

GENERAL ORDER

PORT WASHINGTON POLICE DEPARTMENT

SUBJECT:	EYEWITNESS IDENTIFICATION	NUMBER:	6.3.4
		ISSUED:	5/6/09
SCOPE:	All Sworn Personnel	EFFECTIVE:	5/6/09
DISTRIBUTION:	General Orders Manual	<input checked="" type="checkbox"/> RESCINDS	34.1
		<input type="checkbox"/> AMENDS	
REFERENCE:	WI State Statutes: Wisconsin State Statute 175.50(2) & 2005 Wisconsin Act 60	WILEAG 5 th EDITION STANDARDS: 6.3.7	

INDEX AS: Eyewitness Identification
 Line ups
 Photo Array
 Show Up

PURPOSE: To establish guidelines for the use of eyewitness identification procedures involving photo arrays, live lineups, showups, & facial composites. Further, to reduce the risk of wrongful conviction of innocent persons while increasing the probability of convicting the guilty persons.

This Order consists of the following numbered sections:

- I. POLICY
- II. DEFINITIONS
- III. PROCEDURES

I. POLICY

Eyewitness identification has always been a powerful tool for investigating and prosecuting criminal cases. Eyewitness evidence can be the most important and convincing evidence in a case. Research and nationwide experience suggest that eyewitness evidence can be fragile, and that eyewitnesses can be mistaken. Eyewitnesses can make identification errors, but those errors may be difficult to detect, because the witnesses are sincere and have no motive to lie. When wrong, they usually are not being deceitful, but are simply mistaken. To reduce the risk of wrongful conviction and aid in the detection and apprehension of the guilty, officers should adhere to procedures set forth here in order to maximize the reliability of identifications, minimize unjust accusations of innocent persons and to establish evidence that is reliable and conforms to established legal procedure.

II. DEFINITIONS

- A. **Photo Array**: The sequential showing of multiple photographs to an eyewitness for the purpose of obtaining an identification.
- B. **Live Lineup**: The presentation of a number of individuals, including a suspect, sequentially before an eyewitness.
- C. **Showup**: The presentation of one suspect to an eyewitness within a short time following commission of a crime.

III. PROCEDURES

A. Photo Arrays & Live Lineups General Considerations

- 1) Choose non-suspect fillers that fit the witness's description and that minimize any suggestiveness that might point toward a suspect;
- 2) Use 'double blind' procedures, in which the administrator is not in a position to unintentionally influence the witness's selection;
- 3) Specifically instruct eyewitnesses that the real perpetrator may or may not be present and that the administrator does not know which person is the suspect;
- 4) Present the suspects and fillers sequentially (one at a time) rather than simultaneously (all at once.) This encourages absolute judgments of each person presented, because eyewitnesses are unable to see the subjects all at once and are unable to know when they have seen the last subject;
- 5) Assess eyewitness confidence immediately following an identification. Carefully document a witness's response before any feedback from law enforcement;
- 6) Avoid multiple identification procedures in which the same witness views the same suspect more than once.

B. Showups General Considerations

Some courts have suppressed identification evidence based on the use of showups due to inherent suggestiveness of the practice. Therefore, the use of showups should be secondary in preference to the use of photo arrays or lineups when possible. However, when exigent circumstance requires the use of a showup, the following guidelines should be considered:

- 1) Document the eyewitness's description carefully prior to the showup.

- 2) Whenever practical, transport the eyewitness to the location of the suspect. Showups should not be conducted at law enforcement headquarters or other public safety buildings.
- 3) Specifically instruct eyewitnesses that the real perpetrator may or may not be present.
- 4) Showups should not be conducted with more than one witness present at a time. If identification is conducted separately for more than one witness, witnesses should not be permitted to communicate before or after any procedures regarding the identification of the suspect.
- 5) The same suspect should not be presented to the same witness more than once.
- 6) Showup suspects should not be required to put on clothing worn by the perpetrator. They may be asked to speak words uttered by the perpetrator or to perform other actions of the perpetrator.
- 7) Words or conduct of any type by officers that may suggest to the witness that the individual is or may be the perpetrator should be scrupulously avoided.
- 8) Assess eyewitness confidence immediately following an identification.

C. Facial Composite General Considerations

Inaccurate information from outside an eyewitness's memory can taint development of a composite. As with photo arrays, live lineups, and showups, composites can be compromised if the witness's description relies on information learned from external sources after the crime or if the person administering the procedure either unintentionally supplies the witness with information or unintentionally incorporates outside knowledge of the case into the production of the composite. For this reason, when a composite is used, double-blind concepts & principles in which both the witness and the person making the composite are unaware of external information about the case may be helpful. It may not be feasible to conduct a completely double-blind procedure for a variety of reasons, in which case witnesses should be told to rely on their independent recollection of the event - not information learned from other sources - and administrators must be mindful of any natural tendency to incorporate prior knowledge into the process.

