

## Eyewitness Identification

### 503.1 VERSION

Review Date	Effective Date	Approving Authority
01/29/19	07/09/18	Eric D. English, Chief of Police

### 503.2 POLICY AND PURPOSE

This policy sets forth guidelines to be used when members of this department employ eyewitness identification techniques (Va. Code § 19.2-390.02). The policy of the Harrisonburg Police Department is to conduct eye witness examinations in a manner that provides maximum investigative information, while preserving the rights of the accused. The Department will use eyewitness identification techniques, when appropriate, to enhance the investigative process and will emphasize identifying persons responsible for crime and exonerating the innocent. Specifically, use of these procedures should maximize the reliability of identifications, minimize unjust accusations of innocent persons, and establish evidence that is reliable and conforms to established legal procedure.

### 503.3 ACCOUNTABILITY STATEMENT

All employees are expected to fully comply with the guidelines and timelines set forth in this policy. Responsibility rests with the supervisor to ensure that any violations of policy are investigated and appropriate training, counseling and/or disciplinary action is initiated. This directive is for internal use only, and does not enlarge an employee's civil liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violation of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial administrative setting.

### 503.4 DEFINITIONS

**Blind administrator** - The person administering the line-up has no knowledge of which person in the photo line-up is the suspect.

**Blinded administration** - This is a lineup procedure in which the administrator may know the identity of the suspect but, by virtue of of procedures and/or technology used to accomplish this purpose, does not know which lineup member is being viewed by the eyewitness.

**Confidence statements** - A statement in the victim/witness's own words, articulating his/her level of confidence in the identification that is taken at the time the identification is made.

**Fillers** - Non-suspect photographs or line-up members.

**Folder shuffle method** - A method requiring the line-up administrator to place a photograph of the suspect and filler photographs into blank folders with one photograph per folder. The folders are then "shuffled" before being presented individually to the witness.

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**Photographic lineup** - An identification procedure in which an array of photographs, including a photograph of the suspected perpetrator of an offense along with photographs of other persons not suspected of the offense, is displayed to an eyewitness, either in hard copy form or via computer, for the purpose of determining whether the eyewitness identifies the suspect as the perpetrator.

**Sequential lineup** - A method of administration in which photographs are shown to the victim/witness one at a time, with an independent decision on each, before the next photo is shown.

**Show-up** - A show-up procedure is an identification procedure in which an eyewitness is presented with a single suspect for the purpose of determining whether the eyewitness identifies this individual as the perpetrator.

### **503.5 GENERAL RESPONSIBILITIES**

Department personnel shall strictly adhere to established procedures for conducting suspect identification techniques in order to avoid the possibility of error or of undue suggestiveness to witnesses.

Department personnel shall report to their supervisor any known errors, flaws or non-conformance with established procedures in the conduct of a suspect lineup that they may observe or become aware of in order that corrective actions may be taken and safeguards established to protect the innocent.

### **503.6 EYEWITNESS PREPARATION**

Prior to an identification procedure, the investigating officer should record as complete a description as possible of the perpetrator as provided by the eyewitness and in the eyewitness's own words. This statement should also include information regarding conditions under which the eyewitness observed the perpetrator, including location, time, distance, obstructions, lighting, weather conditions and other impairments, including but not limited to alcohol, drugs, stress, the presence of a weapon and any other relevant conditions. The eyewitness should also be asked if he/she requires the use of glasses or contact lenses and whether he/she was wearing them at the time of the offense.

Employees are cautioned not to, in any way, influence a witness as to whether any subject or photo presented in a lineup is in any way connected to the case. Members should avoid mentioning that:

- The individual was apprehended near the crime scene.
- The evidence points to the individual as the suspect.
- Other witnesses have identified or failed to identify the individual as the suspect.

In order to avoid undue influence, witnesses should view suspects or a lineup individually and outside the presence of other witnesses. Witnesses should be instructed to avoid discussing details of the incident or of the identification process with other witnesses.

Whenever feasible, the eyewitness identification procedure should be audio and/or video recorded and the recording should be retained according to current evidence procedures.

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The Department will provide reasonable accommodations to the victim/witness when conducting line-ups, interviews, etc. to include transportation arrangements and taken into account their schedule and availability.

### **503.7 CONDUCTING THE IDENTIFICATION PROCEDURE**

The identification procedure should be conducted in a manner that promotes the accuracy, reliability, fairness and objectivity of the witness' identification. These steps are designed to ensure the accuracy of identification or non-identification decisions.

