



ERIE POLICE DEPARTMENT



Written Directives

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**POLICY:**

The purpose of this policy is to establish procedures for the use of eyewitness identifications involving photo arrays lineups, live lineups, and show ups.

**DEFINITIONS:**

**ADMINISTRATOR:** The person who is conducting an identification procedure.

**BLIND ADMINISTRATOR:** The administrator of an identification procedure who does not know the identity of the suspect when it is viewed by the eyewitness.

**BLINDED ADMINISTRATOR:** The administrator of an identification procedure who may know who the suspect is, but does not know in which position the suspect is placed in a photo array.

**CONFIDENCE STATEMENT:** A statement by an eyewitness immediately following an identification regarding his or her level of confidence in the identification's accuracy.

**EYEWITNESS:** A person who observed another person at or near the scene of an offense.

**FILLER:** A person or photograph of a person who is not suspected of the offense in questions and is included in an identification procedure.

**LIVE LINEUP:** A live identification procedure in which a group of people, including the suspected perpetrator of an offense and additional fillers, is shown to an eyewitness to determine if the eyewitness identifies the suspect as the perpetrator.

**PHOTO ARRAY (PHOTO LINEUP):** An identification procedure in which a group of photographs, including a photo of the suspected perpetrator of an offense and photos of additional fillers, is shown to an eyewitness to determine if the eyewitness identifies the suspect as the perpetrator. The photographs may be displayed in either hard copy form or via electronic means.

**SHOW UP:** An identification procedure in which an eyewitness is presented with a single suspect, typically in person, to determine if the eyewitness identifies the suspect as the perpetrator of an offense.

**PROCEDURES:****I. PHOTO ARRAY (PHOTO LINEUP)****A. Instructions to the officer/investigator creating the photo array:**

Fillers should be similar in appearance to the suspect and to the eyewitness' original description of the suspect. Similarities should include gender, age, race, height, hair color, facial hair, clothing and distinctive physical features.

1. At least five fillers should be included in each photo array, in addition to the suspect. Administrators should not include fillers who are known to the eyewitness.
2. Only one suspect should be included in a photo array. If there is more than one suspect in an investigation, a separate photo array should be made for each suspect. Different fillers should also be used in the separate arrays.
3. Photos used in an array should be of consistent size, quality, color and background. Photos should not contain stray markings or information about the subject. Any markings or identifying information should be covered. If one photo in the array is covered in any manner, all the photos should be similarly covered.

**B. Instructions for the officer/investigator communicating with the eyewitness:**

1. When contacting an eyewitness to arrange for viewing a photo array, the officer/investigator should advise only that he/she intends to conduct a photo identification procedure.
2. Avoid addressing whether a person is in custody or whether other supporting evidence about the suspect has been obtained (such as statements, physical evidence, and other identifications).
3. When an eyewitness arrives to view the array, he/she should be prevented from speaking to any other eyewitnesses about the identification procedure.
4. The administrator should provide the following, or substantially similar, instructions to an eyewitness before displaying a photo array:
  - a. The eyewitness is being asked to view a photo array as part of an ongoing investigation into a crime that occurred on \_\_\_\_ (date) at \_\_\_\_ (location), to see if the eyewitness recognizes anyone involved with the crime.
  - b. The eyewitness should not assume the administrator knows who the suspect is, or seek assistance from the administrator or anyone else present in making an identification.

- c. The suspect may or may not be pictured in the array.
- d. Individuals pictured in the photo array may not look exactly as they did on the date of the incident. Some features – like hairstyle or facial hair – are subject to change.
- e. Photos do not necessarily depict the true complexion of a person; it may be darker or lighter than appears in the photo.
- f. The eyewitness should pay no attention to any markings on the photos or any differences in the style/type of the photos.
- g. If the eyewitness makes an identification, the eyewitness shall be asked about his/her level of certainty as to the identification. The administrator will ask the eyewitness to choose whether he/she is confident, somewhat confident or not confident about his/her identification.
- h. The investigation is ongoing and will continue, regardless of whether the eyewitness makes an identification.

