
Eyewitness Identification

610.1 PURPOSE AND SCOPE

This policy sets forth guidelines to be used when members of this office employ eyewitness identification techniques.

610.1.1 DEFINITIONS

Definitions related to the policy include:

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 line-up member is being viewed by the eyewitness.

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

Eyewitness identification process -Any field identification, live line-up or photographic identification.

Eyewitness- A person, including a victim, who views a photo line-up, live line-up, or a show-up and whose identification by sight or another person may be relevant in a criminal proceeding.

Field identification -Often referred to as a Show-up. A live presentation of a single individual to a witness following the commission of a criminal offense for the purpose of identifying or eliminating the person as the suspect.

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

Independent Administrator- A deputy, who is not participating in the investigation of the criminal offense, is unaware of which person in the line-up is the potential suspect and shows the photo line-up to the eyewitness. The use of an Independent Administrator in a photo line-up is known as the "Double Blind" method.

Live lineup -An identification procedure conducted at a detention center in which a group of persons, including the suspect, is displayed to an eyewitness to determine whether the eyewitness identifies the suspect as the perpetrator of a crime.

Photo lineup - An identification procedure in which an array of photographs, including a photograph of the suspect, is displayed to an eyewitness in hard copy or by digital image to determine whether the eyewitness identifies the suspect as the perpetrator of a crime. Photo line-ups are shown in either simultaneous or sequential format.

Sequential photo line-up- An array of photographs of individuals that includes the potential suspect and five (5) fillers who are similar in appearance to the description of the suspect provided by the eyewitness that are presented one at a time to an eyewitness for identification purpose.

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Show-up (commonly referred to as "one on one" or "field identification")- An identification procedure in which the suspect appears individually for possible identification by the eyewitness as the perpetrator of a crime.

Simultaneous photo line-up- (commonly referred to as a "six pack")- A computer-generated array of photographs of individuals that includes the potential suspect and five (5) fillers who are similar in appearance that is presented on a single sheet of paper to an eyewitness for identification purpose.

610.2 POLICY

This office will strive to use eyewitness identification techniques, when appropriate, to enhance the investigative process and will emphasize identifying persons responsible for crime and exonerating the innocent.

610.3 INTERPRETIVE SERVICES

Deputies should make a reasonable effort to arrange for an interpreter before proceeding with eyewitness identification if communication with a witness is impeded due to language or hearing barriers.

Before the interpreter is permitted to discuss any matter with the witness, the investigating deputy should explain the identification process to the interpreter. Once it is determined that the interpreter comprehends the process and can explain it to the witness, the eyewitness identification may proceed as provided for within this policy.

610.4 EYEWITNESS IDENTIFICATION FORM

The Detectives supervisor shall be responsible for the development and maintenance of an eyewitness identification process for use by members when they are conducting eyewitness identifications.

The process and any related forms or reports should provide:

- (a) The date, time and location of the eyewitness identification procedure.
- (b) The name and identifying information of the witness.
- (c) The name of the person administering the identification procedure.
- (d) If applicable, the names of all of the individuals present during the identification procedure.
- (e) An admonishment that the suspect's photograph may or may not be among those presented and that the witness is not obligated to make an identification.
- (f) An admonishment to the witness that the investigation will continue regardless of whether an identification is made by the witness.
- (g) A signature line where the witness acknowledges that he/she understands the identification procedures and instructions.

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The process and related forms should be reviewed at least annually and modified when necessary.

610.5 EYEWITNESS IDENTIFICATION

Deputies shall not reveal to a witness whether any subject or photo presented in a line-up is in any way connected to the case. Deputies should avoid mentioning that:

- The individual was apprehended near the crime scene.
- The evidence points to the individual as the suspect.
- Other witnesses have identified, or failed to identify, the individual as the suspect.

In order to avoid undue influence, witnesses should view suspects or a line-up individually and outside the presence of other witnesses. Witnesses will be instructed to avoid discussing details of the incident or of the identification process with other witnesses.

