



Model Policy Draft



Subject

Eyewitness Identification:
Photo Arrays, Live Lineups, Showups, Facial Composites

Effective Date

April 2005

References

Eyewitness Evidence: A Guide for Law Enforcement (October 1999) and Eyewitness Evidence: A Trainer's Manual for Law Enforcement (September, 2003), United States Department of Justice.

Model Policy & Procedure for Eyewitness Identification; Comprehensive Review & Analysis of Best Practices (March 2005), State of Wisconsin Department of Justice, Office of the Attorney General

Special Instructions

Distribution

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I. PURPOSE

To establish guidelines for the use of eyewitness identification procedures involving photo arrays, live lineups, showups, & facial composites. Further, to reduce the risk of wrongful conviction of innocent persons while increasing the probability of convicting the guilty persons.

II. POLICY

Eyewitness identification has always been a powerful tool for investigating and prosecuting criminal cases. Eyewitness evidence can be the most important and convincing evidence in a case. Research and nationwide experience suggest that eyewitness evidence can be fragile, and that eyewitnesses can be mistaken. Eyewitnesses can make identification errors, but those errors may be difficult to detect, because the witnesses are sincere and have no motive to lie. When wrong, they usually are not being deceitful, but are simply mistaken. To reduce the risk of wrongful conviction and aid in the detection and apprehension of the guilty, officers should adhere to procedures set forth here in order to maximize the reliability of identifications, minimize unjust accusations of innocent persons and to establish evidence that is reliable and conforms to established legal procedure.

III. DEFINITIONS

A. Photo Array: The sequential showing of multiple photographs to an eyewitness for the purpose of obtaining an identification.

B. Live Lineup: The presentation of a number of individuals, including a suspect, sequentially before an eyewitness.

C. Showup: The presentation of one suspect to an eyewitness within a short time following commission of a crime.

IV. PROCEDURES

A. Photo Arrays & Live Lineups General Considerations

- 1) Choose non-suspect fillers that fit the witness's description and that minimize any suggestiveness that might point toward a suspect;
- 2) Use 'double blind' procedures, in which the administrator is not in a position to unintentionally influence the witness's selection;
- 3) Specifically instruct eyewitnesses that the real perpetrator may or may not be present and that the administrator does not know which person is the suspect;
- 4) Present the suspects and fillers sequentially (one at a time) rather than simultaneously (all at once.) This encourages absolute judgments of each person presented, because eyewitnesses are unable to see the subjects all at once and are unable to know when they have seen the last subject;
- 5) Assess eyewitness confidence immediately following an identification. Carefully document a witness's response before any feedback from law enforcement;

6) Avoid multiple identification procedures in which the same witness views the same suspect more than once.

B. Showups General Considerations

Some courts have suppressed identification evidence based on the use of showups due to inherent suggestiveness of the practice. Therefore, the use of showups should be secondary in preference to the use of photo arrays or lineups when possible. However, when exigent circumstance requires the use of a showup, the following guidelines should be considered:

- 1) Document the eyewitness's description carefully prior to the showup.
- 2) Whenever practical, transport the eyewitness to the location of the suspect. Showups should not be conducted at law enforcement headquarters or other public safety buildings.
- 3) Specifically instruct eyewitnesses that the real perpetrator may or may not be present.
- 4) Showups should not be conducted with more than one witness present at a time. If identification is conducted separately for more than one witness, witnesses should not be permitted to communicate before or after any procedures regarding the identification of the suspect.
- 5) The same suspect should not be presented to the same witness more than once.
- 6) Showup suspects should not be required to put on clothing worn by the perpetrator. They may be asked to speak words uttered by the perpetrator or to perform other actions of the perpetrator.
- 7) Words or conduct of any type by officers that may suggest to the witness that the individual is or may be the perpetrator should be scrupulously avoided.
- 8) Assess eyewitness confidence immediately following an identification.

C. Facial Composite General Considerations

Inaccurate information from outside an eyewitness's memory can taint development of a composite. As with photo arrays, live lineups, and showups, composites can be compromised if the witness's description relies on information learned from external sources after the crime or if the person administering the procedure either unintentionally supplies the witness with information or unintentionally incorporates outside knowledge of the case into the production of the composite. For this reason, when a composite is used, double-blind concepts & principles in which both the witness and the person making the composite are unaware of external information about the case may be helpful. It may not be feasible to conduct a completely double-blind procedure for a variety of reasons, in which case witnesses should be told to rely on their independent recollection of the event - not information learned from other sources - and administrators must be mindful of any natural tendency to incorporate prior knowledge into the process.

Note: Every effort has been made by the Wisconsin Department of Justice Staff and advisory committees to ensure that this model policy incorporates the most current information and contemporary professional judgment. However, law enforcement administrators must be cautioned that no "model" policy can meet all the needs of any given law enforcement agency. Each agency operates in a unique environment of federal court rulings, state laws, local ordinances, regulations, judicial and administrative decisions, prosecutor guidelines and collective bargaining agreements that must be considered. In addition, the formulation of specific agency policies must take into account local political and community perspectives and customs, prerogatives and demands; often divergent law enforcement strategies and philosophies; and the impact of varied agency resource capabilities, among many other factors.