved logistics. However, when circumstances require the prompt display of a suspect to the witness, the following guidelines shall be followed.

- Showups shall be conducted only when the suspect is detained within a reasonably short timeframe following the offense.
- The witness shall be transported to the suspect's location, whenever possible.
- Presentations shall be recorded when possible.
- Prior to the presentation, read instructions to the witness from the form in Section V, ensuring and documenting that they understand the instructions.
- Officers shall avoid suggestive words or conduct, such as presenting the suspect in handcuffs, from the backseat of a patrol car, or being physically restrained by police.
- Separate witnesses to avoid communication among them, and obtain a thorough description of the suspect from each witness separately prior to the showup. A suspect shall only be viewed by one witness at a time, out of the presence and earshot of other witnesses.
- If an identification is made, record a statement of confidence on the form in Section V, which shall be signed by the witness.

6. Witness Confidence Statement

Regardless of the type of identification procedure employed, if an identification is made, the officer shall ask the witness immediately for a statement of confidence in his or her selection in his or her own words. The statement shall be documented by the officer and signed by the eyewitness.

7. Documenting the Identification Procedure.

The identification procedure shall be carefully documented. The preferred method of documenting the identification procedure is a video record with audio. Documentation, which shall be treated as evidence, shall include the following:

- Name of the administrator and eyewitness.
- Date and time of the identification procedure.
- Whether the administrator was blind, blinded, or non-blind. Law enforcement officials shall provide a written justification for using a live or photographic presentation other than a double-blind sequential presentation.
- Names and sources of fillers used in photo and live lineups.
- In a photo or live lineup, any eyewitness identification of a filler.
- All identification and non-identification results obtained during the procedure, including witness confidence statements, signed by the witness.
- If a photo lineup is developed electronically, the lineup shall be printed for documentation.

V. FORMS

Eyewitness Identification Form: Photo Lineup

Case Number: _____
Law Enforcement Official Name: _____
Date and Time of Presentation: _____
Witness Name: _____
Attorney Name & P-Number, if present: _____

INSTRUCTIONS *(read by law enforcement official to witness)*

In a moment I'm going to show you some photographs. A photograph of the person who is involved in the crime may or may not be among them. You will be shown all of the photographs and you may take your time looking at them.

You should not feel compelled to make an identification. The police department will continue to investigate the incident whether or not you select someone.

If you pick a photograph, I'm going to ask you to explain why you picked that photograph and to describe how confident you are in your selection.

Do you understand these instructions? _____

WITNESS STATEMENT *(written by law enforcement official)*

Witness picked photograph number:

I, _____, affirm that I read or was read the instructions above, that I understand the instructions, and that the statement written by the law enforcement official accurately reflects what I said.

Finally, I understand that I should not talk to other people about the photos or tell them which photo I picked, if any.

Signature of Witness _____

Eyewitness Identification Form: **Live Lineup**

Case Number: _____
Law Enforcement Official Name: _____
Date and Time of Presentation: _____
Witness Name: _____
Attorney Name & P-Number: _____

INSTRUCTIONS *(read by law enforcement official to witness)*

In a moment I'm going to present a series of individuals to you. A person who is involved in the crime may or may not be among them. You will be shown all of the individuals and you may take your time looking at them.

You should not feel compelled to make an identification. The police department will continue the investigation whether or not you select someone.

If you make an identification, I'm going to ask you to explain why you picked that individual and to describe how confident you are in your selection.

Please do not ask questions about the person you have selected because we cannot share that information with you at this time. Since this is an ongoing investigation, you should not discuss the identification procedures or the results with other people.

Do you understand these instructions? _____

WITNESS STATEMENT *(written by law enforcement official)*

Witness picked individual number:

I, _____, affirm that I read or was read the instructions above, that I understand the instructions, and that the statement written by the law enforcement official accurately reflects what I said.

Finally, I understand that I should not talk to other people about the photos or tell them which photo I picked, if any.

Signature of Witness _____

Eyewitness Identification Form: **Showup**

Case Number: _____
Law Enforcement Official Name: _____
Date and Time of Presentation: _____
Witness Name: _____
Attorney Name & P-Number: _____

INSTRUCTIONS *(read by law enforcement official to witness)*

You will be asked to view some individuals. A person who is involved in the crime may or may not be among them.

You should not feel compelled to make an identification. The police department will continue the investigation whether or not you select someone.

If you make an identification, I'm going to ask you to explain why you picked that individual and to describe how confident you are in your selection.

Please do not ask questions about the person you have selected because we cannot share that information with you at this time. Since this is an ongoing investigation, you should not discuss the identification procedures or the results with other people.

Do you understand these instructions? _____

WITNESS STATEMENT *(written by law enforcement official)*

Witness picked individual: Yes/No

I, _____, affirm that I read or was read the instructions above, that I understand the instructions, and that the statement written by the law enforcement official accurately reflects what I said.

Finally, I understand that I should not talk to other people about the photos or tell them which photo I picked, if any.

Signature of Witness _____

Eyewitness Identification Form: **Folder Method**

Case Number: _____
Law Enforcement Official Name: _____
Date and Time of Presentation: _____
Witness Name: _____
Attorney Name & P-Number, if present: _____

INSTRUCTIONS *(read by law enforcement official to witness)*

In a moment I'm going to present you with folders that contain a series of photographs. A photograph of the person who is involved in the crime may or may not be among them. You will be shown all of the photographs and you may take your time looking at them. Some of the folders may be empty.

You should not feel compelled to make an identification. The police department will continue to investigate the incident whether or not you select someone.

If you pick a photograph, I'm going to ask you to explain why you picked that photograph and to describe how confident you are in your selection.

Do you understand these instructions? _____

WITNESS STATEMENT *(written by law enforcement official)*

Witness picked photograph number:

I, _____, affirm that I read or was read the instructions above, that I understand the instructions, and that the statement written by the law enforcement official accurately reflects what I said.

Finally, I understand that I should not talk to other people about the photos or tell them which photo I picked, if any.

Signature of Witness _____