

Delaware Police Chiefs' Council
EYEWITNESS IDENTIFICATION – Model Policy

I. PURPOSE

- A.** The purpose of this policy is to establish guidelines for the use of eyewitness identifications involving show-ups, photographic identifications and lineups.

II. POLICY

- A.** Eyewitness identification is a frequently used investigative tool. As such, it is the policy of the _____ Police Department that officers shall strictly adhere to the procedures herein established in order to maximize the reliability of identifications, minimize unjust accusations of innocent persons and to establish evidence that is reliable and conforms with established legal procedure.

III. DEFINITIONS

Show-up: The presentation of a suspect to an eyewitness in a short time frame following commission of a crime to confirm or eliminate him or her as the perceived perpetrator. This practice is sometimes referred to as a field identification.

Photo Array: Showing photographs to an eyewitness for the purpose of identifying or eliminating suspects.

Lineup: Live presentation of individuals, before an eyewitness, for the purpose of identifying or eliminating suspects.

Independent Administrator: The officer administering a lineup or a photo array who has no knowledge of the suspect's identity.

Filler: A person used in a lineup, or a photograph of a person used in a photo array that is not a suspect in the crime under investigation and is not known to the witness.

Sequential: Presentation of photos, or individuals in a lineup, to a witness one at a time rather than all at once.

Simultaneous: Presentation of photos, or individuals in a lineup, to a witness, all at the same time.

IV. PROCEDURES

- A.** Show-ups: The use of show-ups should be avoided whenever possible in preference to the use of a photo array or a lineup. However, when exigent circumstances require the prompt display of a suspect to a witness, the following guidelines shall be followed to minimize potential misidentifications.
1. Document the witness's description of the suspect prior to conducting the show-up.

2. Use show-ups only when the suspect is detained within a reasonably short time frame following the offense.
3. Do not use single suspect show-ups if you already have sufficient probable cause to arrest the suspect.
4. Transport the witness to the location of the suspect whenever possible, rather than bringing the suspect to the witness. Never take suspects to the witness's residence unless it is the scene of the crime.
5. Do not conduct show-ups when the suspect(s) are in patrol cars, handcuffed, or physically restrained by police officers, unless absolutely necessary due to safety.
6. Explain to the witness that the person he or she is about to see, may or may not be the perpetrator and document this in the crime report.
7. If one witness identifies the suspect, use a lineup or photo array for remaining witnesses.
8. Do not require show-up suspects to put on clothing worn by, speak words uttered by, or perform other actions of the perpetrator.
9. Officers should avoid words or conduct of any type that may suggest to the witness that the individual is or may be the perpetrator.
10. Ask the witness how certain he or she is of any identification that is made of a suspect. Document the exact words used by the victim in the crime report, without prompting the witness to elaborate.
11. When Practical, record the identification process using an in-car camera.
12. Witnesses should be separated in order to avoid communication among them, and officers should obtain a thorough description of the suspect from each witness separately prior to the show-up. A suspect should only be viewed by one witness at a time, out of the presence and earshot of other witnesses.

B. Photographic Identifications

1. Creating a Photo Array
 - a. The photo array should consist of a minimum of six photographs. Use a minimum of five filler photos together with only one suspect. It is recommended that a filler be used as the first photo and all photos are to be numbered.
 - b. Use photographs of individuals who are reasonably similar in age, height, weight and general appearance and are of the same sex and race, according to the witness's description of the suspect. Do not mix color and black & white photos; use

- photos of the same size and basic composition;
never mix mug shots with other snapshots.
- c. Cover any portions of mug shots or other photos that provide identifying information on the subject, and similarly cover other photos used in the array.
2. Conducting the Photo Array
- a. An officer who is unaware of the identity of the suspect, acting as an independent administrator, should present the photos. No one who is aware of the suspect's identity should be present during the administration of the photo array.
 - b. If an independent administrator is not available, the investigating officer shall adhere to the following procedures.
 1. Place the suspect and each filler photo in a folder.
 2. Shuffle the folders before giving them to the witness.
 3. The officer administering the array should position himself or herself so that he or she cannot see inside the folders as they are viewed by the witness.
 - c. Whenever reasonably possible, conduct video and audio recordings of the photo array identification procedure. When it is not feasible to electronically record the identification procedure, comments and exchanges among persons present during an identification procedure should be documented in writing, and an explanation of why electronic recording was not feasible should be included in the record. A permissible reason for not electronically recording an identification procedure is the refusal of a witness to participate in an identification procedure if it is electronically recorded. The documentation, whether electronic or written, should include all witness comments, using the witness's own words, regarding the persons or photos in the lineup and all questions and commentary by the lineup administrator and any other persons present during the identification procedure. If the documentation is in writing, the witness should be asked to sign the documentation and any refusal to sign is to be noted.
 - d. Give the witness a copy of the instructions (**Attachment A for Sequential Arrays, Attachment B for Simultaneous Arrays**) prior to presenting the photo array and read the instructions aloud before the identification procedure.

