

	<b>DELMAR POLICE DEPARTMENT</b>	
	<b>Policy 7.42 Eyewitness Identifications</b>	
	<b>Effective Date: 04/06/16</b>	<b>Replaces: 2-14.1</b>
	<b>Approved: <u>Ivan Barkley</u> Chief of Police</b>	
	<b>Reference: N/A</b>	

## I. POLICY

Eyewitness identification is a frequently used investigative tool. This Policy is designed to maximize the reliability of identifications, minimize unjust accusations of innocent persons, and to establish evidence that is reliable and which conforms to established legal procedure.

## II. PURPOSE

It is the purpose of this policy to establish department guidelines for photographic line-up identification and field identification procedures. The procedures in this policy are applicable when a person is known to an investigator and is suspected of criminal involvement in the incident under investigation.

## III. DEFINITIONS

- A. Photo Lineup: a selected group of photographs of persons presented to an eyewitness to a crime, containing a single suspect and several fillers, for the purpose of determining whether the eyewitness is able to identify the suspect as the perpetrator.
- B. Live Lineup: a selected group of persons presented to an eyewitness to a crime containing a suspect and several fillers for the purpose of determining whether the eyewitness is able to identify the suspect as the perpetrator.
- C. Filler: a person, not a suspect in the crime under investigation, not known to the witness, who is made part of a live lineup; or a photograph of a person, not a suspect in the crime under investigation, not known to the witness, made part of a photo lineup and presented to a witness.
- D. Neutral Blind Administrator: a person who conducts photo or live lineup procedures while unaware of which person in the lineup is the suspect and which are fillers.
- E. Show up: the presentation of a live person in the field shortly after a crime is committed, to confirm or eliminate him or her as a suspect.

#### **IV. WITNESS INSTRUCTION**

Prior to presenting a live lineup or photo array identification procedure, the lineup administrator should instruct the witness that:

- A. The procedure is intended to identify guilty parties as well as to clear innocent suspects from suspicion;
- B. The witness should not guess or conclude that the perpetrator is among the persons in the lineup;
- C. The witness should not feel compelled to make an identification because the perpetrator may or may not be among those shown;
- D. The person administering the lineup may not be aware of which person in the lineup is the suspect;
- E. Individuals depicted in lineup photos may not appear exactly as they did on the date of the incident because features such as head and facial hair are subject to change;
- F. The police will continue to investigate the incident whether or not the witness identifies someone.

#### **V. DOCUMENTATION OF IDENTIFICATION PROCEDURES**

- A. All photo and live lineup identification procedures conducted in connection with a criminal investigation should be documented, regardless of whether an identification is made, made a part of the case record, and provided to the States Attorney and or the Deputy Attorney General in the event any prosecution related to the crime being investigated occurs. The documentation should include:
  - 1. The time, date, location, and identities of all persons present;
  - 2. A form listing the instructions listed in the “Witness Instructions” section of these procedures, signed by the witness to confirm understanding of the instructions prior to administration of the identification procedure;
  - 3. A photograph of any live lineup as presented to a witness; or all photographs used in any photo lineup preserved in their original condition;
  - 4. The order of presentation of photographs or individuals;
  - 5. The period of time that it took for the witness to identify a suspect upon viewing either the photograph of the lineup.
- B. All comments and exchanges during an identification procedure should be electronically recorded with audio or audio/video recording equipment whenever possible. 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; in such instances, the witness's refusal to allow electronic recording should be verified in writing with the witness. 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.

- C. If the witness makes an identification as a result of a photo or live lineup, the lineup administrator should immediately ask the witness to state in his or her own words how confident he or she is that the person identified is the perpetrator; and make the witness's words part of the record prior to any commentary or feedback from the lineup administrator or any other persons present. The witness should be asked to sign the portion of the record reflecting the witness's words.
- D. If no electronic recording of the identification procedure is made, the witness should review and sign the written record of the identification procedure, including all comments regarding the persons or photos presented, and any statements regarding an identification and degree of certainty, prior to any feedback or communication of information from the administrator or others involved in the investigation regarding the identification procedure.

## **VI. GENERAL REQUIREMENTS FOR COMPOSITION AND CONDUCT OF LINEUP IDENTIFICATION PROCEDURES**

- A. During the identification procedure, the administrator should refrain from any commentary or feedback to the witness regarding particular persons or photographs in a lineup until after the procedure is concluded and the witness certifies the record of the procedure.
- B. At least five fillers should be included in a photo lineup, in addition to the suspect, and at least four fillers should be included in a live lineup, in addition to the suspect.
- C. Only one member of a photo or live lineup should be a suspect, and the remainder should be fillers who are not suspects.
- D. Fillers should be selected who generally fit the witness's description of the perpetrator. When there is a limited or inadequate description of the perpetrator provided by the witness, or when the description of the perpetrator differs significantly from the appearance of the suspect, fillers should resemble the suspect in significant features.

