

Eyewitness Identification

603.1 PURPOSE AND SCOPE

Eyewitness identification is an important investigative tool for identifying individuals suspected of committing crimes. The purpose of this policy is to set forth eyewitness identification protocols that will result in strong, reliable evidence while observing relevant constitutional and statutory protections. The safeguards incorporated into these protocols are intended to prevent the possibility of law enforcement personnel inadvertently or intentionally suggesting a positive identification to an eyewitness. (CRS § 16-1-109).

603.1.1 DEFINITIONS

Definitions related to the policy include:

- A. Eyewitness: a person who observed another person at or near the scene of an offense.

- B. Filler: a person or photograph of a person who is not suspected of the offense in questions and is included in an identification procedure.

- C. Showup: an identification procedure in which an eyewitness is presented with a single suspect in person to determine if the eyewitness identifies the suspect as the perpetrator of an offense.

- D. Photo Array (Photo Lineup): an identification procedure in which a group of photographs, including a photo of the suspected perpetrator of an offense and photos of additional fillers, is shown to an eyewitness to determine if the eyewitness identifies the suspect as the perpetrator. The photographs may be displayed in either hard copy form or via electronic means.

- E. Live Lineup: a live identification procedure in which a group of people, including the suspected perpetrator of an offense and additional fillers, is shown to an eyewitness to determine if the eyewitness identifies the suspect as the perpetrator.

- F. Administrator: the person who is conducting an identification procedure.

- G. Blind administrator: the administrator of an identification procedure who does not know the identity of the suspect when it is viewed by the eyewitness.

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H. Blinded administrator: the administrator of an identification procedure who may know who the suspect is, but does not know in which position the suspect is placed in a photo array.

I. Confidence Statement: a statement by an eyewitness immediately following an identification regarding his or her confidence in the identification's accuracy.

603.2 POLICY

This department 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.

603.3 INTERPRETIVE SERVICES

Members 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 member 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.

603.4 EYEWITNESS IDENTIFICATION PROCESS AND FORM

The Investigations 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 should include appropriate forms or reports that 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 instruction to the witness that it is as important to exclude innocent persons as it is to identify a perpetrator.
- (f) An instruction to the witness that the perpetrator may or may not be among those presented and that the witness is not obligated to make an identification (CRS § 16-1-109).
- (g) If the identification process is a photographic or live lineup, an instruction to the witness that the perpetrator may not appear exactly as he/she did on the date of the incident.

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- (h) An instruction to the witness that the investigation will continue regardless of whether an identification is made by the witness (CRS § 16-1-109).
- (i) A signature line where the witness acknowledges that he/she understands the identification procedures and instructions.
- (j) A statement from the witness in the witness's own words describing how certain he/she is of the identification or non-identification. This statement should be taken at the time of the identification procedure.

The process and related forms should be reviewed at least annually and modified when necessary (CRS § 16-1-109).

603.5 EYEWITNESS IDENTIFICATION

Members are cautioned not to, in any way, influence a witness as to whether any subject or photo presented in a lineup is in any way connected to the case. Members 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 lineup individually and outside the presence of other witnesses. Witnesses should be instructed to avoid discussing details of the incident or of the identification process with other witnesses.

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

603.6 DOCUMENTATION

A thorough description of the eyewitness process and the results of any eyewitness identification should be documented in the case report (CRS § 16-1-109).

If a photographic lineup is utilized, a copy of the photographic lineup presented to the witness should be included in the case report. In addition, the order in which the photographs were presented to the witness should be documented in the case report.

603.7 PUBLIC ACCESS TO POLICY

This policy shall be made available to the public, without cost, upon request (CRS § 16-1-109).

603.8 PHOTOGRAPHIC AND LIVE LINEUP CONSIDERATIONS

When practicable, the member presenting the lineup should not be involved in the investigation of the case or know the identity of the suspect. In no case should the member presenting a lineup to a witness know which photograph or person in the lineup is being viewed by the witness. Techniques to achieve this include randomly numbering photographs, shuffling folders or using a computer program to order the persons in the lineup (CRS § 16-1-109).

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Individuals in the lineup should reasonably match the description of the perpetrator provided by the witness and should bear similar characteristics to avoid causing any person to unreasonably stand out. In cases involving multiple suspects, a separate lineup should be conducted for each suspect. The suspects should be placed in a different order within each lineup (CRS § 16-1-109).

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

A live lineup 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 member should contact the appropriate prosecuting attorney before proceeding.

603.9 PHOTOGRAPHIC LINEUP PROCEDURES

A. CREATING THE PHOTO ARRAY

Instructions to the officer/investigator creating the photo array:

1. Fillers should be similar in appearance to the suspect and to the eyewitness' original description of the suspect. Similarities should include gender, age, race, height, hair color, facial hair, clothing and distinctive physical features.
2. At least five fillers should be included in each photo array, in addition to the suspect. Administrators should not include fillers who are known to the eyewitness.
3. Only one suspect should be included in a photo array. If there is more than one suspect in an investigation, a separate photo array should be made for each suspect. Different fillers should be used in the separate arrays.
4. Photos used in an array should be of consistent size, quality, color and background. Photos should not contain stray markings or information about the subject. Any markings or identifying information should be covered. If one photo in the array is covered in any manner, all the photos should be similarly covered.

