



POLICY & PROCEDURE

ELKHART LAKE POLICE DEPARTMENT

SUBJECT: **EYEWITNESS IDENTIFICATION**

SCOPE: All Department Personnel

DISTRIBUTION: Policy & Procedure Manual

REFERENCE: WI State Statute: 175.50(2); WI DOJ
Eyewitness Identification Best Practices

NUMBER: 6.14

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RESCINDS

AMENDS

WILEAG 4TH EDITION

STANDARDS: 6.3.7

INDEX AS: Eye Witness Identification

PURPOSE: The purpose of this Policy & Procedure is to establish guidelines for the Elkhart Lake Police Department in the use of eyewitness identification procedures involving photo arrays, live lineups, showups, & facial composites. A further purpose is to reduce the risk of wrongful conviction of innocent persons while increasing the probability of convicting the guilty persons.

This Policy & Procedure consists of the following numbered sections:

- I. POLICY
- II. DEFINITIONS
- III. PHOTO ARRAY
- IV. SHOW UPS
- V. LINE UPS
- VI. FACIAL COMPOSITE
- VII. PHOTO COLLECTION DISPLAYS
- VIII. BIENNIAL REVIEW

I. POLICY

- A. 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 criminal 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 eyewitnesses 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 of the Elkhart Lake Police Department shall adhere to procedures set forth in this document in order to maximize the reliability of identifications, minimize unjust accusations of innocent persons, and to establish evidence that is reliable and which also conforms to established legal procedure described in WI State Statute 175.50(2). (WILEAG CORE 16-6.3.7)

II. DEFINITIONS

- A. Photo Array: The sequential showing of multiple photographs to an eyewitness for the purpose of obtaining an identification.
- B. Filler: A person who is not a suspect.
- C. Show up: The presentation of one suspect to an eyewitness within a short time period following the commission of a crime.
- D. Live Lineup: The sequential presentation of a number of individuals, including a suspect, before an eyewitness.

III. PHOTO ARRAY PROCEDURE:

- A. Eyewitness identification by use of the double blind photo array method shall be the primary means used by officers of the Elkhart Lake Police Department to conduct identification procedures.
 - 1. The investigating officer should gather the photographs to be used in the photo array.
 - a) Suspect photos:
 - (1) If there are multiple suspects, include only one suspect photo per photo array.
 - (2) If multiple photos of the suspect are available, choose the photo that most resembles the suspect's appearance at the time of the crime.

(3) If the appearance of the suspect at the time of the crime is unknown, choose the photo that most resembles the description of the perpetrator.

b) Filler photos:

(1) Include a minimum of five (5) filler photos in each array.

(2) Increasing the number of filler photos tends to increase the reliability of the procedure. Include as many filler photos above the minimum as desired.

(3) Fillers should resemble the witness's description of the perpetrator in significant features.

(a) Race/Ethnicity

(b) Sex

(c) Face Profile

(d) Height

(e) Weight

(f) Age

(g) Build

(h) Posture

(i) Hair

(j) Facial Hair

(k) Specific Articles of Clothing

(4) If a perpetrator was described as having an unusual identifying mark, all fillers should have similar markings or all photos should include similar coverings over the described area.

(5) When there is an inadequate description of the perpetrator, or when there is a suspect whose appearance differs from the description of the perpetrator, fillers should resemble the suspect in significant features.

2. Assess the array. The officer shall make sure that no person stands out from the rest.

3. Photocopy the photos used in the array.

a) Photocopy all of the photos to be used in the array onto one sheet of paper.

