

Eyewitness Identification

604.1 PURPOSE AND SCOPE

It is the purpose of this policy to establish guidelines for eyewitness identification procedures involving show-ups, photo arrays, and line-ups. Erroneous eyewitness identifications have been cited as the factor most frequently associated with wrongful convictions. Therefore, in addition to eyewitness identification, all appropriate investigative steps and methods should be employed to uncover evidence that either supports or eliminates the suspect identification.

604.1.1 DEFINITIONS

Definitions related to the policy include:

Show-up - The presentation of a suspect to an eyewitness within a short time frame following the commission of a crime to either confirm or eliminate him or her as a possible perpetrator. Show-ups, sometimes referred to as field identifications, are conducted in a contemporaneous time frame and proximity to the crime.

Line-up - The process of presenting live individuals to an eyewitness for the purpose of identifying or eliminating suspects.

Photo Array - A means of presenting photographs to an eyewitness for the purpose of identifying or eliminating suspects.

Administrator - The law enforcement official conducting the identification procedure.

Blinded Presentation - The administrator may know the identity of the suspect, but does not know which photo array member is being viewed by the eyewitness at any given time

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

Filler - A live person, or a photograph of a person, included in an identification procedure who is not considered a suspect.

Sequential - Presentation of a series of photographs or individuals to a witness one at a time.

Simultaneous - Presentation of a series of photographs or individuals to a witness all at once.

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604.2 POLICY

The Rochester Police 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.

604.3 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 officer 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.

604.4 EYEWITNESS IDENTIFICATION PROCESS AND FORM

The Investigative Division 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 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.
- (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.
- (h) An instruction to the witness that the investigation will continue regardless of whether an identification is made by the witness.
- (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.
- (k) Any other direction to meet the requirements of the POST model policy.

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

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604.5 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.

604.5.1 LINEUP AND PHOTO ARRAY PROCEDURES

Basic procedures for conducting a Line-up or Photo Array:

- (a) Line-ups will not typically be utilized for investigations, unless conducting a photo array is not possible.
- (b) Whenever possible, a blind presentation shall be utilized. In cases where a blind presentation is not feasible for a photo array, a blinded presentation should be used. Live line-ups must be conducted using a blind presentation.
- (c) The line-up or photo array should consist of a minimum of six individuals or photographs. Use a minimum of five fillers and only one suspect.
- (d) Fillers should be reasonably similar in age, height, weight, and general appearance and be of the same sex and race, in accordance with the witness's description of the offender.
- (e) Avoid the use of fillers who so closely resemble the suspect that a person familiar with the suspect might find it difficult to distinguish the suspect from the filler.
- (f) Create a consistent appearance between the suspect and the fillers with respect to any unique or unusual feature (e.g., scars, tattoos, facial hair) used to describe the perpetrator by artificially adding or concealing that feature on the fillers.
- (g) If there is more than one suspect, include only one in each line-up or photo array.
- (h) During a blind presentation, no one who is aware of the suspect's identity should be present during the administration of the photo array. However, during a line-up, the suspect's attorney should be present.
- (i) Place suspects in different positions in each line-up or photo array, both across cases and with multiple witnesses in the same case.
- (j) Witnesses should not be permitted to see or be shown any photos of the suspect prior to the line-up or photo array.

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- (k) The witness shall be given a copy of the following instructions prior to viewing the line-up or photo array and the administrator shall read the instructions aloud before the identification procedure:

You will be asked to look at a series of individuals

The perpetrator may or may not be present in the identification procedure.

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

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

Sometimes a person may look different in a photograph than in real life because of different hair styles, facial hair, glasses, a hat or other changes in appearance. Keep in mind that how a photograph was taken or developed may make a person's complexion look lighter or darker than in real life.

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 individuals are not configured in any particular order.

If you make an identification, I will continue to show you the remaining individuals or 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

- l. The line-up or photo array should be shown to only one witness at a time; officers should separate witnesses so they will not be aware of the responses of other witnesses.
- m. Multiple identification procedures should not be conducted in which the same witness views the same suspect more than once.
- n. Officers should scrupulously avoid the use of statements, cues, casual comments, or providing unnecessary or irrelevant information that in any manner may influence the witnesses' decision-making process or perception.
- o. Following an identification, the administrator shall ask the witness to provide a confidence statement and document the witness's response.
- p. The administrator shall ask the witness to complete and sign an Eyewitness Identification Procedure Form.
- q. Line-up and photo array procedures should be video or audio recorded whenever possible. If a procedure is not recorded, a written record shall be created and the reason for not

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recording shall be documented. In the case of line-ups that are not recorded, agents shall take and preserve a still photograph of each individual in the line-up.

