DEPARTMENT OF CORRECTIONS

Policy Number:	**107.072**
Title:	**Eyewitness Identification Procedures**
Effective Date:	**9/16/24**

PURPOSE: To provide guidelines for eyewitness identification procedures involving show-ups, photo arrays, and line-ups to maximize the reliability of identifications, minimize erroneous identifications, and gather evidence that conforms to contemporary eyewitness identification protocols.

APPLICABILITY: Minnesota Department of Corrections (MN DOC) Fugitive Apprehension Unit

DEFINITIONS:

Administrator – the law enforcement official conducting the identification procedure.

Blind administrator – the administrator does not know the identity of the suspect.

Blind 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 their 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.

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.

Sequential – presentation of a series of photographs or individuals to a witness one at a time.

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 the suspect as a possible perpetrator. Show-ups, sometimes referred to as field identifications, are conducted in a contemporaneous time frame and proximity to the crime.

Simultaneous – presentation of a series of photographs or individuals to a witness all at once.

PROCEDURES:

A. Show-Ups

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.

1. Document the witness's description of the perpetrator prior to conducting the show up.

2. Conduct a show-up only when the suspect is detained within a reasonable time frame after the commission of the offense and within a close physical proximity to the location of the crime.

3. Do not use a show-up procedure if probable cause to arrest the suspect has already been established.

4. If possible, avoid conducting a show-up when the suspect is in a patrol car, handcuffed, or physically restrained by law enforcement personnel, unless safety concerns make this impractical.

5. Caution the witness that the person they are 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.

6. Do not conduct the show-up with more than one witness present at a time.

7. Separate witnesses and do not allow communication between them before or after conducting a show-up.

8. If one witness identifies the suspect, use a line-up or photo array for remaining witnesses.

9. Do not present the same suspect to the same witness more than once.

10. Do not require show-up suspects to put on clothing worn by, speak words uttered by, or perform other actions of the perpetrator.

11. MN DOC – fugitive apprehension unit members (FAUMs) should scrupulously avoid words or conduct of any type that may suggest to the witness that the individual is or may be the perpetrator.

12. Ask the witness to provide a confidence statement.

13. Remind the witness not to talk about the show-up to other witnesses until police or prosecutors deem it permissible.

14. Record the identification process using a body worn camera or other recording device.

15. Document the time and location of the show-up, the FAUMs present, the result of the procedure, and any other relevant information.

B. Basic Procedures for Conducting a Line-up or Photo Array

1. Line-up and Photo Array Procedures

a) Line-ups are not typically utilized for investigations, unless conducting a photo array is not possible.

b) Whenever possible, a blind administrator must be utilized. In cases where a blind administrator is not feasible for a photo array, a blind presentation must be used. Live line-ups must be conducted using a blind administrator.

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 suspect.

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 fillers.

f) Create a consistent appearance between the suspect and the fillers with respect to any unique or unusual feature (for example, 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 of a photo array, no one who is aware of the suspect's identity other than the administrator should be present. 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.

k). The witness must be given a copy of the following instructions prior to viewing the line-up or photo array and the administrator must 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; FAUMs 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). FAUMs 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 must ask the witness to provide a confidence statement and document the witness's response.

p). The administrator must ask the witness to complete and sign a MN DOC Fugitive Apprehension Unit Photo Display Form (attached).

q). Line-up and photo array procedures should be video or audio recorded whenever possible. If a procedure is not recorded, a written record must be created and the reason for not recording must be documented. In the case of line-ups that are not recorded, FAUMs must take and preserve a still photograph of each individual in the line-up.

2. Photo Arrays

a) Creating a photo array:
   (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) Never mix mug shots with other photos and ensure consistent appearance of photograph backgrounds and sizing.
   (5) Do not include more than one photo of the same suspect.
   (6) 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.
   (7) Where the suspect has a unique feature, such as a scar, tattoo, or mole, or distinctive clothing that would make them 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.
   (8) Fillers should not be reused in arrays for different suspects shown to the same witness.

b) Conducting the photo array:
   (1) 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.
   (2) If a blind administrator is not available, the administrator must ensure that a blind presentation is conducted using the following procedures.

(a) 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).
(b) The administrator takes one folder containing a known filler and places it to the side. This is the first photo in the series. The administrator should then shuffle the remaining folders (containing one suspect and the remainder of fillers) such that they cannot see how the line-up members are ordered. These shuffled folders follow the first filler photo. The stack of photos is now ready to be shown to the witness.
(c) The administrator should position themself so that they cannot see inside the folders as the folders are viewed by the witness.

(3) The witness should be asked if they recognize 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 they 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.

(4) 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 they may view the entire array only one additional time. If a second viewing is permitted, it must be documented.

3. Line-Ups
a) Conducting the line-up
(1) Live line-ups must 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 they are 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 they are 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 their client prior to the line-up and to observe the manner in which the line-up is conducted.

INTERNAL CONTROLS:

A. All forms, recordings, photos, and other documentation are retained in ACISS.

REFERENCES: Minn. Stat. § 626.8433

REPLACES: All facility policies, memos, or other communications whether verbal, written, or transmitted by electronic means regarding this topic.

ATTACHMENTS: MN DOC Fugitive Apprehension Unit Photo Display Form (107.072A) (public pdf of 107.072A)

APPROVALS:
Deputy Commissioner, Chief of Staff
Deputy Commissioner, Client Services and Supports
Assistant Commissioner, Agency Services and Supports
Assistant Commissioner, Facilities
Assistant Commissioner, Facilities
Assistant Commissioner, Community Services and Reentry
Assistant Commissioner, Health, Recovery, and Programming