Reference Following Appendices:

- Appendix 1: First Responder Checklist-Eyewitness Identification
- Appendix 2: Photo Collection Display Instructions
- Appendix 3: Photo Arrays- Folder System
- Appendix 4: Photo Array Instructions-Folder System
- Appendix 5: Follow-up Investigator Checklist-Eyewitness Identification Procedures
- Appendix 6: Photo Array Instruction Sheet -Independent Administrator
- Appendix 7: Live Lineups

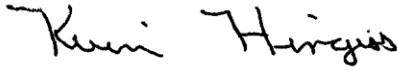
- Appendix 8: Live Lineup Instructions
- Appendix 9: Show-ups
- Appendix 10: Show-up Instructions

D. BIENNIAL REVIEW

The Department shall biennially review this policy as directed by Wisconsin State Statute 175.50(3). The first review shall occur two years after this General Order becomes effective.

APPROVED:

DATE:



1/9/19

Chief Kevin Hingiss

- Revised 1/9/19
- Revised 7/12/16
- Reviewed 5/1/14
- Revised 2/28/12
- Revised 5/21/10



First Responder Checklist Eyewitness Identification

GENERALLY

- Identify all potential eyewitnesses at the scene and ask them to remain for identification purposes.
- Take precautions to separate eyewitnesses & prevent them from communicating with each other.
- Interview each eyewitness separately from any other.
- Ask witnesses to provide a detailed description of the perpetrator and the crime.
- Seek to determine the location of the eyewitness's vantage point as precisely as possible.
- Document the interaction with the witness in as much detail as possible. An electronic recording may be beneficial.
- Stay objective; avoid giving positive or negative feedback as you collect information.

SHOW-UPS

- Before conducting a show-up, consider that a properly conducted photo array or lineup may be more reliable than a show-up.
- Before the show-up is conducted, ask the witness to give a detailed description of the perpetrator, and carefully document this description in writing.
- In general, conduct show-ups only when it is done close in time & space to the crime.
- Consider the future availability of witnesses in deciding whether to conduct a show-up.
- Videotape or audiotape the entire show-up procedure if possible & practical.
- Whenever practical, transport the witness to the location of the detained suspect (as opposed to transporting the suspect to the witness).
- Use a neutral location; do not conduct a show-up at a police station or other public safety building.
- Read written instructions aloud & give the witness a copy of instructions when available. Ask the witness to sign the sheet.
- If possible and safe, have the witness view the suspect while the suspect is not restrained by handcuffs or by the officer, and while the suspect is not seated in a squad car.
- Avoid words or conduct of any type that may suggest to the witness that the individual is or may be the perpetrator.
- After the witness views the suspect, ask the witness, "Is this the person you saw [insert description of act]?"

- If the witness answers "Yes," ask the witness, "In your own words, can you describe how certain you are?"
- Document the witness's responses to each question.
- Whenever possible, photograph the suspect at the time of the show-up.
- Document:
 - the administrator's name
 - the procedure employed
 - date, time, and location of the procedure
 - names of all persons present during the show-up

Show-up Procedures for Multiple Witnesses and Multiple Suspects

In addition to the above...

- Conduct individual procedures for each witness. Do not conduct show-ups with more than one witness present at a time.
- If there are two suspects, have the witness view two separate show-ups, each conducted in accordance with these procedures. Do not show a witness two or more suspects at the same time.

PHOTO COLLECTION DISPLAY INSTRUCTIONS

In a moment, I am going to show you a collection of photos. The person who committed the crime may or may not be included in the photos.

Keep in mind that things like hairstyles, beards, and mustaches can be easily changed and that complexion colors may look slightly different in photographs.

You should not feel you have to make an identification. It is as important to exclude innocent persons as it is to identify the perpetrator.

You will look at the photos and they are not in any particular order. Take as much time as you need. Tell me immediately if you recognize anyone in one of the photographs.

Because you are involved in an ongoing investigation, in order to prevent compromising the investigation, you should avoid discussing this identification procedure or its results.

Do you understand the way the photo collection procedure will be conducted and the other instructions I have given you?

I have read these instructions, or they have been read to me, and I understand the instructions. I am prepared to review the photographs, and I will follow the instructions provided on this form.