B. COMMUNICATING WITH THE EYEWITNESS

Instructions for the officer/investigator communicating with the eyewitness:

1. When contacting an eyewitness to arrange for viewing a photo array, the officer/investigator should advise only that he/she intends to conduct a photo identification procedure.
2. Avoid addressing whether a person is in custody or whether other supporting evidence about the suspect has been obtained (such as statements, physical evidence, other identifications).
3. When an eyewitness arrives to view the array, he/she should be prevented from speaking to any other eyewitnesses about the identification procedure.

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4. The administrator should provide the following or substantially similar instructions to an eyewitness before displaying a photo array:

- a. The eyewitness is being asked to view a photo array as part of an ongoing investigation into a crime that occurred on ____ (date) at ____ (location), to see if the eyewitness recognizes anyone involved with the crime.
- b. The eyewitness should not assume the administrator knows who the suspect is, or seek assistance from the administrator or anyone else present in making an identification.
- c. The suspect may or may not be pictured in the array.
- d. Individuals pictured in the photo array may not look exactly as they did on the date of the incident. Some features – like hairstyle or facial hair – are subject to change.
- e. The suspect may or may not be pictured in the array.
- f. Photos do not necessarily depict the true complexion of a person; it may be darker or lighter than appears in the photo.
- g. The eyewitness should pay no attention to any markings on the photos or any differences in the style/type of the photos.
- h. If the eyewitness makes an identification, the eyewitness will be asked about his/her level of certainty. The administrator will ask the eyewitness to choose whether he/she is confident, somewhat confident or not confident about his/her identification.
- i. The investigation will continue, regardless of whether the eyewitness makes an identification.

C. ADMINISTERING THE PHOTO ARRAY

The following or substantially similar steps should be taken in administering the photo array:

1. When practicable, a blind administrator is recommended for all photo arrays (an administrator who does not know the identity of the suspect).
2. When use of a blind administrator is impractical, blinded administration of the photo array should be used (the administrator knows the identity of the suspect, but not what position the suspect occupies in the array).
3. Examples of methods for blinded administration may include, but are not limited to, the following:
 - a. The photo array is created by an officer other than the administrator and then placed in a folder. The administrator gives the folder to the eyewitness, who looks at the array within the folder, so that the administrator cannot see the photos during the identification.

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- b. The administrator makes multiple arrays, placing the suspect's photo in different positions in each. The same fillers may be used in the multiple arrays. The arrays are then placed in separate, closed folders and the witness selects which one to view. The eyewitness looks at the array within the folder, so that the administrator cannot see the photos while the eyewitness is viewing them.
4. During all photo array procedures, the administrator should stand out of the eyewitness' line of sight during the viewing of the array, but in a position where he/she can observe and hear the eyewitness.
5. If multiple eyewitnesses are viewing a photo array, they should be prevented from speaking to one another about the identification procedure. Each eyewitness must view the array separately and be admonished not to discuss the identification procedure with any other eyewitness.
6. The administrator should always remain neutral during the identification procedure, so as not to suggest a particular photo to the eyewitness.
7. If both practicable and available, administrators are encouraged to video record the photo array procedure and confidence statement. Audio recording is an acceptable alternative if video recording is not practicable.
8. After viewing the array, the administrator should ask the eyewitness the following questions. If the eyewitness' answers are unclear, the administrator should ask the eyewitness what he/she meant by the answers.
 - a. Do you recognize anyone?
 - b. If so, what number do you recognize?
 - c. From where do you recognize this person?
9. If the eyewitness makes an identification, in addition to recording or memorializing any spontaneous statements made by the eyewitness, the eyewitness should be asked about his/her level of certainty. The administrator should ask the eyewitness to choose which of the following statements best describes his/her level of certainty in the identification:
 - I am confident that is the person I saw.
 - I am somewhat confident that is the person I saw.
 - I am not confident at all that is the person I saw.
10. The administrator should not comment, nod or make gestures (either positive or negative) on whether the eyewitness picked the suspect. If asked by the eyewitness, the administrator should explain he/she is not allowed to provide feedback.
11. Once the procedure is concluded and fully documented (see below), the administrator can talk to the eyewitness about the next steps in the case. The eyewitness

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should be instructed not to discuss the identification procedure with other eyewitnesses. Also, the administrator should not discuss any other identification procedures viewed by other eyewitnesses.

D. DOCUMENTING THE PHOTO ARRAY

Administrators should document the following or substantially similar information using appropriate forms or notes:

1. Where the procedure took place, who was present, the date and time it was administered.
2. Any statements, comments or physical reactions of the eyewitness while viewing the array.
3. Each eyewitness should complete a standard form that records their identifying information and the results of the procedure after viewing the array. The eyewitness should sign and date the array itself, or a copy supplied to document the identification procedure.
4. The eyewitness' confidence statement, including any spontaneous statements, should be documented word for word.

Preserve the photo array in the original form that was shown to each eyewitness. A copy of the photo array should be included with the case report.

603.10 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 lineup 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 lineup is the preferred course of action if eyewitness identification is contemplated.

When initiating a field identification, the member 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.
 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.

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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, members should bring the witness to the location of the subject of the show-up, rather than bring the subject of the show-up to the witness.
 - (e) The person who is the subject of the show-up 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 subjects of the show-up one at a time.
 - (g) The person who is the subject of the show-up 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 a subject of the show-up as the suspect, members should not conduct any further field identifications with other witnesses for that suspect. In such instances members should document the contact information for any additional witnesses for follow up, if necessary.