C. The following or substantially similar steps should be taken in administering the photo array:

1. When practicable, a blind administrator is recommended for all photo arrays (an administrator who does not know the identity of the suspect).
2. When use of a blind administrator is impractical, blinded administration of the photo array should be used (the administrator knows the identity of the suspect, but not what position the suspect occupies in the array).
3. Examples of methods for blinded administration may include, but are not limited to, the following:
  - a. The photo array is created by an officer other than the administrator and then placed in a folder. The administrator gives the folder to the eyewitness, who looks at the array within the folder, so that the administrator cannot see the photos during the identification.
  - b. The administrator makes multiple arrays, placing the suspect's photo in different positions in each. The same fillers may be used in the multiple arrays. The arrays are then placed in separate, closed folders and the witness selects which one to view. The eyewitness looks at the array within the folder, so that the administrator cannot see the photos while the eyewitness is viewing them.

4. During all photo array procedures, the administrator should stand out of the eyewitness' line of sight during the viewing of the array, but in a position where he/she can observe and hear the eyewitness.

5. If multiple eyewitnesses are viewing a photo array, they should be prevented from speaking to one another about the identification procedure. Each eyewitness must view the array separately and be admonished not to discuss the identification procedure with any other eyewitness.

6. The administrator should always remain neutral during the identification procedure, so as not to suggest a particular photo to the eyewitness.

7. If both practicable and available, administrators are encouraged to video record the photo array procedure and confidence statement. Audio recording is an acceptable alternative if video recording is not practicable.

8. After viewing the array, the administrator should ask the eyewitness the following questions. If the eyewitness' answers are unclear, the administrator should ask the eyewitness what he/she meant by the answers.

- a. Do you recognize anyone?
- b. If so, what number do you recognize?
- c. From where do you recognize this person?

9. If the eyewitness makes an identification, in addition to recording or memorializing any spontaneous statements made by the eyewitness, the eyewitness should be asked about his/her level of certainty. The administrator should ask the eyewitness to choose which of the following statements best describes his/her level of certainty in the identification:

- a. I am confident that is the person I saw.
- b. I am somewhat confident that is the person I saw.
- c. I am not confident at all that is the person I saw.

10. The administrator should not comment, nod or make gestures (either positive or negative) on whether the eyewitness picked the suspect. If asked by the eyewitness, the administrator should explain he/she is not allowed to provide feedback.

11. Once the procedure is concluded and fully documented (see below), the administrator can talk to the eyewitness about the next steps in the case. The eyewitness should be instructed not to discuss the identification procedure with other eyewitnesses. Also, the administrator should not discuss any other identification procedures viewed by other eyewitnesses.

D. Administrators should document the following or substantially similar information using appropriate forms or notes:

1. Where the procedure took place, who was present, the date and time it was administered.
2. Any statements, comments or physical reactions of the eyewitness while viewing the array.
3. Each eyewitness should complete a standard form that records their identifying information and the results of the procedure after viewing the array. The eyewitness should sign and date the array itself, or a copy supplied to document the identification procedure.
4. The eyewitness' confidence statement, including any spontaneous statements, should be documented word for word.
5. Preserve the photo array in the original form that was shown to each eyewitness. A copy of the photo array should be included with the case report.

## **II. LIVE LINEUPS**

- A. The officer/investigator creating a live lineup should generally follow the guidelines below:
  1. Consultation with the appropriate prosecuting attorney's office is recommended whenever a live lineup is being considered.
  2. Fillers should be similar in appearance to the suspect and to the eyewitness' original description of the suspect. Similarities should include gender, age, race, height, hair color, facial hair, clothing and distinctive physical features.
  3. At least five fillers should be included in each live lineup, in addition to the suspect. In no case, should less than four fillers be used. Only one suspect should appear per live lineup. Administrators should not include fillers who are known to the eyewitness.
  4. If necessary, all members of the live lineup should be seated to minimize any height differences.
  5. If there is more than one suspect, different fillers should be used in each live lineup.
  6. The suspect should be allowed to select his/her own position in the live lineup. Where the suspect was previously identified in a photo array, that number should be avoided unless insisted upon by the suspect.
  7. All members of the live lineup should be instructed not to speak or gesture to one another during the procedure. All members of the live lineup should be instructed to remain still and look forward unless otherwise directed by an officer/investigator.