Each witness should be admonished that he/she is not required to make an identification of any person shown during an eyewitness identification process.

Whenever feasible, the eyewitness identification procedure should be audio and/or video recorded and the recording should be retained according to current evidence procedures.

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

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

(a) Obtaining a Description of the Perpetrator.

Prior to any line-up, the deputy shall record a thorough description of the perpetrator from each eyewitness, taken separately, in the witness' own words.

b. Witness Instructions:

1. Instructions for Photographic/Live Line-up

Prior to any photographic/live line-up, the deputy shall read the witness the following instructions:

You are being asked to view a group of people/photographs. You will be viewing them one at a time in random order. Please look at all of them. I am required to show you the entire series.

The perpetrator may or may not be in the line-up you are about to view. I do not know who the perpetrator is.

You should not feel compelled to make an identification. The Sheriff's Office will continue to investigate the incident whether or not you make a selection. If you do make an identification, I will

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ask you to state, in your own words, how certain you are. 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 results.

c. Instructions for Show-up

Prior to any show-up, the deputy shall read the following instructions to the witness:

You are being asked to view some people (even if only one person is shown). The person you saw may or may not be among the people you are about to view.

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 make an identification, I will ask you to state, in your own words, how certain you are. 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 results.

d. Witness Confidence Statement

If an identification is made, the deputy shall ask the witness immediately after the presentation for a statement of confidence in his or her selection in his own words. The statement shall be documented by the deputy, at signed by the eyewitness. If a folder shuffle technique or sequential presentation is employed, the administrator will tell the eyewitness that he is still required to show the eyewitness the remaining line-up members, even if an identification is made by the eyewitness earlier in the series of photographs/individuals presented to the eyewitness.

610.5.1 PHOTOGRAPHIC LINE-UP AND LIVE LINE-UP CONSIDERATIONS

The Washoe County Sheriff's Office recognizes that it is as much the responsibility of law enforcement to protect the innocent from misidentification, as it is to assist in the conviction of the guilty. Prior to utilizing any of the line-up methods, investigators should evaluate the case and all of the other evidence to determine if there will be a positive impact to the case by utilizing any eyewitness identification.

When practicable, the person composing the line-up and the person presenting the line-up should not be directly involved in the investigation of the case. When this is not possible, the member presenting the lineup must take the utmost care not to communicate the identity of the suspect in any way.

When practicable, the employee presenting a line-up to a witness should not know which photograph or person is the suspect.

Other persons or photos used in any line-up should bear similar characteristics to the suspect to avoid causing him/her to unreasonably stand out. In cases involving multiple suspects, a separate

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line-up should be conducted for each suspect. The suspects should be placed in a different order within each line-up.

The employee presenting the line-up to a witness should do so sequentially and not simultaneously (i.e., show the witness one person at a time). The witness should view all persons in the line-up.

The order of the suspect or the photos and the fillers photos should be randomized before being presented to each witness.

A live line-up should only be used before criminal proceedings have been initiated against the suspect. If there is any question as to whether any criminal proceedings have begun, the investigating deputy should contact the appropriate prosecuting attorney before proceeding.

610.5.2 PHOTO LINE-UP

Photo line-ups are an investigative tool and will not be the sole basis of an arrest unless by a lieutenant and approval of the District Attorney's office.

- (a) Photo line-ups should be generated using photographs electronically stored within the WebMug mug shot system. If a photograph of the suspect is not available in the WebMug mug shot system, a photo line-up may be generated using other data bases that provide similar photographs of every individual to be used in the array. Fillers should resemble the description of the suspect provided by the eyewitness and none of the line-up subjects should stand out. A sequential line-up may be used when the deputy cannot prepare a line-up from the WebMug mug shot system and must rely upon photographs from outside sources. These sources for the line-up may include photos from the WebMug mug shot system, yearbook photographs, Department of Motor Vehicles photographs or other sources providing photographs. All photo line-ups conducted will be retained as evidence unless generated and electronically stored within the WebMug mug shot system. In composing a photograph line-up, the deputy will adhere to the following guidelines:

