

## Police Protocols for Eyewitness Identification

1. Every law enforcement agency should have a written policy on eyewitness identification.
2. All police officers should receive training in eyewitness identification.
3. Upon response to the scene of a crime, the police should make an effort to prevent eyewitnesses from comparing their recollections of the offender or the incident. The police often accomplish this by promptly separating the witnesses and interviewing each out of the earshot of the others. Witnesses should not participate in identification procedures together. For example, witnesses should not be transported together to view a suspect during a show-up or allowed to view a suspect within earshot of each other.
4. Police officers should use caution when they interview eyewitnesses. Specifically, whenever possible, they should avoid the use of leading questions.
5. Prior to asking an eyewitness to identify a suspect, police officers should obtain a detailed description of the offender.
6. Police officers should instruct eyewitnesses using standardized cards or forms to insure that complete instructions are given. The use of prepared instruction documents also helps the prosecution comply with the discovery rules of many states. The instructions should include:
  - a. The alleged wrongdoer may or may not be in the photographs depicted in the array;
  - b. It is just as important to clear a person from suspicion as to identify a person as the wrongdoer;
  - c. Individuals depicted in the photographs may not appear exactly as they did on the date of the incident because features such as weight, head, and facial hair are subject to change;
  - d. Regardless of whether an identification is made, the investigation will continue, and

- e. The procedure requires the administrator to ask the witness to state, in his or her own words, how certain he or she is of any identification.
7. The use of composites and sketches and the showing of mug files are disfavored.
8. Officers should avoid multiple identification procedures featuring any one suspect with the same witness.
9. Police officers should file a full report on every identification attempt, whether identification is made or not. Reports should include, at a minimum, the place where the procedure was conducted, who was present, the instructions given to the witness, any comments made to the witness before or after the identification, all comments made by the witness during or following the procedure, including any statement of certainty or confidence in any identification, and, in the case of a photo array, any steps taken to preserve the array. A copy of the array and the forms used and completed during the identification process should be included with the police report.

#### Best Practices for Photo Arrays and Lineups

1. When assembling a photo array, officers should ensure they are using a current and accurate photograph of the suspect. In the case of arrays and lineups, they should select fillers based on their similarity to the witness's description of the offender, not to the appearance of the suspect. However, officers must also ensure that nothing about the suspect or his photo makes him stand out.
2. Photographic arrays and lineups must contain at least five fillers and only one suspect. The police must not repeat fillers with the same witness from one array or lineup to the next.
3. When showing a photo array or conducting a lineup, the police must use a technique that will ensure that no investigator present will know when the witness is viewing the suspect. The preference is that the police have an officer who does not know who the suspect is administer the array or

lineup. With photo arrays, they may use a blinded technique such as the folder shuffle as an alternative.

4. Police officers must conduct photographic arrays and lineups by displaying the suspect and fillers sequentially.
5. Witnesses who ask to see a photo or lineup participant a second time should be shown the entire array or lineup, but no more than for a second time.
6. When an eyewitness identifies a photograph or person, the officer must immediately ask the witness how certain or confident he is of the identification, preferably without using a numeric scale.
7. When an officer is showing a photographic array or lineup to a subsequent witness in the same investigation, officers should shuffle the order so as to ensure that there could be no collusion between the two witnesses.
8. When submitting reports about photo arrays, officers should include copies of any instruction forms and a copy of the array.
9. Whenever practicable, the police should videotape or audiotape a photo array or lineup.

#### Best Practices for Show-ups

1. Show-ups are disfavored. However, when they are conducted, they should not be conducted more than two hours after the witness's observation of the suspect.
2. When transporting a witness to a show-up, officers should attempt to prevent the witness from hearing radio transmissions or other officer-to-officer conversations related to the suspect or their investigation.
3. When conducting a show-up, the police should minimize suggestiveness. Show-ups should not be conducted if the suspect is seated in the rear of a police cruiser, in a cell, or in any other enclosure associated with custody. If

the suspect is handcuffed, he should be situated so that the handcuffs are not visible to the witness.

4. During a show-up, the police should not tell the witness where the suspect was found or whether he did or said anything suspicious. Also, the police should not allow the witness to learn whether the suspect was found with items associated with the crime, such as the car used or a stolen purse.
5. The witness should be instructed using a standardized pocket card, similar to the form used with a photo array. Those instructions should include that the witness will be asked to view some people (even if only one suspect will be shown), and that the person the witness saw may or may not be among the people the witness will view.
6. Once a witness has positively identified the suspect at a show-up, the police should not conduct additional show-ups with the same suspect.
7. A show-up should not be conducted more than approximately two hours after the commission of the offense.
8. If show-ups are to be conducted with multiple witnesses, they should be conducted in such a way that one witness cannot see or hear the procedure or results of another witness.
9. When an eyewitness identifies a person, the officer should immediately ask the witness how certain or confident he or she is of the identification, preferably without using a numeric scale.

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Based on the "Supreme Judicial Court (of Massachusetts) Study Group on Eyewitness Identification; Report and Recommendations to the Justices."