



EYEWITNESS IDENTIFICATION

INDEX CODE: 1822
EFFECTIVE DATE: 01-04-17

Contents:

- I. Policy
- II. Purpose
- III. Definitions
- IV. Show Ups ("One-on-One Identifications")
- V. Field Views
- VI. Photo Arrays
- VII. Live Line Ups & Voice Identification
- VIII. Drawings & Identi-Kit® Composites
- IX. Proponent Unit
- X. Cancellation

I. POLICY

The identification of a suspect by an eyewitness can be an important component of a criminal investigation, but can be equally significant in clearing an innocent suspect. Many people who have been convicted of serious crimes, only to later be exonerated by scientific evidence, were originally convicted based in large part on mistaken identification by a witness. The Anne Arundel County, MD Police Department recognizes that it is as much the responsibility of the police to protect the innocent from conviction as it is to assist in the conviction of the guilty. The identification of criminal offenders must be approached with extreme caution as the court may exclude eyewitness evidence if it determines that police methods were unnecessarily suggestive.

II. PURPOSE

The purpose of this policy is to provide procedures to be used for show ups ("one-on-one identifications") and photo arrays; and to provide the Department policy regarding live line-ups and voice identifications. Guidance for the use of drawings & Identi-Kit® composites is also provided. These procedures are to ensure that members of the department maintain consistency and to assure that when challenged in court, the eyewitness identification can not be construed as being unnecessarily suggestive.

III. DEFINITIONS

A. Show-up ("One-on-One Identifications")

The live presentation of one suspect to an eyewitness shortly after the commission of a crime to confirm or eliminate him or her as the perceived perpetrator.

B. Field View

The exposure of an eyewitness to groups of people in public places on the theory that the suspect may be among the group.

C. Photo Array

The showing of photos of several individuals to an eyewitness for the purpose of identifying or eliminating suspects.

D. Live Line-up

The live presentation of individuals to an eyewitness for the purpose of identifying or eliminating suspects. A live line-up differs from a field view in that it is conducted in a controlled setting, such as a police station, a known suspect is in the mix, and the participants are aware that an identification procedure is being conducted.

E. Voice Identification

A procedure whereby a witness is permitted to hear the voices of several people for the purpose of identifying or eliminating a suspect's voice.

F. Independent ("Blind") Administration

Refers to the technique of an eyewitness identification procedure in which an independent administrator (police officer/detective/investigator) does not know who the suspect is among the photos or persons being presented to the witness.

G. Functional Equivalent ("Blinded") Administration

Refers to techniques used when an independent administrator is not available to conduct an Independent Administration. Functional Equivalent procedures permit the investigating officer to conduct a photo array, using procedures that preclude him or her from knowing when the suspect is being presented and being viewed by the witness. The Functional Equivalent technique used by the Department is the "Folder Shuffle" technique.

H. Sequential

Presentation of photos or individuals in a photo array or live line-up to a witness one at a time rather than all at once.

IV. SHOW UPS ("One-on-One Identifications")

Show-up identification procedures should only be used soon after a crime has been committed, typically within two hours, or under exigent circumstances, such as the near death of the only available witness. *Show ups should be conducted live whenever possible and not photographically. Do not use show ups if probable cause to arrest the suspect has already been established. The preference then is to use a photo array.*

A. *Separate witnesses and do not allow communication between them before or after conducting a show up.*

B. Document the witness's *full* description of the perpetrator prior to conducting the show up.

C. *All efforts should be made to minimize any suggestiveness during show up identifications. Officers should scrupulously avoid words or conduct any type that may suggest to the witness that the individual being detained is or may be the perpetrator, including minimizing exposure to police radio transmissions and other officer-to-officer communication. Do not conduct show ups when the suspect(s) is (are) in a patrol car, handcuffs are visible, or in any other "in-custody" environment, unless necessary due to safety. Do not require the suspect(s) to put on clothing worn by, speak words uttered by, or perform other actions of the perpetrator.*

D. Transport the witness to the location of the suspect whenever possible, rather than bringing the suspect to the witness. *If there are multiple witnesses, they should be transported separately, one at a time. Suspects should not be transported into a crime scene to avoid evidence contamination.*

