

Model Policy¹

Eyewitness Identification – Minimum Standards

PURPOSE

The purpose of this policy is to provide law enforcement with minimum standards for the collection of eyewitness evidence in order to increase the probative value of the evidence collected from eyewitnesses and reduce false identifications.

POLICY

This agency will conduct eyewitness identification procedures in a manner consistent with these minimum standards in order to standardize the identification procedures employed by law enforcement and maximize the reliability of the eyewitness evidence collected.

DEFINITIONS

Administrator – The individual conducting an identification procedure with a victim/witness.

Blind Presentation – An identification procedure in which the administrator does not know which physical lineup/photo array member is the suspect. Also known as double-blind presentation.

Blinded Presentation – An alternative to blind presentation in which the administrator knows which physical lineup/photo array member is the suspect. In this presentation, specific procedures are employed to prevent the administrator from knowing which physical lineup/photo array member is being viewed by the victim/witness at any time.

Confidence Statement – A statement in the victim/witness's own words, articulating his/her level of confidence in the identification taken immediately after the identification has been made.

Field Showup – An identification procedure in which a single suspect is presented in order to determine whether the victim/witness recognizes a person involved with the crime. Typically includes the in-person presentation of a suspect in the field and occurs close in time and proximity to the incident under investigation.

Fillers – Non-suspect photographs or physical lineup members included with the suspect's photograph or suspect in an identification procedure.

¹ This policy was approved by the Washington State Best Practices Committee and adopted by the Washington Prosecutors Association (WAPA) and the Washington Association of Police Chiefs and Sheriff's (WASPC). May 18, 2015

Identification Procedure – Any procedure that includes the suspect and tests the witness's memory of a person involved with the crime, including a field showup, photo array, physical lineup, mug-book search, and the production of a composite sketch.

Photo Array – An identification procedure in which a series of photographs of persons, including a suspect, is displayed in order to determine whether the victim/witness recognizes a person involved with the crime.

Physical Lineup – An identification procedure in which a group of persons, including a suspect, is displayed in order to determine whether the victim/witness recognizes a person involved with the crime.

MINIMUM STANDARDS

Identification procedures should be conducted in a manner consistent with the minimum standards outlined below.

A. Selecting the appropriate identification procedure

1. **When** an identification procedure is conducted should be determined by the investigator after taking into account the following important considerations:
 - a. Only **one** identification procedure should be conducted with each victim/witness for each suspect.
 - b. Since only one identification procedure should be conducted, **when** the procedure is conducted is crucial and needs to be considered carefully. A rushed, poor procedure cannot be corrected with a later, better procedure.
2. **Which** identification procedure is conducted should be determined by the investigator after taking into account the circumstances of the investigation at hand, and the following considerations:
 - a. *Field Showup* - A field showup should be performed only when circumstances require the immediate display of a suspect to a victim or witness. When circumstances allow for construction and administration of a photo array or physical lineup in accordance with this policy, a field showup should be avoided.
 - b. *Photo Array* - When constructed and administered in accordance with this policy, a photo array is a reliable test of a victim/witness's memory.
 - c. *Physical Lineup* - Lineups can be effective, but are frequently less than optimum due to the difficulty of finding appropriate fillers, the challenges of managing the interaction between various witnesses, victims, and lineup

administrators, and the amount of time and resources required to appropriately construct and administer a lineup.

B. Selecting fillers for photo arrays and physical lineups

1. All photo arrays and physical lineups should contain *only* one suspect.
2. In cases in which there are multiple suspects, separate photo arrays/physical lineups with unique fillers should be created for each suspect. No fillers should be used in more than one photo array/physical lineup with the same victim/witness.
3. Fillers should generally fit the victim/witness's description of the suspect. When there is a limited description or when the description differs from the suspect in significant features, the fillers should resemble the suspect's appearance.
4. All photo arrays and physical lineups should contain a minimum of 5 fillers.

C. Minimizing suggestiveness and perceived suggestiveness

1. All photo arrays and physical lineups should be conducted using blind presentation.
2. When blind presentation is not practicable, blinded presentation should be used.

D. Instructing victims and witnesses

1. Administrators should avoid saying anything to a victim/witness that would suggest that there is a specific suspect of interest for the crime at any time prior to an identification procedure.
2. Administrators should provide these *minimum* instructions to a victim/witness immediately before conducting an identification procedure:
 - i. Keep in mind that the person who committed the crime may or may not be included in the showup/photo array/lineup.
 - ii. You should not feel that you have to make an identification. It is just as important to clear innocent persons from suspicion as it is to identify guilty parties.
 - iii. The investigation will continue whether or not you make an identification.

E. Witness contamination

1. Victims/witnesses should be separated immediately after the criminal event and should be discouraged from speaking with one another about what they saw (including discussion of the crime on social media).
2. All interviews and identification procedures should be conducted with each victim/witness separately. Steps should be taken to ensure that victims/witnesses do not become aware of the statements and/or identification decisions of other victims/witnesses.
3. Administrators should not provide any feedback to a victim/witness regarding their decision in an identification procedure.
4. Administrators should instruct victims/witnesses that they should not discuss identification decisions with each other and explain to victims/witnesses that doing so could be harmful to the investigation.

F. Documenting the procedure

1. All interviews and identification procedures conducted with any victim/witness should be fully documented. Video-recordings should be used when practicable. Audio-recording is the preferred alternative. If neither video- nor audio-recording is possible, administrators should produce a detailed written report of the interview or identification procedure immediately following completion of the procedure.
2. A confidence statement should be obtained immediately after the victim/witness makes a decision. The exact words used by the victim/witness in expressing his/her degree of confidence should be documented.