



Chapter 6 - Investigation Operations

Section 610 - Eyewitness Identification

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Eyewitness Identification Policy

SCOPE

This policy sets forth guidelines to be used when members of this department employ eyewitness identification techniques.

610.1.1 DEFINITIONS

Definitions related to the policy include:

Administrator – The peace officer conducting the Lineup.

Blind Presentation – In this type of presentation, the Administrator does not know the identity of the suspect.

Blinded Presentation – In this type of presentation, the Administrator may know the identity of the suspect, but does not know which photo in a photographic lineup the eyewitness is viewing at any given time.

Confidence Statement – A verbal statement in which the witness describes his or her level of certainty in the identification. This is done immediately after the viewing and may or may not be memorialized with an audio recording.

Eyewitness identification process - Any Field identification, Live Lineup or Photographic lineup

Field identification - Also referred to as a "Show-up" is the presentation of a suspect to an eyewitness within a short time after the commission of a crime to either confirm or eliminate the individual as a suspect.

Filler – A "Filler" is a live person in the case of a Live Lineup or a photograph of a person in the case of a Photographic Lineup shown to the witness, who is not a suspect in the crime.

Lineup – A presentation of more than one person, either Live or Photographic, for the purpose of identifying or eliminating an individual as a suspect.

Live Lineup - A live presentation of individuals to a witness for the purpose of identifying or eliminating an individual as the suspect.

Photographic Lineup – Sometimes referred to as a "Photo Array" is the presentation of photographs to a witness for the purpose of identifying or eliminating an individual as 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.

610.2 POLICY

It is the purpose of this policy to establish guidelines for eyewitness identification procedures involving Field Identifications, Photographic Lineups (Photo Lineups) or Live Lineups. 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. In addition to eyewitness identification, appropriate investigative steps will be employed to reveal evidence that either supports or eliminates the suspect identification.

610.3 INTERPRETIVE SERVICES

Officers 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.

610.4 EYEWITNESS IDENTIFICATION FORM

The Investigations Sergeant shall be responsible for the development and maintenance of an eyewitness identification process for use by members when they are conducting eyewitness identifications.

610.5 EYEWITNESS IDENTIFICATION

Officers 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. Officers 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. Each witness should be admonished that he/she is not required to make an identification of any person shown during an eyewitness identification process. Whenever feasible, the eyewitness identification procedure should be audio and/or video recorded and the recording should be retained according to current evidence procedures.

610.5.1 FIELD IDENTIFICATION CONSIDERATIONS

Field Identifications, also known as Field Elimination Show-ups, ~~or~~ One-on-One Identifications or Show-ups, may be helpful in certain cases where exigent circumstances make it impracticable to conduct a Photo or Live Lineup identification. A Field Identification should not be used when independent probable cause exists to arrest a suspect. In such cases a Live Lineup or Photographic Lineup is the preferred course of action if eyewitness identification is contemplated. When initiating a Field Identification, the officer should observe the following guidelines:

- (a) Obtain a complete description of the suspect from the witness.
- (b) Do not conduct a Field Identification if probable cause has already been established for the arrest.
- (c) 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 witness observed the suspect.
 5. Whether there were distracting noises or activity during the observation.
 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.

(d) If safe and practicable, the person who is the subject of the Field Identifications ~~show-up~~ should not be handcuffed or in a patrol vehicle.

(e) When feasible, officers should bring the witness to the location of the suspect, rather than bring the suspect to the witness.

- (f) 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 be told that the investigation will continue regardless of the identification outcome.
- (g) Do not conduct the Field Identification with more than one witness at a time.
- (h) As much as is feasible, prevent eyewitnesses from communicating with each other prior to the Field Identification
- (i) Ask the witness not to speak with other potential witnesses about the identity of the suspect
- (j) If one witness identifies the suspect, use a Live Lineup or Photographic Lineup with other witnesses
- (k) Officers should be careful to avoid words or conduct that may suggest to the witness that the individual may or may not be the perpetrator
- (l) If feasible, videotape the identification process using an in-car video camera or audio record using another a device.
- (n) A person should not be shown to the same witness more than once.
- (o) In cases involving multiple suspects, witnesses should only be permitted to view the suspects one at a time.
- (p) A person in a Field Identification 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.
- (q) If a witness positively identifies an individual as the perpetrator, officers should not conduct any further field identifications with other witnesses for that suspect. In such instances, officers should document the contact information for any additional witnesses for follow up, if necessary.

610.5.2 PHOTOGRAPHIC AND LIVE LINEUP CONSIDERATIONS

When practicable, the person composing the Lineup and the officer acting as the Administrator ~~person~~ presenting the Lineup, should not be directly involved in the investigation of the case. When this is not practicable, the Administrator must take the utmost care not to communicate the identity of the suspect in any way.

When practicable, a "Blind Presentation" should be used in which the Administrator presenting a Lineup to a witness does not know which photograph or person is the suspect.

Other persons or photos used in any Lineup should bear similar characteristics to the suspect to avoid causing him/her 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. The officer who is the Administrator presenting the Lineup to a witness should do so sequentially and not simultaneously (i.e., show the witness one person at a time). The witness should view all persons in the Lineup. The order of the suspect or the photos and the Fillers should be randomized before being presented to each witness.

Unless advised otherwise by the Itasca County Attorney, a Live Lineup should only be used before criminal proceedings have been initiated against the suspect.