- b) Make several identical photocopies to be kept for potential additional witnesses to be shown the same photos.
4. Gather photos large enough to hold and fully conceal one photo.
 - a) Place a filler photo in one folder and set that folder aside to be used as the lead photo in the array.
 - b) Set aside two empty folders to be used at the end of the array.
 - c) Randomly place the remaining photos into the remaining empty folders, one photo per folder.
 - d) Shuffle the photos listed in c. above, so that it is no longer known which folder contains the suspect photo.
 - e) Place the lead filler photo folder on top of the stack of folders.
 - f) Place the two empty folders on the bottom of the stack of folders.
 - g) Number each folder.
 5. Conduct the Array: Under the best circumstances and when possible, another officer, not involved in the initial investigation or involved in the selection of photos for the photo array, should present the photo array to the witness.
 - a) When possible, videotape or audiotape the identification procedure.
 - b) Ensure that no writing or other information concerning previous identification results is visible to the witness.
 - c) Seat the witness at a desk, table, or provide an otherwise comfortable environment.
 - d) The officer presenting the photo array should be positioned close enough to the witness to communicate verbally, but in a place where the witness will be able to open a folder and look at the photo without the officer being able to see that photo.
 - e) Provide the witness instructions orally and in writing from the Elkhart Lake Police Department document, Witness Instructions for Photo Array.
 - (1) The witness should be asked to sign and date the form.
 - (2) When a witness declines to sign, it is sufficient for the investigating officer to document that the witness was appropriately instructed.
 - f) The officer shall present the folders one at a time, in order, rather than all at once.

- g) After the witness has looked at a photo and handed the photo back to the officer, the officer should ask the following questions:
 - (1) “Is this the person you saw (describe the act)?”
 - (2) If the witness answers “yes”, the witness should be asked, “In your own words, can you describe how certain you are?”
 - (3) The same verbiage should be used after each photo to prevent undue influence towards a particular photo.
- h) Officers shall document the identification procedure on the Elkhart Lake Police Department document, “Photo Array Report Form”.
- i) Even if the eyewitness makes an identification, continue to show the witness each folder until the witness has viewed and reported on every photo.
 - (1) If a witness asks why, the officer should explain that the procedure requires that each photo in the array be shown.
- j) At the end of the process, if an identification has been made, the officer shall conduct a follow up interview to assess any relevant factors that support identification.
- k) The officer shall not give the witness any feedback regarding the individual selected, or comment on the outcome of the identification procedure in any way.
 - (1) Officers should be aware that witnesses may perceive unintentional body language as messages regarding their selection.
 - (2) Officers should be polite but purposeful when they speak.
- l) Additional viewing of photographs after they have been returned to the officer should be avoided.
 - (1) Additional viewing of photos should be done only at the request of the witness.
 - (2) If the witness requests to see a photo again, it shall only be done after all photos have been reviewed.
 - (3) Additional photo viewings shall be thoroughly documented.
 - (4) The officer shall never suggest an additional viewing to the witness.
- m) The officer should ensure that if a witness writes on, marks on, or in any way alters identification materials, those items are not to be used in subsequent procedures.

- n) If there are multiple witnesses, they should be prevented from conferring with each other to the extent possible, before, during, or after a photo array procedure.
 - o) Each witness shall be instructed separately and outside of the presence of other witnesses.
6. Once the procedure is completed, the officer should show the witness the completed, "Photo Array Report Form".
- a) Request that the witness sign and date this report.
 - b) When a witness declines to sign, it is sufficient for the investigating officer to document that the witness was appropriately instructed.
7. Regardless of whether or not an identification has been made, the photos and the order in which they were shown to the witness shall be preserved as evidence.
- a) The photocopy of the photos used in the array will be used to document the order in which the photos were presented to the witness. This documentation will take place after the identification procedure is completed.
 - b) Photographs, folders and video or audio tapes used in the photo array shall be classified as evidentiary property and processed pursuant to the guidelines set forth within Chapter 11: Evidence/Property Integrity.
 - c) Evidentiary photographs, folders and video or audio tapes used in the photo array shall be maintained within the Department Evidence Room under the care and control of department authorized evidence custodians.
 - d) Evidentiary photographs and folders used in the photo array shall be disposed of in accordance with applicable laws and ordinances and under the guidelines set forth within Chapter 11: Evidence/Property Integrity.
 - e) If it is necessary to show the same suspect to a subsequent witness, all folders except the lead filler folder and the two empty folders should be shuffled and renumbered accordingly.
8. When showing a different suspect to the same witness, do not reuse the same fillers from a previous array shown to that witness.
9. Avoid multiple identification procedures in which the same witness views the same suspect more than once.

IV. SHOW UP PROCEDURE:

- A. The use of a show up can provide investigative information at an early stage, but the inherent suggestiveness of a show up requires careful use of procedural safeguards. The following procedure is designed to address those risks and outline the proper use of show ups.