Signature

Date

Print Name

Photo Arrays- Folder System

- One suspect photo, at least five filler photos, and two blanks.
- Fillers should resemble description of the perpetrator in significant features.
- Gather 10 folders, each large enough to hold & fully conceal a photo.
- Set aside one folder containing a filler and two folders containing blank photos.
- Place remaining photos in folders & shuffle so you do not know which contains suspect.
- Position filler folder you set aside as first folder & blanks as last. Number the folders.
- Ensure that no other persons who know suspect identity is present.
- Position yourself close enough to communicate with him/her but in a place where witness can open a folder and look at the photo without your being able to see the photo.
- If possible, videotape or audiotape the entire identification procedure.
- Do not tell the witness how many photos will be shown.
- Issue a copy of instructions and read the instructions aloud.
- Ask the witness to sign and date the instruction sheet at the bottom of the form.
- Present folders one at a time, in order. Have witness return each folder when done viewing.
- After looking at a folder & returning it, ask: "Is this the person you saw _____?"
- If "Yes," ask, "In your own words, can you describe how certain you are?"
- Document answers carefully, even if the procedure is being recorded.
- Show the folders until you have gone through all the photographs.
- Carefully avoid any feedback or commenting on the procedure in any way.
- Only upon request, may a witness view all the folders again.
- Do not write on, mark or in any way alter materials to be used in other procedures.
- Preserve folders/photos and the order in which they were presented to the witness.
- Document:
 - -your name
 - -the procedure employed (photo array – folder system)
 - -date, time, and location of the procedure
 - -the total number of filler photos and blank photos
 - -names of persons present during the array
 - -if additional viewing occurred

Procedures for Multiple Suspects or Multiple Witnesses.

- Restrict witnesses from conferring with each other before, during, and after the photo array procedure.
- Instruct each witness outside the presence of the other witnesses.
- If you need to show the same suspect to a new witness, remix all but the lead filler and the two blank folders and renumber them accordingly.
- When showing a different suspect to the same witness, do not reuse the same fillers from any previous array shown to that witness.
- Avoid display of the same suspect to the same witness in two or more separate identification procedures.

PHOTO ARRAY INSTRUCTIONS
FOLDER SYSTEM

The folders in front of you contain photos. In a moment, I am going to ask you to look at the photos. The person who committed the crime may or may not be included in the photos. Although I placed the photos into the folders, I have shuffled the folders so that right now I do not know which folder contains a particular photo.

Even if you identify someone during this procedure, I will continue to show you all photos in the series.

Keep in mind that things like hairstyles, beards, and mustaches can be easily changed and that complexion colors may look slightly different in photographs.

You should not feel you have to make an identification. It is as important to exclude innocent persons as it is to identify the perpetrator.

You will look at the photos one at a time and, since I have shuffled them, they are not in any particular order. When you open a folder, please open it in a manner that does not allow me to see the photo inside the folder. Take as much time as you need to look at each one. When you have finished looking at a photo, close the folder and hand it to me. I will then ask you, "Is this the person you saw [insert description of act here]?" Take your time answering the question. If you answer "Yes," I will then ask you, "In your own words, can you describe how certain you are?"

Because you are involved in an ongoing investigation, in order to prevent compromising the investigation, you should avoid discussing this identification procedure or its results.

Do you understand the way the photo array procedure will be conducted and the other instructions I have given you?

I have read these instructions, or they have been read to me, and I understand the instructions. I am prepared to review the photographs, and I will follow the instructions provided on this form.

Signature

Date

Print Name



Follow-up Investigator Checklist Eyewitness Identification Procedures

Photo Arrays- Independent Administrator

- One suspect photo, at least five filler photos, and two blanks.
- Fillers should resemble description of the perpetrator in significant features.
- One filler is first, two blank are last, and remaining photos are random.
- Ensure no one who knows suspect identity is present.
- Someone who doesn't know suspect identity conducts the photo array.

THE FOLLOWING STEPS SHOULD BE CONDUCTED BY THE ADMINISTRATOR

- If possible, videotape or audiotape the entire identification procedure.
- Do not tell the witness how many photos will be shown.
- Issue a copy of instructions and read the instructions aloud.
- Ask the witness to sign and date the instruction sheet at the bottom of the form.
- Present the first photo & have him/her hand it back when done viewing.
- After the photo is handed back, ask: "Is this the person you saw _____?"
- If "Yes," ask: "In your own words, can you describe how certain you are?"
- Document answers carefully, even if the procedure is being recorded.
- Show the photos until you have gone through all the photographs.
- Carefully avoid any feedback or commenting on the procedure in any way.
- Only upon request may a witness view all the photos again.
- Do not write on, mark or in any way alter materials to be used in other procedures.
- Preserve photos and the order in which they were presented to the witness.
- Document:
 - -the administrator's name
 - -the procedure employed (photo array - independent administrator)
 - -date, time, and location of the procedure
 - -the total number of filler photos and blank photos
 - -names of persons present during the array
 - -if additional viewing occurred

Procedures for Multiple Suspects or Multiple Witnesses.