Preparing photo line-ups:

- (a) Use of any juvenile photos must comply with Lexipol Policy 624 and NRS 62H.010.
- (b) Only one potential suspect will be included and randomly placed in each photo line-up.
- (c) In the event a simultaneous photo line-up is shown to more than one eyewitness the same six (6) photographs will be used and the position of the photographs will be changed.
- (d) Photo line-ups will contain six (6) photographs, one of the potential suspect and five (5) fillers who are similar in physical appearance to the description of the suspect provided by the eyewitness.
- (e) Complete uniformity of features is not required. The deputy may avoid using fillers who so closely resemble the suspect that a person familiar with the suspect might find it difficult to distinguish the suspect from the fillers.
- (f) The deputy will ensure that no writings, information concerning previous arrest, identifications or any other documentation associated with the identification process, is visible to the eyewitness on any photo line-up.

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- (g) The deputy will view the line-up once it is completed to ensure the suspect does not stand out and appears only once in the photo line-up.

Conducting a simultaneous photo line-up:

Supervisor responsibilities:

- (a) Will ensure the lead detective identifies which method will be utilized to show the photo line-up to the eyewitness;
- (b) Ensure all photographs used in the photo line-up depict a visual likeness of the potential suspect;
- (c) Ensure photographs positions have been changed when simultaneous photo line-up is used;
- (d) Review each photo line-up package and associated paperwork, post eyewitness viewing to ensure completeness.

Deputy responsibilities:

- (a) Complete the top portion of the Photo Line-up Witness Instructions;
- (b) Read the Photo Line-up Witness Instructions to the eyewitness:
 - 1. (a) When multiple eyewitnesses are involved, the deputy will separate the eyewitnesses and read the instructions to each separately.
 - (b) Eyewitnesses will not be allowed to confer with each other before or while being shown the photo line-up.
- (c) Once the instructions have been read, provide the eyewitness a copy of the Photo Line-up Witness Instructions and ask if they understand how the photo line-up procedure will be conducted. If they have no questions and fully understand the procedure, have the witness sign, and record the date and time.

Eyewitness viewing of the photo line-up:

- (a) Show the photo line-up to the eyewitness for as long as the eyewitness wishes,
- (b) If the eyewitness indicates that they recognize someone in the photo line-up, the deputy will ask the circumstances from which the eyewitness recognizes the individual. The deputy will document the eyewitness' response in either an arrest or deputy's report;
- (c) At the conclusion of the viewing have the witness indicate, in thier own words, which photograph they have identified, if any, in the statement section of the Photo Line-up Witness Instructions and sign, date and time signature section at the bottom of the form;
- (d) If the eyewitness identifies anyone in the photo line-up, the deputy will immediately seek and document a statement of confidence in the eyewitness's own words and will not provide the eyewitness any feedback regarding the individual selected or comment on the outcome of the procedure in any way;
- (e) The deputy will instruct the eyewitness not to discuss the line-up or its results with other eyewitnesses;

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- (f) In the event there are multiple eyewitnesses, each eyewitness will be shown an unviewed copy of the photo line-up, and the suspect photo will be placed in a different position in each line-up;
- (g) The deputy will document all line-up procedures, the date and time the photo line-up was conducted, and the names of all persons present when the photo line-up was shown;
- (h) All photo line-ups presented to eyewitnesses regardless of the outcome will become part of the investigative case file.

Conducting a Sequential Photo Line-up (these guidelines are in addition to the General Guidelines given above):

- (a) When conducting a sequential line-up, the deputy will not include more than one suspect within the array of photographs presented to the eyewitness;
- (b) Photographs will be shown to the eyewitness one at a time;
- (c) The deputy will show the eyewitness all of the photographs in the line-up, even if the eyewitness requests to see a specific photo after being shown the entire array, the deputy will show the entire array to the eyewitness again, in the same order in which it was initially presented;
- (d) In the event a sequential photo line-up is shown to more than one eyewitness the same six photographs will be used and the order of the photographs will be changed.

