

# Montana Law Enforcement Academy

## Eyewitness Identification Model Policy

### PHOTOGRAPHIC LINEUPS / SHOW-UPS

P25-2012-V4.0

#### 25.0.0 PURPOSE

The purpose of this policy is to establish procedures for eyewitness identification of suspects in photographic lineups and show ups.

#### 25.1.0 POLICY

Eyewitness identifications are a significant component in some criminal investigations. Photographic lineups and show-ups must be carefully administered to minimize the likelihood of misidentifications. Officers must strictly adhere to the procedures set forth below in order to maximize the reliability of identifications, protect innocent persons, and to establish evidence that is reliable and conforms to established legal requirements.

Properly prepared and properly presented photographic lineups are the preferred method of obtaining identification over a show-up. Sequential and simultaneous presentation of photographs both are accepted methods of photographic lineups. Sequential photographic lineups shall be used instead of a simultaneous photographic lineup when the investigating officer conducts the procedure instead of an Independent Administrator. Some departments also prefer sequential lineup, because many studies have found they help to reduce misidentification by eyewitnesses. Sequential photographic lineups may also be conducted by an Independent Administrator.

#### 25.2.0 DEFINITIONS

25.2.1 Simultaneous Photographic Lineup: An identification procedure in which a group of photographs are displayed all at once to the victim or witness rather than one -at- a-time (sequential).

25.2.2 Sequential Photographic Lineup: An identification procedure in which photographs in the photo group are displayed one-at-a-time to the victim or witness.

25.2.3 Independent Administrator: A person administering the photo lineup, who has no knowledge of the suspect's identity.

25.2.4 Functional Equivalent Procedures (FEP): Procedures utilized when an Independent Administrator is not utilized, permitting the investigator to conduct a sequential photo lineup in a manner that precludes him or her from knowing when the suspect is presented to the witness.

- 25.2.5 Filler Photos: Photographs of persons other than the suspect, used to complete a photo lineup.
- 25.2.6 Blank photo: A sheet of paper the same size as the photos utilized in the photo lineup that is blank, with no photo showing. (Blank photos are utilized in sequential photo lineups.)
- 25.2.7 Photo Array: The group of photographs utilized in a photo lineup. A photo array may be presented to the witness simultaneously or sequentially.
- 25.2.8 Showup: An identification procedure in which a single suspect is shown to a victim or witness soon after the commission of a crime for the purpose of identifying or eliminating the suspect as the perpetrator.

### **25.3.0 PHOTO LINEUPS**

- 25.3.1 A Simultaneous Photo Lineup will consist of six individual photographs in a photo array that is shown to the witness at once or simultaneous.
- 25.3.2 If a simultaneous photo lineup is used, it should be conducted by another officer, investigator, or employee (Independent Administrator), who is not directly involved in the investigation, and is not aware of which photograph is the suspect.
- 25.3.3 By utilizing this practice the Independent Administrator would not be aware of which member of the photo lineup is the suspect, and would eliminate the possibility of influencing the witness' selection.
- 25.3.4 If it is not feasible to have an Independent Administrator, the officer shall use the sequential photographic lineup method with Functional Equivalent Procedure (FEP). The sequential photo lineup is a good alternative to the simultaneous lineup and can be conducted by either the investigating officer or an Independent Administrator.
- 25.3.5 A Sequential Photo Lineup will consist of ten folders identical in appearance, size and color. Six folders will contain one photograph each of either the suspect photo or the five filler photos. Four folders will be empty. Each folder will be shown to the witness one at a time or sequentially.

### **25.4.0 COMPOSING THE LINEUP**

- 25.4.1 The following procedures will result in the composition of a photo lineup in which a suspect does not unduly stand out. An identification obtained through a lineup composed in this manner should minimize any risk of misidentification and have stronger evidentiary value than one obtained without these procedures.