B. The officer/investigator communicating with the eyewitness should generally follow the guidelines below:

1. When contacting an eyewitness to arrange for viewing a live lineup, the officer/investigator should advise only that he/she intends to conduct an identification procedure.
2. Avoid addressing whether a person is in custody or whether other supporting evidence about the suspect has been obtained (such as statements, physical evidence, and other identifications).
3. When an eyewitness arrives to view the live lineup, he/she should be prevented from speaking to any other eyewitnesses about the identification procedure.
4. The administrator should provide the following or substantially similar instructions to an eyewitness before viewing a live lineup:
  - a. The eyewitness is being asked to view a lineup as part of an ongoing investigation into a crime that occurred on \_\_\_\_ (date) at \_\_\_\_ (location), to see if the eyewitness recognizes anyone involved with the crime.
  - b. The eyewitness should not assume the administrator knows who the suspect is, or seek assistance from the administrator or anyone else present in making an identification.
  - c. The suspect may or may not be present in the lineup.
  - d. Individuals presented in the lineup may not look exactly as they did on the date of the incident. Some features – like hairstyle or facial hair – are subject to change.
  - e. The eyewitness can ask the administering officer to have the lineup members move, speak or change clothing. If one lineup member is asked, all the members will be asked to do the same.
  - f. If the eyewitness makes an identification, the eyewitness will be asked about his/her level of certainty. The administrator will ask the eyewitness to choose whether he/she is confident, somewhat confident or not confident about his/her identification.
  - g. The investigation will continue, regardless of whether the eyewitness makes an identification.

C. The officer/investigator administering the Live Lineup should generally follow the guidelines below:

1. A blind administrator is recommended for all live lineups (an administrator who does not know the identity of the suspect).
2. After the administrator instructs the eyewitness, he/she should stand outside the eyewitness' line of sight, while still being in position to observe and hear the eyewitness.
3. If there are multiple eyewitnesses, they must each view the lineup separately. The position of the suspect should be moved each time the lineup is shown to a different eyewitness. Eyewitnesses should be prevented from speaking to each other about the identification procedure.
4. The officer/investigator monitoring the suspect and fillers in the lineup room should remain out of view of the eyewitness to avoid any claims of inadvertent suggestion.
5. If both practicable and available, administrators are encouraged to video record the live lineup procedure and confidence statement. Audio recording is an acceptable alternative if video recording is not practicable. If the procedure is not video recorded, the lineup should be preserved by photograph.
6. After an eyewitness views the lineup, the administrator should ask him/her the following questions. If the eyewitness' answers are unclear, the administrator should ask the eyewitness what he/she meant by the answers.
  - a. Do you recognize anyone?
  - b. If so, what number do you recognize?
  - c. From where do you recognize this person?
7. If the eyewitness makes an identification, in addition to recording or memorializing any spontaneous statements made by the eyewitness, the eyewitness should be asked about his/her level of certainty. The administrator should ask the eyewitness to choose which of the following statements best describes his/her level of certainty in the identification:
  - a. I am confident that is the person I saw.
  - b. I am somewhat confident that is the person I saw.
  - c. I am not confident at all that is the person I saw.
8. The administrator should not comment, nod or make gestures (either positive or negative) on whether the eyewitness picked the suspect. If asked by the eyewitness, the administrator should explain he/she is not allowed to provide feedback.
9. There are circumstances where a suspect may have an attorney present during a live lineup. Consult with the appropriate prosecuting attorney's office for guidance regarding a suspect's right to counsel. When in attendance, a defense attorney should be instructed not to speak in the viewing room when the eyewitness is present.