The following procedures apply regardless of whether other practices would be legally permissible; i.e., even if a given suspect consents to a show up, a show up should not be conducted unless the investigating officer decides that exigencies of the situation outweigh any possible risk of misidentification presented by conducting a show up. Consent may legally authorize police to detain a suspect for a show up, but it does nothing to remove the suggestiveness of the procedure.

1. The use of show ups shall be avoided whenever possible in preference to the use of photo arrays.
2. The use of show ups shall not be used when probable cause exists to arrest the suspect.
3. Prepare for the show up.
 - a) Before the show up is conducted, it is important that the witness be asked to give a detailed description of the perpetrator.
4. This description should be carefully documented.
 - a) Whenever practical, transport the witness to the location of the detained suspect (as opposed to transporting the suspect to the witness) to limit the potential legal impact of the suspect's detention and to minimize the influence on the witness of seeing the suspect transported under custody.
 - (1) Show ups should not be conducted at a police station or other law enforcement building.
 - (2) Show ups should not be conducted when the suspect is dressed in jail clothing.
 - (3) If possible and safe, the suspect should not be restrained by handcuffs or by the officer, or seated in a squad car.
 - b) When circumstances dictate that the suspect must be controlled and/or separated from the witness, practical steps shall be taken to minimize the suggestiveness of the procedure.
5. Conduct the show up.
 - a) When possible, videotape or audiotape the identification procedure.
 - b) Provide the witness instructions orally and in writing from the Elkhart Lake Police Department document, Witness Instructions for Show Up Identification.

- (1) The witness should be asked to sign and date the form.
- (2) When a witness declines to sign, it is sufficient for the investigating officer to document that the witness was appropriately instructed.
- c) Words or conduct of any type that may suggest to the witness that the individual is, or may be, the perpetrator must be carefully avoided.
- d) After the witness views the suspect, the officer should ask the following questions:
 - (1) "Is the person you saw (insert description of the act)?"
 - (2) If the answer to (1) is "yes", the witness should be asked, "In your own words, can you describe how certain you are?"
- e) Officers shall document the identification procedure on the Elkhart Lake Police Department document, "Show Up Report Form".
- f) If an identification has been made, the officer shall conduct a follow up interview to assess any relevant factors that supports identification.
- g) The officer shall not give the witness any feedback regarding the individual selected, or comment on the outcome of the identification procedure in any way.
 - (1) Officers should be aware that witnesses may perceive unintentional body language as messages regarding their selection.
 - (2) Officers should be polite but purposeful when they speak.
- h) Whenever possible, photograph the suspect at the time of the show up, regardless of whether or not an identification is made.
- i) Once the procedure is completed, the officer should show the witness the complete, "Show Up Report Form".
 - (1) Request that the witness sign and date this report.
 - (2) When a witness declines to sign, it is sufficient for the investigating officer to document that the witness was appropriately instructed.
- j) Photographs, folders and video or audio tapes used in the photo array shall be classified as evidentiary property and processed pursuant to the guidelines set forth within Chapter 11: Evidence/Property Integrity.
- k) Evidentiary photographs, folders and video or audio tapes used in the photo array shall be maintained within the Department Evidence Room under the care and control of department authorized evidence custodians.

- l) Evidentiary photographs and folders used in the photo array shall be disposed of in accordance with applicable laws and ordinances and under the guidelines set forth within Chapter 11: Evidence/Property Integrity.
- m) Show ups should not be conducted with more than one witness present at a time.
- n) If there are multiple witnesses and one witness makes an identification during a show up, that identification should provide probable cause for an arrest.
 - (1) In this situation, the remaining witnesses should be shown a photo array, rather than a show up.
- o) Avoid multiple identification procedures in which the same witness views the same suspect more than once.
 - (1) Should an officer decide to do more than one identification procedure, they will likely be called upon to clarify and/or justify the action.
- p) Two or more suspects should not be shown to a witness at the same time.
 - (1) Should there be more than one suspect, the witness should view separate show ups, and each conducted in accordance with this procedure.