Photographic-Array

a. Creating a Photo Array

- (a) Use contemporary photos.
- (b) Do not mix color and black and white photos.
- (c) Use photos of similar size, physical characteristics, and basic composition.
- (d) Do not include more than one photo of the same suspect.
- (e) 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.
- (f) Where the suspect has a unique feature, such as a scar, tattoo, or mole or distinctive clothing that would make him or her stand out in the photo array, filler photographs should include that unique feature either by selecting fillers who have the same features themselves or by altering the photographs of fillers to the extent necessary to achieve a consistent appearance.
- (g) Fillers should not be reused in arrays for different suspects shown to the same witness.

b. Conducting the Photo Array

The photo array should be preserved, together with full information about the identification process as part of the case file and documented in a report. If a blind administrator is not available, the administrator shall ensure that a blinded presentation is conducted using the following procedures:

1. Place the suspect and at least five filler photos in separate folders for a total of six (or more depending on the number of fillers used).
2. The administrator will take one folder containing a known filler and place it to the side. This will be the first photo in the series. The administrator should then shuffle the remaining folders (containing one suspect and the remainder of fillers) such that he or she cannot see how the line-up members are ordered. These shuffled folders will follow the first filler photo. The stack of photos is now ready to be shown to the witness.
3. The administrator should position himself or herself so that he or she cannot see inside the folders as they are viewed by the witness.
4. The witness should be asked if he or she recognizes the person in the photo before moving onto the next photo. If an identification is made before all of the photos are shown, the administrator should tell the witness that he or she must show the witness all of the photos and finish showing the sequence to the witness, still asking after each photo if the witness recognizes the person in the photo.
5. If possible, the array should be shown to the witness only once. If, upon viewing the entire array the witness asks to see a particular photo or the entire array again, the witness should be instructed that he or she may view the entire array only one additional time. If a second viewing is permitted, it must be documented.

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[See attachment: Photo Display Administrator_2.pdf](#)

[See attachment: Photo Display Witness Instructions.pdf](#)

[See attachment: Photo Display Form Witness_2.pdf](#)

Line-ups

- (a) Conducting the Line-up
 1. Live line-ups shall be conducted using a blind administrator.
 2. Ensure that all persons in the line-up are numbered consecutively and are referred to only by number.
- (b) The primary investigating officer is responsible for the following:
 1. Scheduling the line-up on a date and at a time that is convenient for all concerned parties, to include the prosecuting attorney, defense counsel, and any witnesses.
 2. Ensuring compliance with any legal requirements for transfer of the subject to the line-up location if he or she is incarcerated at a detention center.
 3. Making arrangements to have persons act as fillers.
 4. Ensuring that the suspect's right to counsel is scrupulously honored and that he or she is provided with counsel if requested. Obtaining proper documentation of any waiver of the suspect's right to counsel.
 5. Allowing counsel representing the suspect sufficient time to confer with his or her client prior to the line-up and to observe the manner in which the line-up is conducted.

604.5.2 SHOW UP

The use of show-ups should be avoided whenever possible in preference to the use of a lineup or photo array procedure. However, when circumstances require the prompt presentation of a suspect to a witness, the following guidelines shall be followed to minimize potential suggestiveness and increase reliability:

- (a) Document the witness's description of the perpetrator prior to conducting the show up.
- (b) Conduct a show-up only when the suspect is detained within a reasonably time frame after the commission of the offense and within a close physical proximity to the location of the crime.
- (c) Do not use a show-up procedure if probable cause to arrest the suspect has already been established.

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- (d) If possible, avoid conducting a show-up when the suspect is in a patrol car, handcuffed, or physically restrained by officers, unless safety concerns make this impractical.
- (e) Caution the witness that the person he or she is about to see may or may not be the perpetrator—and it is equally important to clear an innocent person. The witness should also be advised that the investigation will continue regardless of the outcome of the show-up.
- (f) Do not conduct the show-up with more than one witness present at a time.
- (g) Separate witnesses and do not allow communication between them before or after conducting a show-up.
- (h) If one witness identifies the suspect, use a line-up or photo array for remaining witnesses.
- (i) Do not present the same suspect to the same witness more than once.
- (j) Do not require show-up suspects to put on clothing worn by, speak words uttered by, or perform other actions of the perpetrator.
- (k) Officers should scrupulously avoid words or conduct of any type that may suggest to the witness that the individual is or may be the perpetrator.
- (l) Ask the witness to provide a confidence statement.
- (m) Remind the witness not to talk about the show-up to other witnesses until police or prosecutors deem it permissible.
- (n) Videotape the identification process using an in-car camera or other recording device when feasible.
- (o) Document the time and location of the show-up, the officers present, the result of the procedure, and any other relevant information.

604.6 DOCUMENTATION

A thorough description of the eyewitness process and the results of any eyewitness identification should be documented in the case report.

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.

604.6.1 DOCUMENTATION RELATED TO RECORDINGS

The member conducting the lineup should document the reason that an audio and/or video recording was not obtained, if applicable.