D. Officers/Investigators should document the following or substantially similar information using appropriate forms or notes:

1. Where the procedure took place who was present in the viewing room and the lineup room, the date and time it was administered. Document the names of any officers/investigators who escorted the eyewitness to and from the viewing room.
2. Any statements, comments or physical reactions of the eyewitness while viewing the lineup.
3. Anything the lineup members were asked to do, such as speak, move or change clothing.
4. Any requests made by defense counsel and whether they were granted.
5. Each eyewitness should complete a standard form that records their identifying information and the results of the procedure after viewing the lineup.
6. The eyewitness' confidence statement, including any spontaneous statements, should be documented word for word.
7. If a video recording is not made, preserve a photograph of the lineup.

### **III. SHOW UPS/FIELD IDENTIFICATIONS**

Show up (field identification) is an identification procedure used when a suspect has been detained soon after the commission of an offense because he/she resembles the description of the perpetrator provided by an eyewitness. The eyewitness is then allowed to view the suspect, or an image of the suspect, so a positive or negative identification can be made.

1. The eyewitness should be transported to view the suspect whenever possible, rather than have the suspect transported to the eyewitness' location. Detentions for the purpose of a show up procedure are typically seizures based upon reasonable suspicion. Without probable cause to arrest a suspect, transporting him/her to the eyewitness' location might be considered an unlawful arrest. Suspects do not have the right to refuse to participate in a show up.
2. The officer transporting an eyewitness to view a show up should not discuss the suspect or whether other supporting evidence about the suspect has been obtained (such as statements, physical evidence, or other identifications).
3. The administrator of the show up should instruct the eyewitness:



- a. He/She is being transported to view a person fitting their description of the suspect for the purpose of making a positive or negative identification.
- b. The person involved in the crime(s) may or may not be the detained suspect.
- c. If the eyewitness makes an identification, the eyewitness will be asked about his/her level of certainty. The administrator will ask the eyewitness to choose whether he/she is confident, somewhat confident or not confident about his/her identification.
- d. The eyewitness can ask the administrating officer to have the detained suspect put on or remove outer garments, repeat words or make gestures.
- e. The investigation will continue, regardless of whether the eyewitness makes an identification.

4. The eyewitness should be transported to a position at a distance which allows him/her a clear view of the suspect. If prudent under the circumstances of the case, the eyewitness should not be visible to the suspect.

5. When there are multiple eyewitnesses for a show up procedure, they should each be transported to view the suspect in separate vehicles. Eyewitnesses should be prevented from speaking to each other about the identification procedure. When the procedure is over, eyewitnesses should be admonished not to discuss the identification procedure with any other eyewitness.

6. When there are multiple suspects detained, the suspects should be distanced from each other sufficiently so the eyewitness views each suspect one at a time.

7. Whenever practicable, the suspect should not be handcuffed or in a patrol vehicle at the time of the show up.

8. Video recording of show up procedures is recommended using dashboard cameras, body-worn cameras or other available recording devices. When video recording is not practicable, audio recording is an acceptable alternative.

9. The administrator should not comment, nod or make gestures (either positive or negative) about the eyewitness' identification of the suspect.

10. The administrator of a show up identification should document the procedure using appropriate forms and/or notes to record the following or substantially similar information:

- a. The name and identifying information of the eyewitness.

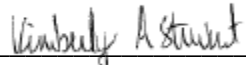
- b. Where the procedure took place, who was present, the date and time it was administered.
- c. The circumstances leading to the necessity for the show up procedure.
- d. Physical circumstances of the show up - including lighting, weather, approximate distance between the eyewitness and suspect, whether the suspect was handcuffed, physical description of the suspect and the length of time between the suspect's detention and the identification.
- e. Any statements, comments or physical reactions of the eyewitness (es) during the identification procedure.
- f. The eyewitness' confidence statement, including any spontaneous statements, should be documented word for word.
- g. Each eyewitness should complete a standard form about the results of the procedure after viewing the suspect.

**RULES:**

NONE

**REFERENCES:**

The Colorado Best Practices Committee Model Policy and Forms for Eyewitness Identification – 2015

  
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