V. LIVE LINEUP GENERAL CONSIDERATIONS

- A. Due to logistical difficulties in obtaining acceptable fillers for live lineups, the Elkhart Lake Police Department does not use live lineups.

VI. FACIAL COMPOSITE GENERAL CONSIDERATIONS

- A. In some investigations, law enforcement authorities have an eyewitness description but have either 1) no specific suspect or 2) no visual likeness of a known suspect.

The use of composite images can yield investigative leads in cases in which no suspect has been determined. In these situations, some law enforcement authorities may try to produce a facial composite of the perpetrator based on the eyewitness's description. Various methods exist for carrying out this goal, including manual sketches, mechanical systems such as Identikit, and more recently, computer-based systems such as E-fit. Composites produced with these methods have been used to gather suspects who resemble the composite or to confirm that an unavailable suspect's appearance matches the description given by an eyewitness.

- B. Because of concerns about the reliability of composites and their potential to taint eyewitness's memories, law enforcement authorities should use them cautiously. Research tends to show that none of the existing methods can reliably produce recognizable composites in real-world settings. In the experiments, subjects look at a target photo, the photo is taken away, and the subjects are then asked to produce a composite using one of the methods mentioned above. Despite the best efforts of the subjects making the composites, people who know the person in the target photo are generally not able to recognize the person depicted in the composite.
- C. The unreliability of composites raises concern about the possibility that an inaccurate composite might taint an eyewitness's memory and lead to a misidentification. For instance, if authorities produce a composite and then arrest a person who resembles the composite but who unknown to them is innocent, the eyewitness may then identify the innocent suspect because of the suspect's resemblance to the composite. In this way, an inaccurate composite, and the innocent suspect who resembles it, can contaminate an eyewitness's actual memory of the perpetrator.
- D. New research also suggests that the process of making a composite can damage an eyewitness's ability to identify the true perpetrator in a later lineup. In an experiment, eyewitnesses were first directed to build a composite of a perpetrator using a computer-based system. Later, the same eyewitnesses were asked to try to pick the same perpetrator out of a lineup. Compared to eyewitnesses who did not build composites, the eyewitnesses who built composites were less able to identify the perpetrator in a lineup.
- E. In addition to the concerns discussed above, inaccurate information from outside an eyewitness's memory can taint a composite. As with photo arrays, lineups, and show-ups, composites can be compromised if the witness's description relies on information learned from external sources after the crime or 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.

For this reason, in the rare situation in which a composite must be used, these guidelines recommend a double-blind composite procedure, in which both the witness and the person making the composite are unaware of external information about the case. It may not be feasible in some circumstances to conduct a completely double-blind procedure because it may not be possible to prevent both the witness and the administrator from learning about the case.

In such situations, witnesses should be told to rely on their independent recollection of the event-not information learned from other sources- and administrators should be mindful of the natural tendency to incorporate prior knowledge into the interaction with the witness and into the production of the composite itself.

- F. Procedure: Preparing the composite:

1. Assess the ability of the witness to provide a description of the perpetrator.
2. Select the procedure to be used from those available (e.g., Identikit-type templates, artist, or computer-generated images).
3. Unless part of the procedure, avoid showing the witness any photos immediately prior to development of the composite.
4. Select an environment for conducting the procedure that minimizes distractions.
5. Conduct the procedure with each witness separately.
6. Determine with the witness whether the composite is a reasonable representation of the perpetrator.

VII. PHOTO COLLECTION DISPLAYS

- A. "Mug books" (i.e., collections of photos/images of previously arrested persons) may be useful in cases in which a suspect has not yet been determined and other reliable sources have been exhausted. This technique may provide investigative leads, but results should be evaluated with caution. Avoid individual photos/images that are suggestive or cause any one to stand out unnecessarily.
 1. Mug books must be objectively compiled to yield investigative leads that will be admissible in court. Individuals should be selected who are uniform with regard to physical characteristics such as race, age, gender, etc.

VIII. BIENNIAL REVIEW

- A. Following the date this policy is issued, the Department shall review this policy biennially to ensure compliance with State Statutes and Department Policy & Procedures.

Michael Meeusen
Chief of Police

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

Initial 06/01/2015