E. *Prior to the show up, the witness should be given the following instructions:*

1. *You are going to be asked to view some people (even if only one person is shown).*
2. *The person you saw may or may not be among the people you are about to view.*
3. *It is just as important to clear innocent persons from suspicion as it is to identify the guilty.*
4. *Regardless of whether you identify someone, we will continue to investigate the incident.*
5. *If you identify someone, our procedures require me to ask you to state in your own words, how certain you are.*
6. *If you do select someone, please do not ask us questions about the person you have selected, because we cannot share that information with you at this time.*
7. *Regardless of whether you select a person, please do not discuss the procedure with anyone else.*
8. *Do you have any questions before we begin?*

F. *If an identification is made, ask the witness "Without using a number or percentage scale, how certain are you?" Document the exact words used by the witness without prompting the witness to elaborate.*

G. Do not comment on selections or outcomes of the procedure in any way. Do not indicate to the witness whether he or she did or did not correctly identify a suspect, that he or she did a “good job,” or any other similar comment. Studies have shown that witnesses may have a false higher level of certainty about their identification as a result of positive reinforcement from the investigating officer. This has led to subsequent false identifications in the court room.

H. *If one witness identifies the suspect, use a photo array or live line up for all remaining witnesses.*

I. *Do not present the same suspect to the same witness more than once.*

J. *The circumstances surrounding the detention of the suspect(s) and the show up procedures described in this section must be fully documented in the incident, supplemental or investigative report, including the time and location of the show up, the officer(s) present, environmental and lighting conditions, instructions given by the officer, statements made by the witness and the outcome of the procedure. NOTE: Even if identification is not made, the identity of the subject of the show up and the statements made by the witness must be documented in the incident, supplemental, or investigative report.*

V. FIELD VIEWS

Officers may transport victims or witnesses in police vehicles to cruise the area where a crime has just occurred in order for them to attempt to point out the perpetrator.

A. Document the witness’s description of the perpetrator prior to conducting the Field View.

B. Officers should scrupulously avoid words or conduct of any type, including restricting witnesses from hearing police radio transmissions or seeing police activity that may be suggestive as to who the suspect may be.

C. Ask the witness how certain he or she is of any identification that is made of a suspect, without using a number or percentage scale. Document the exact words used by the witness without prompting the witness to elaborate.

D. Remind the witness not to talk about any identification to other witnesses.

E. Document the time and location of the field view, any identification made, the officers present, the environmental and lighting conditions, statements made by the witness, and the outcome of the procedure in the incident, supplemental, or investigative report.

VI. PHOTO ARRAYS

Photo arrays will be conducted in a sequential rather than simultaneous presentation. Simultaneous or “six-pack” presentations will not be used. Photo arrays will be conducted using Independent (“Blind”) Administration, unless an Independent Administrator is not available. In that case, the Functional Equivalent Procedures (“Blinded”) will be used. Photo arrays should be shown to witnesses as soon as possible after the commission of a crime. A separate photo array will be used for each suspect.

A. Creating a Photo Array

1. The photo array should consist of a minimum of six (6) photos. Use a minimum of five filler photos together with only one suspect photo. A filler photo should be used as the lead. Mark the back of each photo with sequential numbers.

2. Use contemporary photos of individuals who are reasonably similar in age, height, weight and general appearance, including any unique or unusual features, and are of the same sex and race, in accordance with the witness’s description of the suspect. Do not mix color and black and white photos; use photos of the same size and basic composition; never mix law enforcement mug shots with other photos; and do not include more than one photo of the same suspect. Whenever possible, avoid using a photograph of the suspect wearing the same clothing he or she wore while committing the crime.

3. Cover any portions of mug shots or other photos that provide identifying information on the subject, and similarly cover other identifying information on photos used in the array.

