

# UW Whitewater Police



## Eyewitness Identification Procedure

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### I. Purpose

The purpose of this policy is to provide officers direction on the utilization of eyewitness identifications and comply with the requirements of Wisconsin Statute 175.50(2).

### II. Policy

It is the policy of the University of Wisconsin-Whitewater Police Department (UWWPD) to provide comprehensive, yet impartial, investigation utilizing eyewitness identification as a component of an investigation and not normally as the sole evidentiary aspect against an alleged offender.

### III. Procedure

#### A. Double Blind Procedure

1. The individual conducting the photo array should not know which photo, or member of the lineup, is the suspect. This is sometimes referred to as a "Double-blind procedure".
2. Use of a neutral, or independent administrator, helps to minimize unintentional influences, or signals, to the witness regarding who may or may not be the suspect and, therefore, serves to reduce incorrect identifications.
3. Where circumstances or resources make use of an independent administrator impractical, the "folder system", a variation of the sequential photo array, should be used.
4. Use of a neutral or independent administrator to conduct the photo array assumes that the person composing, in contrast to conducting, the photo array is not the person conducting the array (with the exception of the folder system).

#### B. Sequential Presentation

1. Photo arrays should be presented sequentially, rather than simultaneously. Sequential presentation requires each photo to be presented to the witness separately, in a previously determined order, removing each photo after it is viewed (simultaneous presentation presents all photos at the same time).
2. Sequential presentation reduces the occurrence of misidentifications that result from a witness making relative judgment identifications by comparing members of

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the array to determine which one looks most like the suspect, rather than focusing on whether a particular array member actually is the suspect.

3. It is recommended that children 10 and under should not be shown a sequential array; a simultaneous array should be used instead. (Subject to this possible exception, use of simultaneous presentations is not recommended and, consequently, these recommendations include no provisions concerning simultaneous presentations).

## **C. Sequential Photo Array**

1. Composing the Array: Though complete uniformity of features is not required, the person composing the photo array should ensure the array is comprised so the suspect does not unduly stand out.
  - a. Number of Suspects: Include only one suspect at a time in each identification procedure.
  - b. Photo of Suspect: If multiple photos of the suspect are reasonably available, select a photo resembling the suspect's description or appearance at the time of the incident.
  - c. Number of Fillers: Except in extraordinary circumstances, include a minimum of seven fillers (non-suspects) per identification procedure.
  - d. Resemblance of Fillers to Suspect: Fillers should resemble the witness' description of the suspect in significant features (face, profile, height, weight, age, build, posture, specific articles of clothing, etc. to the extent applicable to the photos being used) or, in cases where a composite is used, based on the filler's resemblance to the composite.
  - e. Information on Previous Arrests: Ensure that no writings or information concerning a previous arrest will be visible to the witness.
  - f. Filler as Lead Photo: Always lead photo arrays with a filler (give the array administrator one filler photograph to be used as the first photo shown). Research suggests witnesses are reluctant to identify someone in the first position and, if that person is the suspect, a misidentification may result.
  - g. Positioning of Suspect when Multiple Arrays are Used: Have the administrator remix photos 2 to 8 and renumber them accordingly, in each subsequent photo array when there are multiple witnesses for the same case. Placement in this way reduces the possibility that a subsequent witness identifies someone based on the position number communicated to them by a previous witness. Effective separation of witnesses, as recommended in B.1., below, will prevent inappropriate communication between witnesses.
  - h. Reuse of Fillers for Same Witness: When showing a new suspect, avoid reusing the same fillers previously used in arrays shown to the same witness.
2. Conducting the Array: The identification procedure should be conducted in a manner that promotes the accuracy, reliability and fairness of the witness

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identification. The recommendations below are designed to enhance the accuracy of identification or non-identification decisions by the witness.

- a. Separation of Witnesses: Separate all witnesses. Each witness should be given identification procedure instructions without the presence of other witnesses. Witnesses should not be allowed to confer with one another either before, during, or after the procedure.
- b. Presence of Persons Aware of Suspects Identity: No one should be present during the photo array procedure who knows the suspect's identity except counsel, if present. It is recognized that, in practice, this recommendation is sometimes not feasible.
- c. Initial Instructions to Witness: The photo array administrator should give the identical instructions at the beginning of each identification procedure. See Appendix A for recommended instructions to the witness.
- d. Influencing the Witness: The administrator should avoid making any comments during the identification procedure and should be aware that witnesses can perceive such things as unintentional voice inflection or prolonged eye contact as messages regarding their selection.
- e. Availability of Other Results to Witness: Ensure that no writings or information concerning previous identification results are visible to the witness.
- f. Awareness of Witness of Number of Photos: The witness should not know how many photos will be shown.
- g. Presentation of Photos: Present each photo to the witness separately, in a previously determined order, removing those previously shown. Hand the first photo to the witness for viewing. When the witness is done viewing the photo, have the witness hand the photo back. The second photo is then handed to the witness and the process is repeated through photo number 8. Show all photos to the witness, even if an identification is made before the procedure is completed.
- h. Commenting on Selection and Outcome: Do not give the witness any feedback regarding the individual selected or comment on the outcome of the identification procedure in any way.
- i. Request for Additional Viewing: Upon request of the witness, the witness may view one or more of the photos again after the photo procedure had been completed. If this occurs, it must be thoroughly documented. This should occur only if the witness requests it and only after the first procedure is completed; it should never be at the suggestion of the photo lineup administrator.
- j. Alteration of Material by Witness: Ensure that the witness does not write or mark any materials that will be used in other identification procedures.

