700.46 EYEWITNESS IDENTIFICATION PROCEDURES

POLICY

Janesville Police Department officers shall adhere to the procedures for conducting eyewitness identifications set forth in this policy. This policy establishes guidelines for eyewitness identification procedures involving show-ups, photo arrays, and line-ups. Photo arrays and line-ups will be conducted by displaying the suspect and fillers sequentially using a blind or blinded administration.

PURPOSE

It is the purpose of this policy to maximize the reliability of identifications, minimize erroneous identifications, and gather evidence that conforms to contemporary eyewitness identification protocols. Erroneous eyewitness identifications have been cited as the factor most frequently associated with wrongful convictions. Therefore, in addition to eyewitness identification, all appropriate investigative steps and methods should be employed to uncover evidence that either supports or eliminates the suspect identification.

DEFINITIONS

Administrator: means the law enforcement official conducting the identification procedure.

Blind Presentation: means the administrator conducting the identification procedure does not know the suspect's identity.

Blinded Presentation: means the administrator may know the identity of the suspect but does not know which photo array member is being viewed by the eyewitness at any given time.

Confidence Statement: means a statement in the witness's own words taken immediately after an identification is made stating his or her level of certainty in the identification.

Filler: refers to a live person, or a photograph of a person, included in an identification procedure who is not considered a suspect.

Line-up: means the process of presenting live individuals to an eyewitness for the purpose of identifying or eliminating suspects.

Photo Array: is a means of presenting photographs to an eyewitness for the purpose of identifying or eliminating suspects.

Show-up: means the in-person presentation of a single suspect to an eyewitness within

a short time frame following the commission of a crime to either confirm or eliminate the individual as a possible perpetrator. Show-ups, sometimes referred to as field identifications, are conducted in a contemporaneous time frame and proximity to the crime.

Sequential: means the presentation of a series of photographs or individuals to a witness one at a time.

Simultaneous: means the presentation of a series of photographs or individuals to a witness all at once.

PROCEDURES

Generally, only one identification procedure should be used per witness per suspect and investigative event. This means that multiple identification procedures regarding the same witness and suspect should not be conducted. Witnesses should be separated when identifying suspects and should not share or be aware of the responses of other witnesses. Janesville Police Department officers should carefully avoid the use of statements, cues, casual comments, or information that may influence the witness's decision making in any way during the identification process. After an identification has been made, the administrating officer shall ask the witness to provide a confidence statement and document the witness's response. Finally, the administrating officer shall ask the witness to complete and sign an Eyewitness Identification Procedure Form. All identification procedures should be video and/or audio recorded whenever possible. If a procedure is not recorded, a written record shall be created and the reason for not recording documented. Additionally, still photographs used for the purpose of eyewitness identification shall also be documented and copies preserved with the case file documents.

The witness shall be given a copy of the following instructions prior to viewing a photo array or line-up. The administrator shall read the instructions aloud before the identification procedure.

"You will be asked to look at a series of individuals.

The perpetrator may or may not be present in the identification procedure.

It is just as important to clear innocent persons from suspicion as it is to identify guilty parties.

I don't know whether the person being investigated is included in this series.

Sometimes a person may look different in a photograph than in real life because of different hair styles, facial hair, glasses, a hat or other changes in appearance. Keep in

mind that how a photograph was taken or developed may make a person's complexion look lighter or darker than in real life.

You should not feel that you have to make an identification. If you do identify someone, I will ask you to describe in your own words how certain you are.

The individuals are not configured in any particular order.

If you make an identification, I will continue to show you the remaining individuals or photos in the series.

Regardless of whether you make an identification, we will continue to investigate the incident.

Since this is an ongoing investigation, you should not discuss the identification procedures or results."

PHOTOGRAPHIC ARRAYS

Photographic arrays are the preferred method/procedure of achieving an eyewitness identification of a suspect. When a photographic array cannot be done or a different method is more reasonable under the circumstances, an officer may use a line-up or show-up.

Creating a Photo Array. When using photographic arrays, officers should follow the basic guidelines described in this policy.

- Use contemporary photos.
- Do not mix color and black and white photos.
- Photo arrays should consist of six individuals- the suspect and five fillers.
- Use photos of the same size and basic composition.
- Never mix mug shots with other photos and ensure consistent appearance of photograph backgrounds and sizing.
- Do not include more than one photo of the same suspect.
- Cover any portions of mug shots or other photos that provide identifying information on the subject – and similarly cover other photos used in the array.
- Where the suspect has a unique feature, such as a scar, tattoo, or mole or distinctive clothing that would make him or her stand out in the photo array, filler photographs should include that unique feature either by selecting fillers who have the same features themselves or by altering the photographs of fillers to the extent necessary to achieve a consistent appearance.
- Avoid the use of 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.