- E. Lineup administrators should create a consistent appearance between the suspect and fillers with respect to any unique or unusual feature such as scars or tattoos used to describe the perpetrator by artificially adding or concealing that feature in filler photographs.
- F. In photo lineups, the suspect's photo should resemble his or her appearance at the time of the offense and not unduly stand out.
- 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. Law enforcement should seek identification of any particular suspect through photo or live lineups only once from any given witness. If identification of a suspect is sought more than once from a given witness, the record should contain a statement specifically articulating the reason for seeking a subsequent identification.
- I. In a photo lineup, no writings or information concerning any previous arrest, indictment, or conviction of the suspected perpetrator should be visible or made known to the eyewitness.
- J. The position of the suspect in a photo or live lineup should be changed for each new witness to view the photo lineup.
- K. In a live lineup, any identifying actions, such as speech, gestures, or other movements, should be performed by all lineup participants.
- L. In a live lineup, witnesses should not be exposed to the members of the lineup before the procedure begins.

## **VII. NEUTRAL BLIND ADMINISTRATION OF PHOTO AND LIVE LINEUPS**

- A. Whenever possible, the administrator of photo or live lineup identification procedures shall be someone who is not aware of which member of the lineup is the suspect in the case and which are fillers, and no person familiar with the identity of the suspect shall be present during the identification procedure.
- B. When it is not feasible to have the procedure administered by someone unaware of which person is the suspect, that reason shall be documented, and a photo lineup procedure should be conducted using an alternative method. Any alternative procedure should be structured to achieve neutral blind administration and prevent the administrator from viewing the lineup simultaneously with the witness or knowing the order of photographs as presented to the witness during the identification procedure.

- C. The preferred alternative method for a photo lineup procedure if it is not possible to have a photo lineup conducted in the manner described in Section VII (A) is as follows:
1. Use one suspect photograph that resembles the description of the perpetrator provided by the witness, five filler photographs that match the description, and ten folders (four of the folders will not contain any photos and will serve as ‘dummy folders’)
  2. Affix one filler photo to Folder #1 and number the folder.
  3. The individual administering the lineup should place the suspect photograph and the other four filler photographs into Folders #2 – 6 and shuffle the photographs so that he is unaware of which folder the suspect is in, and then number the remaining folders, including Folders #7 – 10, which will remain empty (this is done so that the witness does not know when he or she has seen the last photo).
  4. Prior to the presentation, read instructions to the witness as provided on the Delmar Police Department Photo Array Instruction Form (DPD Form 7.42), ensuring and documenting that the witness understands the instructions.
  5. Without looking at the photo in the folder, the administrator should hand each folder to the witness individually. Each time the witness has viewed a folder, the witness should indicate whether or not this is the person the witness saw and the degree of confidence in this identification, and return the photo to the administrator. The order of the photos should be preserved, in a facedown position, in order to document.
  6. The administrator should then document and record the results of the procedure, including the order of the folders used.
  7. If an identification is made, a statement of confidence should be recorded on DPD Form 7.42 and signed by the witness.

#### **VIII. PROCEDURES IF SEQUENTIAL PROCEDURE METHOD IS USED**

- A. Live line-up and photo array identification procedures may be presented to witnesses using a sequential method, in which a witness is shown photographs or live lineup participants one at a time, and not simultaneously. If a sequential method is used, the witness should be asked to state for each person whether the individual shown is the perpetrator, prior to viewing the next lineup participant.
- B. If a sequential procedure method is used, the administrator should not offer any comment or feedback to the witness regarding the witness’s responses.

- C. If there are multiple eyewitnesses and sequential procedure method is used, witnesses should be presented with the identification procedure separately, and the suspect should be placed in a different position in the lineup for each eyewitness.
- D. Under no circumstances should a sequential presentation be used unless the procedure complies fully with neutral blind administration specified in Section VII above.

## **IX. SHOWUP IDENTIFICATIONS**

It is preferable for identifications to be done through photo lineups or live lineups conducted pursuant to this policy. However, if circumstances require the prompt display of a suspect to a witness, the following guidelines should be followed:

- A. Show ups should be conducted only when the suspect is detained within a reasonably short timeframe following the offense.
- B. The witness should be transported to the suspect's location, whenever possible.
- C. Show up identifications should be recorded when possible.
- D. Prior to a show up presentation, DPD Form 7.42 should be read, ensuring and documenting that the witness understands the instructions.
- E. Officers should avoid suggestive words or conduct, such as presenting the suspect in handcuffs, from the backseat of a patrol car, or being physically restrained by police.
- F. 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.
- G. If an identification is made, a statement of confidence should be recorded on DPD Form 7.42 and signed by the witness.
- H. Subsequent to the show up, the reason that circumstances did not allow for a photo lineup or live lineup should be specifically documented.