

Minnesota Eyewitness Identification Standard Protocols

Eyewitness identification can be an important investigative tool. However, witness memory can be unreliable and erroneous identifications are the leading contributing factor to wrongful conviction cases nationally.

In order to ensure that witness identification procedures are conducted in a reliable manner, agencies should develop and adopt written policies and protocols regarding the use of photo arrays, live lineups, and showups. Policies should include the following best practices, which have been recommended by the National Academy of Sciences, the International Association of Chiefs of Police, the American Bar Association and others to enhance the accuracy of witness identifications.

1. Blind or blinded administration of the lineup: A blind administrator, who is unaware of the suspect's identity, should conduct both photo arrays and live lineups. Smaller agencies with limited staff may use a "blinded technique" as an alternative, meaning that the officer conducting the lineup is aware of the suspect's identity but cannot see which photo is being viewed by the witness at a given time. Both blind and blinded administration prevents possible suggestiveness, which can contaminate the procedure and lead to defense challenges in court.

One blinded administration technique is the folder shuffle method, which is conducted as follows:

- a. The officer uses 10 folders, the suspect photo and 5 filler photos (4 folders are left empty).
- b. One filler photo is placed in the first folder, which is labeled Folder #1.
- c. The suspect photo and the other four filler photos are placed into folders 2-6 and the officer shuffles the folders so he or she is unaware of which folder the suspect is in. The folders are then labeled Folder #2-6. The remaining folders are left empty and labeled Folders #7-10 (this is done so that the witness does not know when he or she has seen the last photo).
- d. Without looking at the photo in the folder, the officer hands each folder to the witness individually. Each time the witness has viewed a folder, the witness should indicate whether or not this is the person the witness saw and return the folder to the administrator.

2. Witness Instructions: Prior to the administration of the photo array, live lineup or showup, witnesses should be instructed as follows:

In a moment I'm going to show you a set of photographs/people. The person who is involved in the crime may or may not be among them. You do not have to make an identification and the investigation will continue regardless of whether or not you make a selection.

I must show you the entire set of photographs/people, even if you make an identification. If you would like to see a photograph/person again, you are allowed to view the entire lineup once more. If you pick a photograph/person, I'm going to ask you to explain why you picked that photograph/person and to describe how confident you are in your selection. If you make an identification, please do not ask me about the person you have selected, as no information can be shared with you at this stage of the investigation. Do you understand these instructions?

3. Use of Fillers: Fillers, or non-suspect members in a photo array or live lineup, should generally match the witness's description of the perpetrator and should not make the suspect stand out. Photo arrays should include five fillers and live lineups should include four fillers.

4. Witness Confidence Statements: For photo arrays, live lineups and showups, immediately after a witness makes an identification the officer should ask the witness to state, in his or her own words, the level of certainty in the selection. The officer should document the witness confidence statement in writing.