- Restrict witnesses from conferring with each other before, during, and after the photo array procedure.
- Instruct each witness independently, outside the presence of the other witnesses.
- If you need to show the same suspect to a new witness, have the administrator remix all but the lead filler and the two blank photos and renumber them accordingly.
- When showing a different suspect to the same witness, do not use the same fillers from any previous array shown to that witness.
- Avoid display of the same suspect to the same witness in two or more separate identification procedures.

**PHOTO ARRAY INSTRUCTIONS
INDEPENDENT ADMINISTRATOR**

In a moment, I am going to show you a series of photos. The person who committed the crime may or may not be included. I do not know whether the person being investigated is included. Even if you identify someone during this procedure, I will continue to show you all photos in the series.

Keep in mind that things like hairstyles, beards, and mustaches can be easily changed and that complexion colors may look slightly different in photographs.

You should not feel you have to make an identification. It is as important to exclude innocent persons as it is to identify the perpetrator.

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 look at each one. After each photo, I will ask you "Is this the person you saw [insert description of act here]?" Take your time answering the question. If you answer "Yes," I will then ask you, "In your own words, can you describe how certain you are?"

Because you are involved in an ongoing investigation, in order to prevent damaging the investigation, you should avoid discussing this identification procedure or its results.

Do you understand the way the photo array procedure will be conducted and the other instructions I have given you?

I have read these instructions, or they have been read to me, and I understand the instructions. I am prepared to review the photographs that will be presented to me, and I will follow the instructions provided on this form.

Signature

Date

Print Name

Photo Arrays- Folder System

- One suspect photo, at least five filler photos, and two blanks.
- Fillers should resemble description of the perpetrator in significant features.
- Gather 10 folders, each large enough to hold & fully conceal a photo.
- Set aside one folder containing a filler and two folders containing blank photos.
- Place remaining photos in folders & shuffle so you do not know which contains suspect.
- Position filler folder you set aside as first folder & blanks as last. Number the folders.
- Ensure that no other persons who know suspect identity is present.
- Position yourself close enough to communicate with him/her but in a place where witness can open a folder and look at the photo without your being able to see the photo.
- If possible, videotape or audiotape the entire identification procedure.
- Do not tell the witness how many photos will be shown.
- Issue a copy of instructions and read the instructions aloud.
- Ask the witness to sign and date the instruction sheet at the bottom of the form.
- Present folders one at a time, in order. Have witness return each folder when done viewing.
- After looking at a folder & returning it, ask: "Is this the person you saw _____?"
- If "Yes," ask, "In your own words, can you describe how certain you are?"
- Document answers carefully, even if the procedure is being recorded.
- Show the folders until you have gone through all the photographs.
- Carefully avoid any feedback or commenting on the procedure in any way.
- Only upon request, may a witness view all the folders again.
- Do not write on, mark or in any way alter materials to be used in other procedures.
- Preserve folders/photos and the order in which they were presented to the witness.
- Document:
 - -your name
 - -the procedure employed (photo array – folder system)
 - -date, time, and location of the procedure
 - -the total number of filler photos and blank photos
 - -names of persons present during the array
 - -if additional viewing occurred

Procedures for Multiple Suspects or Multiple Witnesses.

- Restrict witnesses from conferring with each other before, during, and after the photo array procedure.
- Instruct each witness outside the presence of the other witnesses.
- If you need to show the same suspect to a new witness, remix all but the lead filler and the two blank folders and renumber them accordingly.
- When showing a different suspect to the same witness, do not reuse the same fillers from any previous array shown to that witness.
- Avoid display of the same suspect to the same witness in two or more separate identification procedures.