24.4.2 In composing either a simultaneous or sequential photo lineup, the investigator should:

- a. Include only one suspect in each identification procedure;
- b. Select fillers (non-suspects) who generally fit the witness' description of the perpetrator. When there is limited or inadequate description of the perpetrator provided by the witness, or when the description of the perpetrator differs significantly from the appearance of the suspect, fillers should resemble the suspect in significant features;
- c. Select a photo that resembles the suspect's description or appearance at the time of the incident if multiple photos of the subject are available to the investigator;
- d. Include a minimum of five fillers (non-suspects) for both the simultaneous photo lineup and sequential photo lineup;
- e. Use photos that are the same size, comparable background, and profile. Do not mix color and black/white photos;
- f. Create a consistent appearance between the suspect and fillers with respect to any unique or unusual feature (e.g., scars, tattoos) used to describe the perpetrator by concealing that feature;
- g. A filler photo will be used as the lead photo position in either simultaneous photo lineup and the sequential lineup;
- h. Place suspects in different positions in each lineup when conducting more than one lineup due to multiple witnesses in the same case. Position the suspect randomly in the lineup;
- i. When showing a new suspect, avoid reusing fillers in lineups showed to the same witness;
- j. Never use an officer or employee photograph for the sole purpose of providing a filler photograph;
- k. Ensure that no writings or information concerning previous arrest(s) will be visible to the witness;
- l. View the array, once completed to ensure that the suspect does not unduly stand out;
- m. Preserve the presentation order of the photo lineup. In addition, the photos themselves should be preserved in their original condition.

24.4.3 The following additional procedures should be used when composing a Sequential Photo Lineup:

- a. Select ten folders identical in appearance size and color. Obtain one suspect photo and five filler photographs that closely match the description of the perpetrator. The remaining four folders will not contain any photos and will serve as 'dummy folders.'
- b. Place one each of the five filler photos and the one suspect photo in their own folder (total six folders.)
- c. Make one of the filler photos your lead position folder;

- d. Take the remaining five folders (containing four filler photos and the suspect photo) and shuffle them, so the position of the suspect photo is not known to the person administering the lineup. (Functional Equivalent Procedure);
- e. Place the lead position folder with known filler on top of the shuffled group of five folders;
- f. Each of your four remaining folders will remain empty or you can place a blank piece of paper in the folder. Place the empty folders underneath the shuffled folders. This is done so the witness does not anticipate viewing the last photo in the sequence.
- g. The folders should not be numbered until after the sequence has been presented to the witness.

### **25.5.0 INSTRUCTIONS TO THE WITNESS PRIOR TO VIEWING A LINEUP**

25.5.1 Prior to presenting the lineup, the investigator shall provide the following instructions to ensure the witness understands the purpose of the identification procedure is to exculpate the innocent as well as identify the actual perpetrator:

- a. Instruct the witness that he/she will be asked to view a set of photographs;
- b. Instruct the witness that it is just as important to clear the innocent persons from suspicion as to identify guilty parties;
- c. Instruct the witness that individuals present in the lineup may not appear exactly as they did on the date of the incident because features such as head and facial hair are subject to change;
- d. Instruct the witness that the person who committed the crime may or may not be present in the set of photographs being presented, and therefore, they should not feel compelled to make an identification;
- e. Assure the witness that regardless of whether an identification is made; the police will continue to investigate the incident;
- f. Instruct the witness that the procedure requires the investigator to ask the witness, to state in his/her own words, how certain he/she is of any identification.

### **25.6.0 CONDUCTING THE PHOTO LINEUP**

25.6.1 The investigator shall conduct the lineup in a manner conducive to obtaining accurate identification and non-identification decisions.

25.6.2 Simultaneous Photo Lineup: When conducting a simultaneous photo lineup the Independent Administrator should:

- a. Provide instructions to the witness as outline in section 25.5.0 "Instructions to the Witness Prior to Viewing a Lineup".
- b. Confirm the witness understands the nature of the lineup procedure;
- c. Instruct the witness that they do not know whether the person being investigated is included in the photo lineup that is to be viewed.
- d. Instruct the witness that photos shown to them are simultaneous and not in any particular order. They should take as much time as needed to examine them;

- e. Avoid any verbal or nonverbal feedback to the witness that may influence the witness' selection;
- f. If an identification is made, avoid reporting to the witness any information regarding the individual he/she has selected prior to obtaining the witness' statement of certainty.
- g. Record any identification results and witness' statement of certainty as outlined in 25.7.0 "Documenting the Lineup."
- h. Instruct the witness not to discuss the identification procedure or its results with other witness involved in the case, and discourage contact with the media.

