

## **EYEWITNESS IDENTIFICATION PROCEDURE GUIDELINES**

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July, 2004

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## I. INTRODUCTION

The following Guidelines are recommendations, the appropriate application of which must be based on the specific circumstances of each case. The Guidelines do not create and may not be relied on to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal.

## II. SHOW-UPS (and Field Identification)

### A. Deciding to Conduct a Show-Up

One-on-one or show-up identifications are, by their very nature, inherently suggestive. While show-ups are not per se unconstitutional, they are disfavored. However, courts will admit show-up identification evidence when there is “good reason” or exigency. Officers should assess the circumstances of the situation, and determine whether there is sufficient justification to conduct a show-up.

**Good Reason** to conduct a show-up must be based on one of three considerations, to be assessed by the court after the fact:

1. The nature of the crime involved and corresponding concerns for public safety.
2. The need for efficient police investigation in the immediate aftermath of a crime.
3. The usefulness of prompt confirmation of the accuracy of investigatory information, which, if in error, will release the police quickly to follow another track.

**Exigent circumstances** also justify conducting a show-up, particularly when the witness is in grave medical danger, often in the hospital. Exigency is not required when “good reason” exists.

### B. Logistics of a Show-Up

1. Conduct the show-up promptly after the crime, within a few hours, while the witness’s recollection is still fresh.
2. Be aware of and, when possible given any safety considerations, minimize the impact of visual cues of custody, such as removing or covering handcuffs, removing the suspect from the cruiser, or minimizing the number of officers surrounding the suspect.
3. Officers must have either reasonable suspicion (threshold inquiry requiring rapid response), probable cause to arrest, or consent in order to hold the suspect while conducting the show-up. A witness description reflective of a suspect who is stopped in a proximate time and place in

relation to the crime may provide sufficient reasonable suspicion to hold the suspect for a short time.

4. Bring the witness to the suspect, except in rare circumstances such as when the witness is in an ambulance or the hospital.
5. Presentations should be one-on-one to avoid contamination or suggestiveness. Separate witnesses when there are two or more. Officer judgment must be used in determining whether or not to separate the alleged suspects when there are two or more.
6. After a witness makes an initial identification, consider using other less suggestive identification methods for successive witnesses when appropriate.

C. **Conducting a Show-Up**

1. Avoid saying or doing anything that may influence the witness. DO NOT tell the witness the police have stopped someone who fits the description.
2. Transport the witness to the location of the suspect. Use of a cruiser is acceptable, however, the police radio should be turned off; the witness must not hear any related radio transmissions.
3. Provide the witness with the Advisements in Section D below and on the *Show-Up Advisement Card*.
4. Confirm that the witness understands the procedures.
5. After the show-up, be prepared to record both identification and non-identification results, including the witness's own words and any spontaneous comments, as per Section E below.
6. Do not provide the witness with any feedback, or comment on the results of the identification procedure in any way. If asked, explain that this is necessary to maintain the integrity of the investigation.

D. **Show-Up Advisements -- Instructing the Witness**

Before showing a suspect to the witness, instruct the witness as follows:

1. You are going to be shown an individual.
2. This may or may not be the person who committed the crime, so you should not feel compelled to make an identification.
3. It is just as important to clear innocent people as it is to identify possible perpetrators.
4. Whether or not you identify someone, the police will continue to investigate.
5. After you are done, I will not be able to provide you with any feedback or comment on the results of the process.
6. Please do not discuss this identification procedure or the results with other witnesses in this case or with the media.

7. Think back to the time of the event, the place, view, lighting, your frame of mind, etc. Take as much time as you need.
8. People may not appear exactly as they did at the time of the event, because features such as clothing and head/facial hair are subject to change.
9. As you look at this person, tell me if you recognize him/her. If you do, please tell me how you know the person, and in your own words, how sure you are of the identification.

#### E. **Recording the Results**

It is very important that the IDENTIFICATION CHECKLIST be completed fully and accurately for every show-up, regardless of whether or not an identification is made or an arrest is imminent. This information is required for trial discovery if a perpetrator is ever apprehended.

1. Record all procedural information on the top half of the IDENTIFICATION CHECKLIST, including the individuals involved, the individual/suspect shown to the witness, circumstances warranting the show-up, and characteristics of the show-up.
2. Record information that identifies the individual/suspect shown to the witness, such as name, address, and date of birth, even if the witness does not identify that person.
3. Check-off the Advisements given to the witness.
4. After the witness has finished, indicate on the form whether an identification was made.
5. Record the witness's own words of identification or non-identification, and any spontaneous comments.
6. Record statements by any other people, made during the identification procedure and in the presence of the witness.
7. Have the witness sign and date the bottom of the IDENTIFICATION CHECKLIST.
8. The conducting officer must sign and date the form when it is complete.

