



POLICY & PROCEDURE

HOLMEN POLICE DEPARTMENT

SUBJECT:	EYEWITNESS IDENTIFICATION	NUMBER:	4.5
		ISSUED:	10/20/2016
SCOPE:	All Sworn Personnel	REVIEWED:	01/28/2017
DISTRIBUTION:	Policy & Procedure Manual		
REFERENCE:	WI §175.50(2)	WILEAG 4 th EDITION STANDARDS: 16-6.3.7	

INDEX AS: Eyewitness Identification

PURPOSE: The purpose of this Policy & Procedure is to establish guidelines for the use of eyewitness identification procedures involving photo arrays, live lineups, show-ups, & facial composites. Further, to reduce the risk of wrongful conviction of innocent persons while increasing the probability of convicting the guilty persons.

This Policy and Procedure consists of the following numbered sections:

- I. POLICY
- II. DEFINITIONS
- III. PROCEDURE

I. 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 the established legal procedure.

II. DEFINITIONS

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

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

Show-up: The presentation of one suspect to an eyewitness within a short time following commission of a crime.

III. PROCEDURE

- As officers prepare to utilize procedures for eyewitness identification, they may wish to review the most recent information provided by the State of Wisconsin Department of Justice, “Eyewitness Identification Best Practices” found on the WILENET web site.

A. Photo Arrays & Live Lineups General Considerations

- i. Use at least six photographs of individuals who are reasonably similar in age, height, weight, and general appearance and of the same sex and race;
- ii. Whenever possible, avoid mixing color and black and white photos, use photos of the same size and basic compositions, and never mix mug shots with other snapshots or include more than one photo of the same suspect;
- iii. Cover any portions of mug shots or other photographs that provide identifying information on the subject, and similarly cover those used in the array;
- iv. Show the photo array to only one witness at a time;
- v. Never make suggestive statements that may influence the judgment or perception of the witness, and
- vi. Preserve the photo array, together with full information about the identification process, for future reference and place into evidence.

1. Lineups

- a. The primary investigating officer shall be responsible for:
 - i. Scheduling the lineup on a date and at a time that is convenient for all concerned parties, to include the prosecuting attorney, defense counsel and all witnesses,
 - ii. Fulfill the necessary legal requirements for transfer of the subject to the lineup location should he/she be incarcerated at a jail, make timely notice to the jail concerning the pickup and make arrangements for picking up the prisoner; and
 - iii. Make arrangements to have four to six other persons act as “fill ins” at the lineup who are of the same race sex and approximate height, weight, age and physical appearance and who are similarly clothed.

- b. The officer in charge of conducting the lineup shall

- i. Ensure that the prisoner has been informed of his or her right to counsel if formal charges have been made against him or her, and also ensure that she or she has the opportunity to retain counsel or request that one be provided;
- ii. Obtain a written waiver on the prescribed departmental form should the prisoner waive his or her right to counsel;
- iii. Allow counsel representing the accused sufficient time to confer with his client prior to the lineup and observe the manner in which the lineup is conducted;
- iv. Advise the accused that he or she may take any position in the lineup which they prefer and may change positions prior to summoning a new witness;
- v. Ensure that all persons in the lineup are numbered consecutively and are referred to only by number;
- vi. Ensure that a complete written record and videotape recording of the lineup proceedings is made and retained;
- vii. Ensure that witnesses are not permitted to see nor are they shown any photographs of the accused immediately prior to the lineup;
- viii. Ensure that not more than one witness views the lineup at a time and that they are not permitted to speak with on another during the lineup proceedings, and;
- ix. Avoid using statements, clues, casual comments, or providing unnecessary or irrelevant information that in any manner may influence the witnesses' decision-making process or perception.

B. Show-ups General Considerations:

Some courts have suppressed identification evidence based on the use of show-ups due to inherent suggestiveness of the practice (**State v. Dubose**) Therefore, the use of show-ups should be secondary in preference to the use of photo arrays or lineups when possible. However, when exigent circumstance requires the use of a show up, the following guidelines should be considered:

1. Document the eyewitness's description carefully prior to the show-up.
2. Whenever practical, transport the eyewitness to the location of the suspect. Show-ups 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. Show-ups 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. Show-up 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

1. 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
2. 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.
3. 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.
4. 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.

Shane Collins
Police Chief

This Policy & Procedure cancels and supersedes any and all previous written directives relative to the subject matter contained herein.

Initial 10/20/2016