Assure that all law enforcement and/or prosecutorial personnel present and involved in the case are knowledgeable about the procedure so that they will not interfere or influence any witness during the process. Unnecessary personnel should be removed from the location where the process is being conducted.

#### **503.7.1 SHOW UP**

Field identifications, also known as show-ups may be helpful in certain cases, where exigent circumstances make it impracticable to conduct a photo or live lineup identification. A show-up should not be used when independent probable cause exists to arrest a suspect. In such cases a live or photo lineup is the preferred course of action if eyewitness identification is contemplated.

When initiating a show up, the member should observe the following guidelines:

- (a) Obtain a complete description of the suspect from the witness.
- (b) Assess whether a witness should be included in a field identification process by considering:
  - 1. The length of time the witness observed the suspect.
  - 2. The distance between the witness and the suspect.
  - 3. Whether the witness could view the suspect's face.
  - 4. The quality of the lighting when the suspect was observed by the witness.
  - 5. Whether there were distracting noises or activity during the observation.
  - 6. Any other circumstances affecting the witness's opportunity to observe the suspect.
  - 7. The length of time that has elapsed since the witness observed the suspect.
- (c) If safe and practicable, the person who is the subject of the show-up should not be handcuffed or in a patrol vehicle.
- (d) When feasible, members should bring the witness to the location of the subject of the show-up, rather than bring the subject of the show-up to the witness.
- (e) The person who is the subject of the show-up should not be shown to the same witness more than once.
- (f) In cases involving multiple suspects, witnesses should only be permitted to view the subjects of the show-up one at a time.

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- (g) The person who is the subject of the show-up should not be required to put on clothing worn by the suspect, to speak words uttered by the suspect or to perform other actions mimicking those of the suspect.

#### 503.7.2 SHOW-UP PROCEDURES

The eyewitness should be transported to a neutral, non-law enforcement location where the suspect is being detained for the purposes of a show-up.

In addition, this procedure should only be conducted if the suspect is detained within a reasonable amount of time after the incident being investigated.

The eyewitness should be provided with the following instructions:

- (a) The perpetrator may or may not be the person that is presented to the eyewitness;
- (b) The eyewitness should not feel compelled to make an identification;
- (c) The investigation will continue regardless of whether an identification is made;
- (d) The procedure requires the detective to ask the eyewitness to state, in his or her own words, how certain he/she is of the identification he/she has made;
- (e) The eyewitness should not discuss the identification procedure with other eyewitnesses involved in the case and should not speak to the media.

If there are multiple eyewitnesses, only one eyewitness at a time should participate in the show-up procedure, independent of the others. If a positive identification is made, and an arrest is justified, additional eyewitnesses should be shown photo lineups.

If identification is made, the detective should seek and document a clear statement from the eyewitness, at the time of the identification and in the eyewitness's own words, regarding the eyewitness's level of confidence that the person identified is the perpetrator.

Officers should utilize audio/visual equipment (BWC/MAV) to record the investigation and should photograph a suspect at the time and place of the show-up to preserve a record of his or her appearance at the time of the show-up.

#### 503.7.3 PHOTO LINEUP

A photo lineup, also known as a photo array and or photo display, is a procedure used to discover or confirm the identity of a criminal suspect. Generally, an officer or detective shows a set of photographs to a victim or witness and asks whether he or she recognizes one of the persons in the photographs as the perpetrator. A positive identification of a suspect can be used to place the suspect under arrest, and the act of identification may be used later as evidence in the prosecution of the defendant.

The Department's photo lineup process employs two components which helps to ensure a more reliable method of eyewitness identification; 1) the administrator and 2) the method that photos are presented to the eyewitness.

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#### 503.7.4 BLIND ADMINISTRATOR

When possible (dependent upon staffing), the officer or detective in charge of the investigation should select an individual to serve as the “blind administrator.” The blind administrator should not be involved in the investigation and must not know which person in the lineup is the “true” suspect. This is done to avoid inadvertent signs or body language that may lead or cause a witness to make an incorrect identification.

The blind administrator should be thoroughly familiar with the lineup procedure.

#### 503.7.5 BLINDED ADMINISTRATION

In no case should the individual presenting the lineup to a witness know which photograph in the lineup is being viewed by the witness; this is known as “blinded administration.” A blinded administrator may know the identity of the suspect but is not in a position to see which photo is being viewed by the eyewitness. Techniques to achieve this include shuffling folders or using a computer program to order the persons in the lineup.