Live Lineups

- Include only one suspect at a time in each lineup.
- Whenever possible, include a minimum of four fillers (non-suspects) per lineup.
- Fillers should resemble description of the perpetrator in significant features.
- Ensure witness does not encounter suspect or fillers before or after the procedure.
- If possible, videotape or audiotape the entire lineup procedure.
- To the extent possible, ensure no one who knows suspect is present during procedure (except defense counsel, if present).
- Do not tell the witness how many individuals will be shown.
- Issue a copy of instructions and read the instructions aloud.
- Ask the witness to sign and date the instruction sheet at the bottom of the form.
- Begin with all lineup participants out of the view of the witness.
- Always lead lineups with a filler (non-suspect.)
- Present each individual separately, in a determined order, removing those previously shown from the field of view.
- After each shown, ask: "Is this the person you saw _____?"
- If "Yes," ask, "In your own words, can you describe how certain you are?"
- Document answers carefully, even if the procedure is being recorded.
- Show the witness the next subject until all subjects have been shown.
- Ensure any actions (e.g., speaking, moving, etc.) are performed by all lineup members.
- Carefully avoid any feedback or commenting on the procedure in any way.
- Only upon request, may a witness view all members again after lineup has been completed.
- Whether or not the procedure is taped, document the suspect & fillers by photograph.
- Document:
 - the administrator's name
 - the procedure employed (live lineup)
 - date, time, and location of the procedure
 - the number of fillers
 - names of persons present during the lineup
 - if additional viewing occurred

Procedures for Multiple Suspects or Multiple Witnesses.

- Restrict witnesses from conferring with each other before, during, and after the lineup procedure.
- Instruct each witness independently, outside the presence of the other witnesses.
- Place the suspect in different positions in each lineup. Position all other members of the lineup randomly.
- When showing a different suspect to the same witness, do not use the same fillers from any previous array shown to that witness.
- Avoid display of the same suspect to the same witness in two or more separate identification procedures.

LIVE LINEUP INSTRUCTIONS

In a moment, I am going to show you a series of individuals. The person who committed the crime may or may not be included. I do not know whether the person being investigated is included. Even if you identify someone during this procedure, I will continue to show you all individuals in the series.

Keep in mind that things like hairstyles, beards, and mustaches can be easily changed.

You should not feel you have to make an identification. It is as important to exclude innocent persons as it is to identify the perpetrator.

The individuals will be shown to you one at a time and are not in any particular order. Take as much time as you need to look at each one. After each individual, I will ask you "Is this the person you saw [insert description of act]?" Take your time answering the question. If you answer "Yes," I will then ask you, "Can you describe how certain you are?"

Because you are involved in an ongoing investigation, in order to prevent compromising the investigation, you should avoid discussing this identification procedure or its results.

Do you understand the way the lineup procedure will be conducted and the other instructions I have given you?

I have read these instructions, or they have been read to me, and I understand the instructions. I am prepared to review the individuals who will be presented to me, and I will follow the instructions provided on this form.

Signature

Date

Print Name

Show-ups

- Before a show-up, consider that a proper photo array or lineup may be more reliable.
- Conduct a show-up if it is close in time to the time of the crime.
- Consider the future availability of witnesses in deciding whether to conduct a show-up.
- Videotape or audiotape the show-up procedure whenever possible &/or practical.
- Obtain a detailed description of the perpetrator, & carefully document this description.
- Whenever practical, transport the witness to the location of the suspect (as opposed to transporting the suspect to the witness).
- Do not conduct the show-up at a police station or other law enforcement building.
- Issue a copy of instructions and read the instructions aloud.
- Ask the witness to sign and date the instruction sheet at the bottom of the form.
- If possible and *safe*, have witness view suspect while not restrained or seated in a squad.
- Avoid words or conduct that may suggest the individual is or may be the perpetrator.
- After viewing the suspect, ask, "Is this the person you saw _____?"
- If "Yes," ask, "In your own words, can you describe how certain you are?"
- Document answers carefully, even if the procedure is being recorded.
- Photograph the suspect at the time of the show-up.
- Document:
 - -the administrator's name
 - -the procedure employed (showup)
 - -date, time, and location of the procedure
 - -names of persons present during the show-up

Procedures for Multiple Witnesses and Multiple Suspects

- Conduct show-ups individually, with no more than one witness present at a time.
- If there are multiple suspects, have the witness view separate show-ups, each conducted in accordance with these procedures.
- Do not show a witness two or more suspects at the same time.

SHOW-UP INSTRUCTIONS

In a moment, I am going to show you an individual. That person may or may not be the true perpetrator. I do not know if the person is the true perpetrator.

You should not feel you have to make an identification. It is as important to exclude innocent persons as it is to identify the perpetrator.

After you have observed the individual, I will ask you "Is this the person you saw [insert description of act]?" Take your time answering the question. If you answer "Yes," I will then ask you, "In your own words, can you describe how certain you are?"

Because you are involved in an ongoing investigation, in order to prevent compromising the investigation, you should avoid discussing this identification procedure or its results.

Do you understand the way this procedure will be conducted and the other instructions I have given you?

I have read these instructions, or they have been read to me, and I understand the instructions. I am prepared to observe the individual who will be presented to me, and I will follow the instructions provided on this form.

Signature

Date

Print Name