- Fillers should not be reused in arrays for different suspects shown to the same witness.
- Fillers should be reasonably similar in age, height, weight, and general appearance and be of the same sex and race, in accordance with the witness's description of the offender.
- If there is more than one suspect, include only one in each photo array.
- Place the suspect in different positions in each photo array for each witness.

Presenting a Photo Array. The primary investigating officer is responsible for ensuring these described procedures are followed.

- Inform the witness that the suspect may or may not be in the photo array.
- During a photo array presentation, no one who is aware of the suspect's identity should be present.
- Photo arrays should be presented by a blind administrator.
- If a blind administrator is not available, a blinded administrator may present the photo array using the following procedures.
    - Place the suspect and at least five filler photos in separate folders for a total of six (or more depending on the number of fillers used).
    - The administrator will take one folder containing a known filler and place it to the side. This will be the first photo in the series. The administrator should then shuffle the remaining folders (containing one suspect and the remainder of fillers) such that they cannot see how the line-up members are ordered. These shuffled folders will follow the first filler photo. The stack of photos is now ready to be shown to the witness.
    - The administrator should position themselves so that they cannot see inside the folders as they are viewed by the witness.
- The photo array should be preserved, together with full information about the identification process, as part of the case file and documented in a report.
- The witness should be asked if he or she recognizes the person in the photo before moving onto the next photo. If an identification is made before all of the photos are shown, the administrator should tell the witness that he or she must show the witness all of the photos and finish showing the sequence to the witness, still asking after each photo if the witness recognizes the person in the photo.
- If possible, the array should be shown to the witness only once. If, upon viewing the entire array the witness asks to see a particular photo or the entire array again, the witness should be instructed that he or she may view the entire array only one additional time. If a second viewing is permitted, it must be documented.
- Witnesses should not be permitted to see or be shown any photos of the suspect prior to the photo array.

Appendix A: Sequential Photo Display Form

LINE-UPS

Creating the Line-up. When using a line-up, officers should follow the basic guidelines described in this policy.

- Live line-ups shall be conducted using a blind administrator.
- Ensure that all persons in the line-up are numbered consecutively and are referred to only by number.
- Line-ups should, minimally, consist of six individuals - the suspect and five fillers.
- Fillers should be reasonably similar in age, height, weight, and general appearance and be of the same sex and race, in accordance with the witness's description of the offender.
- Avoid the use of 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.
- Create a consistent appearance between the suspect and the fillers with respect to any unique or unusual feature (e.g., scars, tattoos, facial hair) used to describe the perpetrator by artificially adding or concealing that feature on the fillers.
- If there is more than one suspect, include only one in each line-up.
- Place the suspect in different positions in each line-up for each witness.

Conducting the Line-up. The primary investigating officer is responsible for ensuring the procedures described herein are followed.

- Scheduling the line-up on a date and at a time that is convenient for all concerned parties, to include the prosecuting attorney, defense counsel, and any witnesses.
- Ensuring compliance with any legal requirements for transfer of the subject to the line-up location if the individual is incarcerated at a detention center.
- Making arrangements to have persons act as fillers.
- That the witness was informed the suspect may or may not be in the line-up prior to the live line-up.
- Ensuring that the suspect's right to counsel is scrupulously honored and that he or she is provided with counsel if requested. Obtaining proper documentation of any waiver of the suspect's right to counsel.
- Allowing counsel representing the suspect sufficient time to confer with his or her client prior to the line-up and to observe the manner in which the line-up is conducted.
- Only the suspect's attorney may be present for a line-up.
- Witnesses should not be permitted to see or be shown the suspects or their photos prior to the line-up.

SHOW-UPS

Conducting a Show-up. The use of show-ups should be avoided whenever possible. The use of a line-up or photo array procedure is preferred. However, when circumstances require the prompt presentation of a suspect to a witness, the following guidelines shall be followed to minimize potential suggestiveness and increase reliability.

- Document the witness's description of the perpetrator prior to conducting the show-up.
- Conduct a show-up only when the suspect is detained within a reasonable time frame after the commission of the offense and within a close physical proximity to the location of the crime.
- Do not use a show-up procedure if probable cause to arrest the suspect has already been established.
- If possible, avoid conducting a show-up when the suspect is in a patrol car, handcuffed, or physically restrained by officers, unless safety concerns make this impractical.
- Caution the witness that the person he or she is about to see may or may not be the perpetrator—and it is equally important to clear an innocent person. The witness should also be advised that the investigation will continue regardless of the outcome of the show-up.
- Do not conduct the show-up with more than one witness present at a time.
- Separate witnesses and do not allow communication between them before or after conducting a show-up.
- If one witness identifies the suspect, use a line-up or photo array for remaining witnesses.
- Do not present the same suspect to the same witness more than once.
- Do not require show-up suspects to put on clothing worn by, speak words uttered by, or perform other actions of the perpetrator.
- Remind the witness not to talk about the show-up to other witnesses until law enforcement or prosecutors deem it permissible.
- Document the time and location of the show-up, the officers present, the result of the procedure, and any other relevant information.