Blind administration is preferable to “blinded” techniques, but blinded administration is an acceptable alternative when a blind administrator is not available. It is important to document why blind administration was not feasible.

#### 503.7.6 FOLDER SHUFFLE SYSTEM

The “Folder System” was designed to address concerns surrounding limited personnel resources while allowing for a “blind” administration. Although the administrator may know the suspect’s identity, he/she is blocked from seeing which lineup photo is being viewed by the eyewitness. This removes any risk of suggestiveness or cues.

In a typical Folder Shuffle, the officer/detective obtains one suspect photograph, five (5) filler photographs, and ten (10) empty, plain, unmarked, file folders (four of the folders will not contain any photos and will serve as “dummy folders”). Each folder will contain one photo or will be empty, and the folders will be labeled, shuffled and presented one at a time to the eyewitness by the administrator.

Refer to Supplement – **Eyewitness Identification** for instructions on preparing and administering the Folder Shuffle technique.

#### 503.7.7 PHOTO LINEUP PREPARATION

Individuals in the lineup should reasonably match the description of the perpetrator provided by the witness and should bear similar characteristics to avoid causing any person to unreasonably stand out. In cases involving multiple suspects, a separate lineup should be conducted for each suspect. The suspects should be placed in a different order within each lineup.

A photo lineup should be composed ensuring that the lineup is comprised in such a manner that the suspect does not unduly stand out from non-suspects. However, complete uniformity of features is not required. Select a photo that resembles the suspect’s description or appearance at the time of the incident, if multiple photos of the suspect are reasonably available to the detective.

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Ensure that the photos are reasonably contemporary. Use photos of the same size and basic composition, and never mix mug shots with other snapshots or include more than one photo of the same suspect. Avoid mixing color and black and white photos; they should be either all black and white or all color.

Cover any portions of mug shots or other photographs that provide identifying information. Ensure that no writings or information concerning previous arrest(s) will be visible to the witness. If it is necessary to block-out or cover a notation, such as a name on one photo, then similar blocking out or covering marks should be placed on all photos so that they will appear alike.

Select fillers (non-suspects) who generally fit the witnesses' description of the offender. When there is a limited or inadequate description of the offender provided by the witness, or when the description of the offender differs significantly from the appearance of the suspect, fillers should resemble the suspect in significant features, i.e., individuals who are reasonably similar in age, height, weight and general appearance, and are of the same sex and race. However, avoid using 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.

Avoid reusing filler photos. If the eyewitness has previously viewed a photo lineup in connection with the identification of another person suspected of involvement in the offense, the fillers in the lineup should be different from the fillers used in prior lineups.

Include a minimum of five fillers (non-suspects) per photo identification procedure.

Review the array, once completed, to ensure that the suspect does not unduly stand out.

Assign each photo/person a lineup identification number. Record the identification number on the back of each photo. Refer to that photo/person only by that number. This number should consist of the case number then a dash (-) with the witness assigned letter after it, i.e., 2018-000001-A. After each photo/person has been assigned an identification number, record the number along with all other pertinent information on the Lineup Identification Form.

The nature of the identification number should be purposely complex to the witness, so that any inadvertent glance should not significantly hinder the identification process or alert the witness as to the identity of the actual suspect.

#### 503.7.8 LINEUP PROCEDURE

The officer presenting the lineup should do so sequentially (i.e., show the witness one person at a time) and not simultaneously. The witness should view all persons in the lineup. If there are multiple eyewitnesses, each eyewitness should view the lineup independently and separately and the suspect should be placed in a different position in the photo lineup for each eyewitness.

The administrator should at all times avoid saying anything to the witness that may influence the witness' selection.

The administrator should instruct the witness that if the offender is seen in the lineup, he/she might not appear exactly the same as on the date of the incident because features such as clothing,

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head or facial hair can change. Additionally, photos do not always depict the true complexion of a person, which might be lighter or darker than shown in the photo. Be careful not to imply or lead the witness to believe that the suspect's appearance has actually changed in any way.

Provide the following additional viewing instructions to the witness:

- (a) Individual photos/persons will be viewed one at a time.
- (b) Photos/persons are in random order.
- (c) Take as much time as needed in making a decision about each photo/person.
- (d) All photos/persons will be shown, even if identification is made prior to viewing them all.
- (e) The administrator does not know who the perpetrator is (Only if using the blind administration method)

Instruct the witness that if he/she identifies the suspect, the administrator will ask him/her to state in his/her own words, how certain he/she is of any identification at the time that the identification is made (Confidence statement).