#### F. **Field Identification**

When a suspect is not being held by the police, officers may bring a witness to a public area where the suspect is likely to be found. Procedures similar to those above should be used, as follows.

1. Avoid doing or saying anything that may influence the witness.
2. Record information regarding how you decided to conduct the field identification, such as the "good reasons" discussed above in Section A.
3. Transport the witness to a public area where the suspect is likely to be found. There must be some number of people in the area so that the suspect will not be isolated.

4. Provide the witness with Advisements similar to those in Section D above and on the *Show-Up Advisements Card*, but tailored to a field situation.
5. Record both identification and non-identification results, including the witness's own words and any spontaneous comments.
6. Record the process used and the conditions present for the field identification, such as location, lighting, physical conditions, number of people, etc.
7. Complete an IDENTIFICATION CHECKLIST in full, regardless of whether an identification is made, noting that the procedure was a field identification and not a show-up, as per Section E above.
8. Do not provide the witness with any feedback, or comment on the results of the identification procedure in any way. If asked, explain that this is necessary to maintain the integrity of the investigation.

### III. PHOTO ARRAYS

#### A. Composing Photo Arrays

Photo arrays should be constructed by officers who are familiar with both the witness's description of the perpetrator, and the identity or image of the suspect.

1. Create an array for each witness, based on his/her individual description of the perpetrator. If two witnesses provide descriptions that are very similar, the same group of photos may be utilized, but the suspect must be placed in a different position within each array.
2. Include only one suspect in each array, even when there are multiple perpetrators.
3. When available, select a photo of the suspect that most resembles his/her appearance at the time of the incident.
4. Select photos of fillers (non-suspects) who generally fit the witness's description of the perpetrator. When the witness's description is limited, inadequate, or varies noticeably from the suspect, fillers should resemble the suspect in significant features. Any feature mentioned by the witness is significant.
5. Include a minimum of seven fillers with the photo of the suspect, and up to eleven if reasonable. Volume is not the objective; similarity to the significant features of the description and/or the suspect is, though complete uniformity is not appropriate. Do not use fillers that so closely resemble the suspect that someone familiar with the suspect might have a difficult time distinguishing between the suspect and the filler.
6. Create a consistent appearance between the suspect and the fillers for unique features, such as scars or tattoos, by either adding or concealing that feature.

7. Create as consistent and uniform an appearance as is reasonable regarding photo size, pose, lighting, color/black & white, photo background, etc.
8. Ensure no writing or information is visible on the photos or in the array, particularly relative to previous arrests or identifications.
9. If a "Sequential" presentation is to be conducted (as recommended), photos must be individual, and not grouped on a page.
10. If a "Simultaneous" presentation is to be conducted, photos may be on one page.
11. When composing additional arrays for the same witness, do not re-use the same fillers.
12. Once completed, view the array to ensure the suspect does not unduly stand out.
13. Record identifying information for each photo selected to be in the array, such as a computer identification number, on the COMPOSITION CHECKLIST. Then, mark a unique identifying letter on the back of each photo, such as A-H, making sure it is not visible from the front of the photo, and record that letter on the CHECKLIST beside the corresponding identification information. If applicable, attach a copy of the computer generated "Investigator's Copy" of the array. If conducting a "Blind" presentation (see Section B below), do not show this form to the officer presenting the array.
14. If conducting a "Blind, Sequential" presentation, to ensure the suspect is not in the first position of the array, select a filler photo for the first position, and inform the presenting officer accordingly. This also applies for "Blind, Simultaneous" presentations with more than one piece of paper.
15. All efforts should be made to avoid re-using the same physical photo in different arrays because the need to re-use dictates that any witness selection may not be marked directly on the photo and must be preserved in another way. If you must preserve and re-use a photo, we suggest placing the photo(s) in a clear sleeve that the witness can write on, and making a full, complete copy of the array before any pictures are removed, in order to preserve a record of the array as evidence.

## **B. Who Should Present the Photos to the Witness**

Officers presenting an array to a witness can potentially and unintentionally influence the outcome of an identification based on comments made or body language used prior to, during, or after an identification event. To avoid any potential influence, all aspects of the identification procedure must promote accurate, reliable, fair, and objective witness identification. This office suggests police departments conduct a "Blind" presentation when possible.

“Blind” Presentation An officer other than the primary individuals working on the case should conduct the presentation of the photo array with the witness. The individual conducting the presentation must not know the identity of the suspect or which photo in the array is that of the suspect.

When a department does not have an alternate individual available, for staffing reasons or because all officers are aware of who the suspect is, the following procedure may be used, applying the same principles to avoid any unintentional influence.