Conducting a Simultaneous or Sequential photo line-up using an Independent Administrator-"Double Blind" (these guidelines are in addition to the General Guidelines for both Simultaneous and Sequential photo line-ups given above):

- (a) Investigating Deputy:
 - 1. Will not inform the Independent Administrator the position of the potential suspects' photo before or after the viewing of the photo line-up by the eyewitness;
 - 2. Document in either an Arrest/Deputy's Report following:
 - (a) Name and Commission number of the Independent Administrator;
 - (b) Which method was used by the Independent Administrator and;
 - (c) The outcome of the photo line-up, including the statement of confidence
- (b) Independent Administrator
 - 1. Prior to conducting the photo line-up, the Independent Administrator will inform the eyewitness they do not know if the potential suspect is in the photo line-up or what position they are in;
 - 2. Once the photo line-up has been viewed by the eyewitness inform the investigating deputy of the results;
 - 3. Return all photos and documentation to the investigating deputy.

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610.5.3 LIVE LINE-UP

Organizing a Live Line-up

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

Conducting a Live Line-up

- (a) Use a blind administration technique.
- (b) Prior to the presentation, read instructions to the witness, ensuring and documenting that they understand the instructions.
- (c) Begin with all line-up participants out of view of the witness.
- (d) Present each individual to the witness separately, in a previously determined order, removing those previously shown.
- (e) Present each participant to the witness, even if the witness identifies a previous participant as the suspect. Witnesses may view the line-up a second time if they request to do so.
- (f) Any identifying actions, such as speech, gestures, or other movements, shall be performed by all eyewitness participants.
- (g) If identification is made, record a statement of confidence, which shall be signed by the witness.

610.5.4 FIELD IDENTIFICATION CONSIDERATIONS

Field identifications, also known as field elimination show-ups or one-on-one identifications, may be helpful in certain cases, where exigent circumstances make it impracticable to conduct a photo or live line-up identifications. A field elimination or show-up identification should not be used when independent probable cause exists to arrest a suspect. In such cases a live or photo line-up is the preferred course of action if eyewitness identification is contemplated.

When initiating a field identification, the deputy should observe the following guidelines:

- (a) Obtain a complete description of the suspect from the witness.
- (b) Assess whether a witness should be included in a field identification process by considering:
 - 1. The length of time the witness observed the suspect.
 - 2. The distance between the witness and the suspect.
 - 3. Whether the witness could view the suspect's face.

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4. The quality of the lighting when the suspect was observed by the witness.
 5. Whether there were distracting noises or activity during the observation.
 6. Any other circumstances affecting the witness's opportunity to observe the suspect.
 7. The length of time that has elapsed since the witness observed the suspect.
- (c) If safe and practicable, the person who is the subject of the show-up should not be handcuffed or in a patrol vehicle.
- (d) When feasible, deputies should bring the witness to the location of the suspect, rather than bring the suspect to the witness.
- (e) A person should not be shown to the same witness more than once.
- (f) In cases involving multiple suspects, witnesses should only be permitted to view the suspects one at a time.
- (g) A person in a field identification should not be required to put on clothing worn by the suspect, to speak words uttered by the suspect or to perform other actions mimicking those of the suspect.
- (h) If a witness positively identifies an individual as the perpetrator, deputies should not conduct any further field identifications with other witnesses for that suspect. In such instances deputies should document the contact information for any additional witnesses for follow up, if necessary.
- (i) If identification is made, the deputy shall ask the witness immediately after the presentation for a statement of confidence in his or her selection in his or her own words. The statement shall be documented by the deputy, and signed by the eyewitness.

610.6 DOCUMENTATION

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 the photo and live line-ups.
- In a photo or live line-up, any eyewitness identification of a filler.
- All identification and non-identification results obtained during the procedure, including witness confidence statements, signed by the witness.

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- If a photo line-up is developed electronically, the lineup shall be printed for documentation.