STATUTORY REFERENCES

- MN STATUTE 626.8433 – Eyewitness Identification Policies Required
- ADMINISTRATIVE RULE 6700.1615 – Required Agency Policies

Appendix A

Sequential Photo Display Form

SEQUENTIAL PHOTO DISPLAY FORM
(Witness Side)

Dept.: _____ C.N.: _____ OFFENSE: _____ Line-up ID# _____

WITNESS: _____ DOB _____ ADMINISTRATOR: _____

DATE: _____ TIME: _____ INVESTIGATOR ASSIGNED: _____

READ TO WITNESS BEFORE PHOTO DISPLAY:
__ 1. I am about to show you a set of photos. The person who committed the crime [or: _____] may or may not be included.

(SELECT ONE OF THESE OPTIONS AND READ.)

___ 2. (IA) I do not know whether the person being investigated is included **OR**
___ 2. (FE) I do not know the order of the photos.
___ 3. Even if you identify someone during this procedure, I will continue to show you all photos in the series.
___ 4. Keep in mind that a photo may be an old one. Some things, like hair styles, can be changed, and skin colors may look slightly different in photographs.
___ 5. You should not feel you have to make an identification. It is just as important to clear innocent persons as it is to identify the guilty. Whether or not you identify someone, the investigation will continue.
___ 6. You will see only one photo at a time. They are not in any particular order. Take as much time as you need to look at each one. You should avoid discussing this procedure or the results with any other potential witness in the case.

Please initial here if you understand these instructions. ____
(WITNESS TO INITIAL)

_____

TO BE COMPLETED BY WITNESS AFTER PHOTO DISPLAY:

The sequential photo line-up I was shown consisted of ___ photos.

☐ I am unable to select any photo as being the person(s) who _____.

☐☐I have selected photo(s) # _____ as the person who _____.

(IF SELECTION MADE) How certain are you of your identification?

_____ Date: _____ Time: _____
Witness signature
(Have witness sign and date any photo picked and attach to this report.)

SEQUENTIAL PHOTO DISPLAY FORM
(Administrator Side)

C.N. _____ Witness: _____ Line-up ID # _____
Administrator☐☐ does☐☐ does not know identity of suspect.

_____
Instructions to administrator (READ BEFORE SHOWING PHOTO DISPLAY):
A sequential photo line-up must either be presented by an *independent administrator* [IA] (a person who does *not* know the identity of the suspect) or, if unavailable, a *functional equivalent* [FE] method must be used. Functional equivalent means (1) that the administrator cannot see and does not know the order of the photos and (2) that the witness knows the administrator does not know the order. Before beginning the photo display, determine which of these two methods is used (IA or FE), select the appropriate instruction # 2 and cross out the inapplicable # 2.

Fill out the case information on the top of the form. Read instructions on reverse side to witness and have witness initial at end. Show photos one at a time. Only one photo at a time may be visible. As each photo is displayed, ask "Is this the person who [insert crime]?" If yes, ask, "How certain are you of your identification?" Even if identification is made, continue showing remaining photos. After all photos have been displayed, repeat display ONLY if witness requests it. In any repeat, ALL photos must be displayed in the same sequence, even if the witness only requests to see a particular photo or photos again.

Ask witness to complete witness portion of the form and sign it. If any selection is made, have the witness sign and date the photo (or photos) selected. The photo display used must be preserved. (Attach copy to this form.) BE CAREFUL NOT TO PROVIDE ANY FEEDBACK TO WITNESS ON EITHER IDENTIFICATION OR NON-IDENTIFICATION.

After witness has completed witness portion of the form, complete administrator portion of the form. This includes asking the certainty question, administrator observations and number of times display was shown. Departmental policy may also require a standard supplementary report.

_____
To be completed during and after photo display:
Comments made by the witness about any photograph during the photo display (note photo number):

(If identification made) How certain are you of your identification?

Additional observations by administrator (e.g., any physical response or other comments by witness):
Sequential line-up was shown☐☐once / _____ times

_____ Date: _____ Time: _____
Administrator's signature

Have witness complete front side. Attach copy of photo display used. Have witness sign and date any photo picked.