Traditional Presentation When a department is unable to employ the “Blind” technique above, the officer presenting the array should use extra caution to avoid unintentionally influencing the witness’s decision, by strictly adhering to the instructions below. Caution is warranted before, during, and after the viewing.

### **C. Conducting the Identification Procedure: “Sequential” vs. “Simultaneous”**

Photo arrays have traditionally been presented simultaneously (all at once). However, recent research suggests that sequential presentations (one-by-one) can enhance the accuracy of identifications. The District Attorney recommends that police departments utilize the sequential method of presentation. The following procedures are applicable regardless of whether or not the officer presenting the array is “Blind” to the identity of the suspect.

### **D. Conducting a “Sequential” Photo Array Presentation (one-by-one)**

1. Avoid saying or doing anything that may influence the witness’s selection.
2. Photos must be individual, and not grouped on one piece of paper. Each photo should already have an identifying letter on the back, such as A-H, previously assigned by the individual that composed the array.
3. The officer who composed the array previously selected a photo to use in the first position. Excluding that photo, shuffle the remaining photos to create a random presentation order.
4. Record the presentation order on the IDENTIFICATION CHECKLIST.
5. Provide the witness with the Advisements in Section E below.
6. Confirm that the witness understands the viewing procedures.
7. When the witness is seated and comfortable, hand the witness one photo at a time, retrieving the last before offering the next photo.
8. As the witness views a photo in the array, make sure no other photos are visible to the witness, including those yet to come and those already viewed.
9. If the witness makes an identification, if necessary, remind him/her to place his/her initials and the date below the photo of the suspect, clearly

marking the selection. Record on the IDENTIFICATION CHECKLIST whether there was an identification, the witnesses identification statement(s), and which photo in the sequence was selected, as per Section F below.

10. Continue showing the witness the remaining photos, even if he/she makes an identification.
11. While not to be offered, the officer may show the array to the witness again if the witness asks, regardless of whether the witness has already made an identification or not. The officer should repeat the same procedures, showing all of the photos again, and thoroughly document the request, the additional steps taken, and the results.
12. Do not provide the witness with any feedback, or comment on the results of the identification procedure in any way. If asked, explain that this is necessary to maintain the integrity of the investigation.

#### **E. "Sequential" Advisements -- Instructing the Witness**

Before showing the array to the witness, instruct him/her as follows:

1. I am going to show you a group of photos which are in random order.
2. The person who committed the crime may or may not be included, so you should not feel compelled to make an identification.
3. It is just as important to clear innocent people as it is to identify possible perpetrators.
4. Whether or not you identify someone, the police will continue to investigate.
5. After you are done, I will not be able to provide you with any feedback or comment on the results of the process.
6. Please do not discuss this identification procedure or the results with other witnesses in this case or with the media.
7. Think back to the time of the event, the place, view, lighting, your frame of mind, etc. Take as much time as you need.
8. People may not appear exactly as they did at the time of the event, because features such as clothing and head/facial hair are subject to change.
9. I will hand you photos one at a time, and cannot tell you how many photos there are in total. I will show you all of the photos, even if you identify someone in an earlier one. As you finish with each photo, hand it back to me and I will give you another.
10. As you look at each photo, if you see someone that you recognize, please tell me how you know the person, and in your own words, how sure you are of the identification.
11. If you identify someone, place your initials and the date below the photo, clearly marking your selection.

#### **F. Recording the Results**



It is very important that the IDENTIFICATION CHECKLIST be completed fully and accurately, regardless of whether or not an identification is made or an arrest is imminent, as this information is required for trial discovery if a perpetrator is ever apprehended.

1. Record all procedural information on the top half of the IDENTIFICATION CHECKLIST, including the individuals involved, the procedures used, and the order in which the photos were presented.
2. Check-off the Advisements given to the witness.
3. After the witness has finished, indicate on the form whether an identification was made, and which letter/order # photo was selected. Also ensure that the witness has signed and dated the selected photo, clearly marking his/her selection.
4. Record the witness's own words and any spontaneous comments.
5. Record statements by any other people, made during the identification procedure and in the presence of the witness.
6. Have the witness sign and date the bottom of the IDENTIFICATION CHECKLIST.
7. The conducting officer must sign and date the form when it is complete.
8. When finished, **PRESERVE** the IDENTIFICATION CHECKLIST; the COMPOSITION CHECKLIST and the attached "investigator Copy" of the array generated by the computer; the actual photo array seen (and possibly marked) by the witness; and any other material used to conduct the array.

#### **G. Conducting a "Simultaneous" Photo Array Presentation** (all at once)

Should department or case specific circumstances prevent the sequential presentation of an array, a simultaneous presentation should be conducted as follows. These procedures are applicable regardless of whether or not the officer presenting the array is "Blind" to the identity of the suspect.