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- D. **Folder System:** In the absence of an independent administrator, the “folder system” should be used. Recommendations for composing and conducting a sequential eyewitness identification procedure using the folder system are set forth in Appendix B.
1. Documenting and Recording Procedures and Results
    - a. Preserving Presentation Order and Results: After the photos have been viewed, they should be marked, denoting the order in which presented to the witness, and retained in their original condition for possible later use.
    - b. Documenting Procedure: The photo array administrator should document: his or her name; the procedure employed; the number of photos shown; sources of all photos used; names of persons present during the lineup; and the date, time and location of the procedure. If, pursuant to a request, additional viewing occurs (see B.9., above), that procedure should be thoroughly documented.
    - c. Recording Results: The photo array administrator should preserve the outcome of the procedure by documenting any identification or non-identification results obtained from the witness. Preparing a complete and accurate record of the outcome of the identification procedure is crucial. The record can be a critical document in the investigation and any subsequent court proceedings.
      - i. *Recording results and witness certainty.* Each of the witness’ responses to the question: “Is this the person you saw [insert description of act here]?” should be documented with a reference to the number of the photo being presented and the exact response given. If the witness answers “no” to the question, the next photo is shown. If the witness answers “yes,” the administrator should ask: “Can you describe how sure you are?” The witness’ exact response should be documented. A witness should not be compelled to give an answer to this question.
      - ii. *Witness signing of results.* Ensure identification results are signed and dated by the witness.
- E. **Show-Up Procedure:** It is recognized that, although show-ups are inherently more suggestive than the eyewitness identification procedures previously recommended, under some circumstances the use of show-ups is appropriate. It is difficult to identify all these circumstances but generally, although not exclusively, they arise when circumstances require the prompt display of a suspect to a witness and the suspect matching the description of the perpetrator is located in close proximity in time and place to the crime. If used in appropriate circumstances and with appropriate procedures, show-ups can be a reliable means for both identifying and excluding suspects. In particular, their use in close proximity in time to the crime can be advantageous: the witness’s memory is fresh and the suspect’s appearance is ordinarily unchanged. However, because of the suggestiveness of the procedure, it is important to adhere to some basic procedural components when a show-up is utilized.

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1. Documenting Description: A description of the suspect by a witness should be documented before the show-up procedure is commenced.
2. Location of Suspect: If practical, transport the witness to the location of the suspect to limit the legal impact of the suspect's detention and to minimize the influence on the witness of seeing the suspect transported.
3. Conducting the Procedure:
  - a. Instruction: The witness should be given standard instructions before viewing the suspect. At a minimum, the witness should be given a cautionary instruction that the individual in the show-up may or may not be the suspect.
  - b. Suggestive Words or Conduct: Words or conduct of any type that may suggest to the witness that the individual is or may be the suspect should be carefully avoided.
  - c. Degree of Certainty: If a positive identification is made, the witness should be asked how certain he or she is. The witness should not be compelled to answer this question.
  - d. Multiple Witnesses: Show-ups should not be conducted with more than one witness present at a time. If there are multiple witnesses and one witness makes an identification during a show-up, reserve the remaining witnesses for a sequential photo array or sequential live line-up identification procedure.
4. Documenting the Procedure: A person conducting the procedure should document: his or her name; the date and time of the procedure; the procedure employed, including the location of the procedure and whether the witness was transported to the witness or vice versa; the appearance of the suspect, by taking a photo or video if possible; specific instructions or information provided to the witness; specific words, conduct, or gestures required of the suspect; and names of persons present during the procedure.
5. Recording Results: A person conducting the procedure should document each of the witness's responses regarding the identity of the suspect and, if a positive identification is made, the witness's response concerning the degree of certainty. The witness's statements should be recorded verbatim, or as close to verbatim as possible. Identification results should be signed and dated by the witness.

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## Attachment A: Instructions for Sequential Photo Arrays

### **Instructions for Sequential Photo Arrays**

It is recommended that witnesses be instructed in a manner similar to the following prior to the procedure:

In a moment, I am going to show you a series of photos. The person who committed the crime may or may not be included. I do not know whether the person being investigated is included. Even if you identify someone during this procedure, I will continue to show you all photos in the series

Keep in mind that things like hairstyles, beards, and mustaches can be easily changed and that complexion colors may look slightly different in photographs.

You should not feel you have to make identification. This procedure is important to the investigation whether or not you identify someone.

The photos will be shown to you one at a time and are not in any particular order. Take as much time as you need to look at each one. After each photo, I will ask you, "Is this the person you saw [insert description of act here]?" Take your time answering the question. If you answer "yes", I will then ask you, "Can you describe how sure you are?"

Because you are involved in an ongoing investigation, in order to prevent damaging the investigation, you should avoid discussing this identification procedure or its results.

Do you understand the way the photo array procedure will be conducted and the other instructions I have given you?

Witnesses should be given a written copy of the above instructions and it is recommended that a statement similar to the following be signed and dated by the witness:

I have read these instructions, or they have been read to me, and I understand the instructions. I am prepared to review the photographs that will be presented to me, and I will follow the instructions provided on this form.