B. Conducting the Photo Array - Independent Administrator (“Blind”)

1. When possible, practical, and if the technology is available, the process of conducting a photo array with a witness should be audio/video recorded.
2. An investigator or officer who is unaware of the identity of the suspect, acting as an Independent Administrator, shall present the photos. No one who is aware of the suspect’s identity may be present during the administration of the photo array. If an Independent Administrator is not available, the Functional Equivalent procedures in Section IV. C. will be followed in conjunction with the remaining procedures in this section.
3. Present to the witness the Photo Array Instructions Form (Appendix A) prior to presenting the photo array and read the instructions aloud before the identification procedure. Have the witness acknowledge he or she understands the instructions by signing the form.
4. Show the photo array to only one witness at a time; separate witnesses so they will not be aware of the responses of other witnesses. Each witness will be shown the photo array in different sequential order.
5. The witness will be presented one photo at a time to view by the administrator. After viewing the photo, the photo should be handed back to the administrator. A witness should not be allowed to view the photos in the array simultaneously, or in a manner in which the witness is comparing one photo to another.
6. If the witness identifies a suspect prior to viewing all photos in an array, the remaining photos must still be viewed by the witness. The witness must give an affirmative or negative response to all photos in the array.
7. If a witness requests to view a photo in the photo array again, the photo array must be rearranged/reshuffled and the witness must view all photos again following the same procedures. A witness will only be allowed to view a photo array one additional time (Two times total).
8. Do not comment on selections or outcomes of the procedure in any way. Do not indicate to the witness whether he or she did or did not correctly identify a suspect, that he or she did a “good job,” or any other similar comment. Studies have shown that witnesses may have a false higher level of certainty about their identification as a result of positive reinforcement from the investigating officer. This has led to subsequent false identifications in the court room.
9. If an identification is made, have the witness sign and date/time the photo. This signed and dated photo must not be used in any subsequent showings of the photo array.
10. Ask the witness how certain he or she is of any identification that is made of a suspect, without using a number or percentage scale. Document the exact words used by the witness, without prompting the witness to elaborate, on the Photo Array Instructions Form. Also document the number of the photo identified from the array.
11. If a witness was previously shown a photo array in connection with the identification of another person suspected of involvement in the offense, the filler photos in any subsequent photo array shall be different from the fillers used in any prior identification procedure.
12. Preserve each photo array, together with all documentation of the identification process. This includes the names of all persons present at the identification procedure. All photo arrays that are shown and related documentation and reports become part of the official investigative report and file. They need to be secured as evidence and be available on demand to the investigating officer’s supervisor and the State’s Attorney’s Office. This includes procedures in which no identification was made and procedures in which an incorrect identification was made.

C. Conducting the Photo Array - Functional Equivalent Procedures (“Blinded”)

1. Place the suspect and filler photos in separate file folders.
2. The investigator will shuffle the folders before presenting them to the witness so the investigator does not know the order the photos are in.

3. The investigator administering the array should position him or herself so that he or she does not know which photo the witness is viewing. This is to avoid any unintentional non-verbal cues that the investigating officer/detective may present to the witness when the witness is viewing the suspect.

4. With the exception of the independent administrator, all other procedures outlined in Section IV. B. applies and will be followed in conducting a photo array using “Functional Equivalent Procedures.”

VII. LIVE LINE UPS & VOICE IDENTIFICATION

Because of the complexities involved in live line-ups and voice identification, the Anne Arundel County Police Department does not routinely utilize these techniques for the purpose of identifying or eliminating suspects. The basic principles of Independent Administration that apply to photo arrays also apply to conducting a live line-up or voice identification. The State’s Attorney’s Office will be consulted prior to conducting any live line-up or voice identification procedure.

VIII. DRAWINGS, SKETCHES & IDENTI-KIT® COMPOSITES

An artist’s sketch, composite sketch or computerized drawing can sometimes aid an investigation if the witness has a reliable and specific recollection of the offender’s facial features. The Department primarily uses the Identi-Kit® product for this purpose. However, research has shown that a person selected to be used in a photo array or live line-up based on resemblance to a composite is more likely to be misidentified. Additionally, building a composite has been shown to lower a witness’ accuracy in identifying the offender’s face at a later time. For these reasons, the use of drawings & Identi-Kit® composites should be used only after thoughtful consideration.

A. Prior to attempting a sketch or composite, investigating officers will obtain and document a full description of the suspect from the witness.

B. If available and practical, a drawing or sketch prepared by a trained artist is preferred over a computerized composite.

C. The Identi-Kit® product will only be used by those who have received the proper training.

D. Sketches and composites should not be attempted if the witness is going to be shown a photo array or live line-up of the suspect.

E. Once a sketch or composite has been completed, the witness will be asked to state in her or her own words how accurately the composite reflects how the suspect appeared during the crime. The witness’ specific response will be documented in the incident, supplement, or investigative report.

F. The fact that a suspect resembles a sketch or composite is not by itself probable cause to believe the suspect is the offender.

IX. PROPONENT UNIT: CID Major Crimes Section.

X. CANCELLATION: This Index Code cancels Index Code 1822, dated 01-29-15.