25.6.3 Sequential Photo Lineup: When presenting the sequential photo lineup, the investigator or independent administrator should:

- a. Provide instructions to the witness as outline in section 25.5.0 "Instructions to the Witness Prior to Viewing a Lineup".
- b. Position themselves away from the witness, so they cannot see the inside of the folders as they are being viewed by the witness.
- c. Provide the following additional viewing instructions to the witness:
  - Individual photographs will be viewed one at a time;
  - The photos are not in any particular order;
  - Take as much time as needed to examine each photo;
  - There are some blank photos in the series. This is part of the normal process;
  - If you make an identification, I will continue to show you the remaining photos in the series
  - If you do identify someone, I will have you designate the photo of the person you identified;
  - If an Independent Administrator, instruct the witness that they do not know whether the person being investigated is included in the photo lineup that is to be viewed.
  - If an Investigator, instruct the witness that they do not know the order of the photos.
- d. Confirm the witness understands the nature of the lineup procedure;
- e. Avoid any verbal or nonverbal feedback to the witness that may influence the witness' selection;
- f. If an identification is made, avoid reporting to the witness any information regarding the individual he/she has selected prior to obtaining the witness' statement of certainty;
- g. Only if the witness makes the request, the entire photo lineup may be repeated once but must be in the same sequence as originally presented. The entire sequence will be presented even if the witness only requests to see one or a few photos;
- h. Record any identification results and witness' statement of certainty as outlined in 25.7.0 "Documenting the Lineup";

- i. 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.

### **25.7.0 DOCUMENTING THE LINEUP**

25.7.1 The investigator shall document in writing the lineup procedure used including:

- a. Identification information and sources of all photos used;
- b. The date and time the lineup was conducted;
- c. Names of persons present at the photo lineup;

25.7.2 The investigator shall document in the witness's own words the level of certainty expressed by the witness and any comment made by the witness during the entire lineup process.

25.7.3 The investigator should note any non-verbal communications (e.g. crying upon viewing of a photo) of the witness;

25.7.4 All results of presentations of photo lineups shall be documented in a written report. The photo array used must be preserved regardless of whether identification was made.

25.7.5 Whenever practicable, the presentation of the photo lineup shall be recorded by audio or audio/ video recording.

### **25.8.0 SHOWUPS**

25.8.1 Many courts have suppressed identification evidence based on the use of showups or field identifications because of the inherent suggestiveness of the practice. Therefore, the use of showups should be avoided whenever possible in preference of the photo lineup. However, a showup may be used when the following circumstances exist:

- a. The suspect is detained within a reasonably short time frame following the offense and in close proximity to where the offense occurred. Although this is dependent on the individual circumstances of each case, courts have generally held that two hours is a reasonable amount of time to conduct the showup.
- b. The victim or witness had an opportunity to view the suspect during the crime.
- c. A photographic lineup cannot be promptly arranged.
- d. There is an immediate need to arrest the suspect and there is insufficient independent probable cause.

25.8.2 When the above circumstances require the prompt display of a single suspect to the witness, challenges to the inherent suggestiveness of the encounter can be minimized through the use of the following procedures:

- a. Whenever practicable, the showup will be recorded by audio and/or video recording.
- b. A complete description of the suspect should be obtained from the witness prior to conducting the showup.
- c. Whenever possible, the witness should be transported to the location of the suspect rather than bringing the suspect to the witness.

25.8.3 Officers should take the following steps to avoid any suggestiveness of the showup:

- a. Ensure the suspect is removed from any patrol car, prior to being seen by the victim or witness.
- b. If safe to do so, remove handcuffs from the suspect.
- c. Do not require the suspect to put on any discarded clothing worn during the commission of the crime.
- d. Do not require the suspect to make any statements made in the commission of the crime.
- e. Do not require the suspect to perform any actions or movements done in the commission of the crime.

25.8.4 Before having the witness view the suspect, they should be advised that:

- a. It is just as important to clear innocent persons from suspicion as to identify guilty parties.
- b. The person you're viewing may not be the offender.
- c. You do not have to identify anyone.
- d. Regardless of whether you identify the offender we will continue to investigate the incident.

25.8.8 If there are multiple suspects, they should be separated and subjected to separate field identifications.

25.8.9 If there are multiple witnesses to the offense, only one should participate in the field identification process. If a positive ID is made, the other witnesses should be shown a photo lineup.

25.8.10 Officers must avoid making any actions or comments that could possibly influence victims or witnesses as they view the suspect.

### **25.9.0 Documenting the Showup**

25.9.1 When conducting a showup, the officer should preserve the outcome of the procedure by:

- a. Documenting the time and location of the procedure;
- b. Record any identification or non-identification obtained from the witness.
- c. Record in the witness' own words their certainty if a positive identification is made.