Confirm that the witness understands the nature of the sequential procedure.

#### **503.7.9 PRESENTATION OF LINE UP**

Present each photo to the witness separately, in a previously determined order, as documented on the lineup worksheet.

Care should be taken to avoid the witness turning over photos and reading the identification number recorded on the back.

If identification is made, avoid reporting or confirming to the witness any information regarding the individual he or she has selected, until the entire process (including obtaining a confidence statement and obtaining required signatures and paperwork) has been completed.

If the witness requests to view the photo/person sequence again, (or specific photos/persons again), they may be shown a second time, but must be shown again in the same sequence in its entirety even if the witness makes an identification during this second showing.

Instruct the witness not to discuss the identification procedure or its results with other witnesses involved in the case and discourage contact with the media.

#### **503.8 RECORDING/DOCUMENTING IDENTIFICATION RESULTS**

The administrator will record the presentation order of each lineup and ensure that a complete written record of the identification proceeding is made and retained.

When conducting an identification procedure, the person administering the lineup shall preserve the outcome of the procedure by documenting any identification or non-identification results obtained from the witness. A complete and accurate record of the outcome of the identification procedure is crucial. This record can be a critical document in the investigation and any subsequent court proceedings.

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When documenting the identification procedure, the person administering the lineup should record both identification and non-identification results, including a statement of confidence, in the eyewitness's own words (The results should not be ranked).

If the eyewitness makes an identification, the administrator shall seek and document a clear statement from the eyewitness, at the time of the identification and in the eyewitness's own words, as to the eyewitness's confidence level that the person identified in a given identification procedure.

After the eyewitness' confidence statement is obtained, the administrator shall not tell the eyewitness information about how accurate they were in their identification or provide additional information about the defendant.

Document in writing, the photo lineup procedures, including identification information and sources of all photos used with names of all persons present at the lineup, and date and time of the identification procedure.

Ensure that the results are signed and dated by the witness and the person administering the lineup.

Ensure that no materials indicating previous identification results are visible to the witness.

Ensure that the witness does not write on or mark any materials that will be used in other identification procedures.

A thorough description of the eyewitness process and the result of any eyewitness identification should be documented in the case report.

If a photographic lineup is utilized, a copy of the photographic lineup presented to the witness should be included in the case report. In addition, the order in which the photographs were presented to the witness should be documented in the case report.

#### **503.9 EYEWITNESS IDENTIFICATION FORM**

The Major Crimes Unit supervisor shall be responsible for the development and maintenance of an eyewitness identification process for use by members when they are conducting eyewitness identifications.

The process should include appropriate forms or reports that provide:

- (a) The date, time and location of the eyewitness identification procedure.
- (b) The name and identifying information of the witness.
- (c) The name of the person administering the identification procedure.
- (d) If applicable, the names of all individuals present during the identification procedure.
- (e) An instruction to the witness that it is as important to exclude innocent persons as it is to identify a perpetrator.

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- (f) An instruction to the witness that the perpetrator may or may not be among those presented and that the witness is not obligated to make an identification.
- (g) If the identification process is a photographic lineup, an instruction to the witness that the perpetrator may not appear exactly as he/she did on the date of the incident.
- (h) An instruction to the witness that the investigation will continue regardless of whether an identification is made by the witness.
- (i) A signature line where the witness acknowledges that he/she understands the identification procedures and instructions.
- (j) A statement from the witness in the witness's own words describing how certain he/she is of the identification or non-identification. This statement should be taken at the time of the identification procedure.

The process and related forms should be reviewed at least annually and modified when necessary.

#### **503.9.1 CONFERENCE WITH PROSECUTOR**

The Major Crimes Unit should confer with the Office of the Commonwealth's Attorney and consult the Virginia Model Policy on Eyewitness Investigation issued by the Virginia Department of Criminal Justice Services when developing, reviewing and revising the witness identification process in order to ensure that the procedures established are compatible and consistent with the model policy, as appropriate.

#### **503.10 TRAINING**

The Harrisonburg Police Department should establish minimum standards of training in eyewitness identification procedures for members. The purpose of this training is to:

- (a) Ensure uniformity and consistency in eyewitness identification.
- (b) Establish and maintain a high level of member competence in eyewitness identification and to prepare members for this important aspect of criminal investigation.

The Training Officer should ensure that members receive initial and periodic training in eyewitness identification.