Attachments

Photo Display Witness Instructions.pdf

Rochester Police Department Sequential Photo Display Instructions

The witness shall be given a copy of the following instructions prior to viewing the lineup or photo array and the administrator shall read the instructions aloud before the identification procedure:

1. ☐ You will be asked to look at a series of individuals. You will see only one photo at a time. They are not in any particular order. Take as much time as you need to look at each one.
2. ☐ The perpetrator may or may not be present in the identification procedure. It is just as important to clear innocent persons from suspicion, as it is to identify guilty parties.
3. ☐ I do not know whether the person being investigated is included in this series.
4. ☐ Sometimes a person may look different in a photograph than in real life because of different hairstyles, change in hair color, facial hair, glasses, a hat or other changes in appearance. Keep in mind that how a photograph was taken or developed may make a person's complexion look lighter or darker in real life.
5. ☐ 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.
6. ☐ If you make an identification, I will continue to show you the remaining individuals or photos in the series.
7. ☐ Regardless of whether you make an identification, we will continue to investigate the incident.
8. ☐ Since this is an ongoing investigation, you should not discuss the identification procedure or results with any other potential witness in the case.

Photo Display Form Witness_2.pdf

**Rochester Police Department
Sequential Photo Display Form - Witness**

ICR: OFFENSE: LINE UP#

WITNESS NAME: DOB: ADMINISTRATOR:

DATE: TIME: INVESTIGATOR ASSIGNED:

READ TO WITNESS BEFORE PHOTO DISPLAY:

☐ I am about to show you a set of photos. The person who committed the crime [or:]
may or may not be included.

SELECT ONE OF THESE OPTIONS AND READ:

- ☐ (IA) I do not know whether the person being investigated is included, **OR**
☐ (FE) I do not know the order of the photos.

READ TO WITNESS BEFORE PHOTO DISPLAY:

1. ☐ You will be asked to look at a series of individuals. You will see only one photo at a time. They are not in any particular order. Take as much time as you need to look at each one.
2. ☐ The perpetrator may or may not be present in the identification procedure. It is just as important to clear innocent persons from suspicion, as it is to identify guilty parties.
3. ☐ I do not know whether the person being investigated is included in this series.
4. ☐ Sometimes a person may look different in a photograph than in real life because of different hairstyles, change in hair color, facial hair, glasses, a hat or other changes in appearance. Keep in mind that how a photograph was taken or developed may make a person's complexion look lighter or darker in real life.
5. ☐ 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.
6. ☐ If you make an identification, I will continue to show you the remaining individuals or photos in the series.
7. ☐ Regardless of whether you make an identification, we will continue to investigate the incident.
8. ☐ Since this is an ongoing investigation, you should not discuss the identification procedure or results with any other potential witness in the case.

Please initial here if you understand these instructions: _____

(WITNESS TO INITIAL)

TO BE COMPLETED BY WITNESS AFTER PHOTO DISPLAY:

The sequential photo lineup I was shown consisted of _____ photos.

- ☐ I am unable to select any photo as being the person(s) who _____.
- ☐ I have selected photo(s) # _____ as the person who _____.

(IF SELECTION MADE) How certain are you of your identification?

_____ Date: _____ Time: _____

Witness Signature

(Have witness sign and date any photo picked and attach to this report)

Photo Display Administrator_2.pdf

Rochester Police Department
Sequential Photo Display Form – Administrator

ICR:

Witness:

Lineup #:

Administrator ☐ does ☐ does not know identity of suspect.

Instructions to administrator (READ BEFORE SHOWING PHOTO DISPLAY):

A sequential photo lineup must either be presented by an *independent administrator [IA]* (a person who does *not* know the identity of the suspect) or, if unavailable, a *functional equivalent [FE]* method must be used. Functional equivalent means (1) that the administrator cannot see and does not know the order of the photos, and (2) that the witness knows the administrator does not know the order. Before beginning the photo display, determine which of these two methods is used (IA or FE), select the appropriate instruction option on the *Witness* form and cross out the inapplicable option on the *Witness* form.

Fill out the case information on the top of the form. Provide the witness a copy of the instructions. Read instructions on the *Witness* form to the witness and have the witness initial. Show photos one at a time. Only one photo at a time may be visible. As each photo is displayed, ask “Is this the person who [insert crime]?” If yes, ask, “How certain are you of your identification?” Even if the identification is made, continue showing remaining photos. After all photos have been displayed in the same sequence, even if the witness only requests to see a particular photo or photos again.

Ask witness to complete witness portion of the form and sign it. If any selection is made, have the witness sign and date the photo(s) selected. The photo display used must be preserved. (Attach copy to this form.) BE CAREFUL NOT TO PROVIDE ANY FEEDBACK TO WITNESS ON EITHER IDENTIFICATION OR NON-IDENTIFICATION.

After witness has completed the witness portion of the form, complete the administrator portion of the form. This includes asking the certainty question, administrator observations and number of times display was shown. Information about the identification process should be documented in a supplemental report.

To be completed during and after the photo display:

Comments made by the witness to any photograph during the photo display (note photo #):

(If identification made) How certain are you of your identification? _____

Additional observations by administrator (e.g., any physical response or other comments by witness):

Sequential lineup was shown ☐ once / _____ times

Date: _____ Time: _____

Administrator's signature