Procedures

1. Live Line-ups will not typically be utilized for investigations, unless conducting a Photographic Lineup is not possible.
2. Whenever possible, a Blind Presentation should be utilized. In cases where a Blind Presentation is not feasible for a Photographic Lineup, a Blinded Presentation should be used. Live lineups must be conducted using a Blind Presentation.
3. The Live Lineup or Photographic Lineup should consist of a minimum of six individuals or photographs. Use a minimum of five Fillers and only one suspect
4. Fillers should be reasonably similar in age, height, weight and general appearance and be the same sex and race, in accordance with the witness's description of the suspect.
5. Avoid the use of Fillers who so closely resemble the suspect that a witness might find it difficult to distinguish the suspect from the Fillers.
6. If feasible, create a consistent appearance between the suspect and the Fillers with respect to any unique or unusual feature (e.g., scars, tattoos, facial hair)
7. If there is more than one suspect, include only one in each Live Lineup or Photographic Lineup.
8. During a Blind Presentation, no one who is aware of the suspect's identity should be present during the Photographic Lineup. However, during a Live Lineup, the suspect's attorney may be present.
9. Suspects should be placed in different positions in each Live Lineup or Photographic Lineup, both across cases and within a case with multiple witnesses.
10. Witnesses should not be allowed to see any photos of the suspect before any type of Lineup
11. The Live Lineup or Photographic Lineup should be shown to only one witness at a time; officers should separate witnesses so they will not be aware of the responses of the other witnesses.
12. Multiple identification procedures should not be conducted in which the same witness views the same suspect more than once.

13. Officers should avoid statements, cues, casual comments, providing unnecessary or irrelevant information that may influence the witness's identification of a potential suspect.
14. Following an identification, the Administrator shall ask the witness how confident he or she is of the identification and document the response.
15. The Administrator should ask the witness to complete and sign an Eyewitness Identification Procedure Form available from the Investigative Sergeant.
16. Live Lineup and Photographic Lineup procedures should be video or audio recorded when feasible. If a procedure is not recorded, the reason for not doing so should be include in the officer's case report. In the case of Live Lineups that are not video recorded, a photograph shall be taken of each individual in the Live Lineup.
17. The witness shall be given a copy of the following instructions prior to viewing a Live Lineup or Photographic Lineup and the officer acting as the Administrator shall read the instructions to the witness prior to the identification procedure.

"You will be asked to look at a series of individuals. The perpetrator may or may not be present in this identification procedure. It is just as important to clear innocent people from suspicion, as it is to identify guilty people.

I do not know whether the person being investigated is included in the photos or people you are going to view.

Sometimes a person may look different in a photograph than in real life because of different hairstyles, facial hair, glasses, a hat or other changes in appearance. Keep in mind that how a photograph was taken, developed or copied 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.

These individuals are not configured in any particular order and if you make an identification, I will continue to show you the remaining individuals or photos.

You should know that regardless of whether or not you make an identification, this law enforcement agency will continue to investigate the crime.

Since this is an ongoing investigation, you should not discuss the identification procedures or results with anyone other than an officer of the Grand Rapids Police Department, Itasca County Sheriff's Department, the Minnesota Bureau of Criminal of Apprehension or the Itasca County Attorney."

PHOTOGRAPHIC LINEUP CONSIDERATIONS

When creating a Photographic Lineup, also known as a "Photo Array" consider the following:

1. Use contemporary photos
2. Do not mix color and black and white photos
3. Use photos of the same size and basic composition
4. Do not mix booking photos with other photos and ensure, as much as is possible, consistent appearance of photograph backgrounds and sizing
5. Do not include more than one photo of the same suspect
6. Cover any portions of the booking photo or other photos that provide identifying information on the subject; and similarly cover other photos used in the lineup
7. 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 Photographic Lineup. Filler photographs should include that unique feature as much as is possible, striving to obtain a consistent appearance.
8. Fillers should not be reused in Photographic Lineups for different suspects shown to the same witness.

The Photographic Lineup should be preserved, together with information about the identification process, as part of the case file and documented in the case report.

1. If a Blind Administrator is not available, the Administrator shall implement a "Blinded" presentation using the following

procedures

2. Place the suspect and at least five Filler photos in separate folders for a total of six or more photos, depending upon the number of fillers used.
3. The Administrator should take one folder containing a known Filler and place it to the side. This will be the first photo in the series of photographs. The Administrator should then shuffle the remaining folders containing the one suspect and the remainder of the Fillers such that the Administrator cannot see how the lineup 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.
4. The Administrator should position themselves so that the Administrator cannot see inside the folders as they are viewed by the witness.
5. 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 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.
6. If practicable, the Photographic Lineup should be shown to the witness only once. If, upon viewing the entire lineup the witness asks to see a particular photo or the entire lineup again, the witness should be instructed that he or she may view the entire lineup only one additional time. If a second viewing is permitted, it should be documented.

610.5.4 LIVE LINEUP CONSIDERATIONS

Conducting the Live Lineup

1. Live Lineups shall be conducted using a Blind Administrator
2. All people in a Live Lineup shall be numbered consecutively and referred to only by number
3. Law enforcement shall be responsible for arranging people to act as Fillers
4. The suspect will be given an opportunity to have counsel present and to observe during the Live Lineup
5. The agency arranging the Live Lineup shall consult with the County Attorney to insure that all Constitutional rights are preserved.

610.5.5 DOCUMENTATION

Officers shall document the time and location of any lineup, the officers present, the results and any other relevant information. A thorough description of the eyewitness process and the results of any eyewitness identification should be documented in the case report.

The Administrator in any Field Identification, Photographic Lineup or Live Lineup should ask the witness how confident they are of their identification. This should be done soon after the identification. If not documented with an audio recording, the statement should be noted word-for-word, as much as is possible, in the officer's case report.

If a Photographic Lineup is utilized, a copy of the Photographic Lineup presented to the witness shall 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.