1. Avoid saying or doing anything that may influence the witness's selection.
2. Regardless of whether the array photos are separate or are on one page, the random physical arrangement of the photos, as they are to be presented to the witness, must be determined in advance and recorded on the IDENTIFICATION CHECKLIST. Each photo should already have an identifying letter on the back, such as A-H, previously assigned by the individual that composed the array.
3. The officer who composed the array previously selected a photo/page to use in the first position. (This is only relevant when more than one piece of paper is being used for the "Simultaneous" presentation.)
4. Provide the witness with the Advisements in Section H below.
5. Confirm that the witness understands the viewing procedures.

6. When the witness is seated and comfortable, place the array on the table in front of the witness. (If the array consists of multiple pages or separate photos, position the arrangement as was previously determined and recorded above.)
7. When the witness is finished, confirm whether or not there has been an identification, and if so, that the witness has placed his/her initials and today's date below the photo, clearly marking the selection.
8. Retrieve the array from the witness.
9. Be prepared to record both identification and non-identification results as described in Section F above, including the witness's own words and any spontaneous comments.
10. While not to be offered, the officer may show the array to the witness again if the witness asks, regardless of whether the witness has already made an identification or not. The officer should repeat the same procedures, showing the whole array again, and thoroughly document the request, the additional steps taken, and the results.
11. Do not provide the witness with any feedback, or comment on the results of the identification procedure in any way. If asked, explain that this is necessary to maintain the integrity of the prosecution.

#### **H. "Simultaneous" Advisements -- Instructing the Witness**

Before showing the array to the witness, instruct him/her as follows:

1. I am going to show you a group of photos which are in random order.
2. The person who committed the crime may or may not be included, so you should not feel compelled to make an identification.
3. It is just as important to clear innocent people as it is to identify possible perpetrators.
4. Whether or not you identify someone, the police will continue to investigate.
5. After you are done, I will not be able to provide you with any feedback or comment on the results of the process.
6. Please do not discuss this identification procedure or the results with other witnesses in this case or with the media.
7. Think back to the time of the event, the place, view, lighting, your frame of mind, etc. Take as much time as you need.
8. People may not appear exactly as they did at the time of the event, because features such as clothing and head/facial hair are subject to change.
9. As you look at the photos, if you see someone that you recognize, please tell me how you know the person, and in your own words, how sure you are of the identification.
10. If you identify someone, place your initials and the date below the photo, clearly marking your selection.

## IV. PHOTO COLLECTIONS, LINE-UPS, VOICE SAMPLES

### A. Photo Collections

Collections of photos or mug books are appropriate to present to a witness when a suspect has yet to be identified. When making such a presentation, it is essential that you have identification information for the individual in each photo shown. If possible, it is best to narrow the photo collection to some descriptive factor offered by the witness. In addition, the general principles in these guidelines should be followed, such as providing Advisements, avoiding suggestiveness, recording the details of the presentation process used, recording the witness's own statements, recording the results, and not providing feedback on the results of the procedure.

### B. Line-Ups and Voice Samples

In-person line-ups and voice identifications are used less frequently and most often involve the suspect's having a right to counsel. Procedures for these types of identifications are similar to those discussed earlier, and involve the same principles and precautions. However, because of the infrequency and increased complexities, we recommend they not be conducted without the involvement of the District Attorney's Office. We recommend that you seek our assistance in conducting these other types of identifications.

## REFERENCES

These Guidelines are based on the following references, as well as Massachusetts law.

1. Eyewitness Evidence: A Guide for Law Enforcement, U.S. Department of Justice, October 1999. Available at: [www.ojp.usdoj.gov](http://www.ojp.usdoj.gov).
2. Attorney General Guidelines for Preparing and Conducting Photo and Live Lineup Identification Procedures, State of New Jersey, April 18, 2001. Available at: [www.state.nj.us/lps/dcj/agguide.htm#photoid](http://www.state.nj.us/lps/dcj/agguide.htm#photoid).
3. Turtle, J. et al, Best Practice Recommendations for Eyewitness Evidence Procedures: New Ideas for the Oldest Way to Solve a Case, The Canadian Journal of Police and Security Services, 1, 5-18. Available at: [www.ryerson.ca/~jturtle/cjpss.html](http://www.ryerson.ca/~jturtle/cjpss.html).
4. North Carolina Actual Innocence Commission Recommendations For Eyewitness Identification. Available at: [www.innocenceproject.org/docs/NC\\_Innocence\\_Commission\\_Identification.html](http://www.innocenceproject.org/docs/NC_Innocence_Commission_Identification.html).
5. Patenaude, Kenneth Det. Lt., *Opinion: Improving Eyewitness Identification*, Law Enforcement Technology, October 2003.