- e. For sequential photo arrays position the photos so that the witness does not know the number of photos that will be shown.
- f. Show the photo array to only one witness at a time. Separate witnesses so they are not aware of the responses of other witnesses.
- g. If the eyewitness has previously viewed a photo lineup or live lineup in connection with the investigation of another person suspected of involvement in the offense, the fillers in the lineup in which the suspected perpetrator participates should be different from the fillers used in any prior lineups.
- h. The position of the suspect in a photo or live lineup should be changed for each new witness to view the photo lineup
- i. Avoid multiple identification procedures in which the same witness views the same suspect more than once. If identification of a suspect is sought more than once from a given witness, the report should contain a statement specifically articulating the reason for seeking a subsequent identification.
- j. Do not comment on selections in any way.
- k. Ask the witness to initial any photograph identified.
- l. Ask the witness to describe his or her certainty about any identification that is made. Document the witness's response in the crime report
- m. Ask the witness to complete and sign the Eyewitness Identification Form – Photo Lineup CPD Form#599.
- n. Preserve the photo array, together with full information about the identification process, for future reference.

C. Lineups: The _____ Police Department is not designed to easily facilitate a physical line-up consisting of a suspect and five or more people whose physical characteristics resemble the suspects. Prior to initiating any physical line-up the officer shall consult with the Attorney General's office.

POLICE DEPARTMENT

Eyewitness Identification Form: Sequential Photo Lineup

Complaint #: _____

Officer: _____

Date & Time Presented: _____

Witness Name: _____

INSTRUCTIONS *(read to witness)*

You will be asked to view a series of photos of individuals.

It is just as important to clear innocent persons from suspicion as to identify guilty parties.

I don't know whether the person being investigated is included in this series.

Individuals present in the series may not appear exactly as they did on the date of the incident because features such as head hair and facial hair are subject to change.

You should not feel that you have to make an identification. If you do identify someone, I will ask you to describe in your own words how certain you are.

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 examine each photo. If you make an identification, I will continue to show you the remaining photos in the series.

Regardless of whether you make an identification, we will continue to investigate the incident.

Since this is an ongoing investigation, you should not discuss the identification procedures or results.

Do you understand these instructions? _____

Witness Statement *(written by law enforcement official)*

Witness Picked photograph number: _____

I _____, affirm that I read or was read the instructions above, I understood the instructions, and the statement written by the law enforcement official accurately reflects what I said.

Finally, I understand that I should not talk to other people about the photos or tell them which photo I picked, if any.

Signature of Witness _____

POLICE DEPARTMENT

Eyewitness Identification Form: Simultaneous Photo Lineup

Complaint #: _____

Officer: _____

Date & Time Presented: _____

Witness Name: _____

INSTRUCTIONS *(read to witness)*

You will be asked to view a series of photos of individuals.

It is just as important to clear innocent persons from suspicion as to identify guilty parties.

I don't know whether the person being investigated is included in this series.

Individuals present in the series may not appear exactly as they did on the date of the incident because features such as head hair and facial hair are subject to change.

You should not feel that you have to make an identification. If you do identify someone, I will ask you to describe in your own words how certain you are.

All photos will be shown to you in a single display and are not in any particular order. Take as much time as you need to examine each photo.

Regardless of whether you make an identification, we will continue to investigate the incident.

Since this is an ongoing investigation, you should not discuss the identification procedures or results.

Do you understand these instructions? _____

Witness Statement *(written by law enforcement official)*

Witness Picked photograph number: _____

I _____, affirm that I read or was read the instructions above, I understood the instructions, and the statement written by the law enforcement official accurately reflects what I said.

Finally, I understand that I should not talk to other people about the photos or tell them which photo I picked, if any.

Signature of Witness _____