

 Kinston Police Department	<u>POLICY: Photographic Lineups</u>						POLICY #: 600-10	
	<u>NCLEA Standards: 6.20;</u>							
	<u>CALEA Standards:</u>							
	<u>NCLM Standards: II.7;</u>							
<input type="checkbox"/> New <input checked="" type="checkbox"/> Revised	Revision Dates:	01/01/21	02/16/22	12/03/25			Effective Date: 07-01-2019	
Approval: Chief of Police								

I. PURPOSE

The purpose of this policy is to establish guidelines for eyewitness identification procedures involving show-ups, photo arrays, and lineups. 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.

II. DEFINITIONS

- A. **Show-up:** The presentation of a suspect to an eyewitness within a short time frame following the commission of a crime to either confirm or eliminate him or her as a possible perpetrator. Show-ups, sometimes referred to as field identifications, are conducted in a contemporaneous time frame and proximity to the crime.
- B. **Lineup:** The process of presenting live individuals to an eyewitness for the purpose of identifying or eliminating suspects.
- C. **Photo Array:** A means of presenting photographs to an eyewitness for the purpose of identifying or eliminating suspects.
- D. **Administrator:** The law enforcement official conducting the identification procedure.
- E. **Blind Presentation:** The administrator conducting the identification procedure does not know the suspect's identity.
- F. **Blinded Presentation:** The administrator may know the identity of the suspect, but does not know which lineup or photo array member is being viewed by the eyewitness at any given time.
- G. **Confidence Statement:** 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.
- H. **Filler:** A live person, or a photograph of a person, included in an identification procedure who is not considered a suspect.
- I. **Sequential:** Presentation of a series of photographs or individuals to a witness one at a time.

J. Simultaneous: Presentation of a series of photographs or individuals to a witness all at once.

III. POLICY

A. Officers shall strictly adhere to the procedures for conducting eyewitness identifications set forth herein, in order to maximize the reliability of identifications, minimize erroneous identifications, and gather evidence that conforms to contemporary eyewitness identification protocols. This policy recognizes that the sequential and simultaneous approaches are both valid methods of conducting an identification procedure and does not recommend one over the other. However, regardless of the method that an agency decides to utilize, training of the appropriate personnel in the basic procedures outlined in this document should be conducted and eyewitness identification procedures followed. (**NCLEA 6.20**)

B. Show-ups (**NCLEA 6.20**)

The use of show-ups should be avoided whenever possible in preference to the use of a lineup or photo array procedure. 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.

1. Document the witness's description of the perpetrator prior to conducting the show-up.
2. Conduct a show-up only when the suspect is detained within a reasonably contemporaneous time frame after the commission of the offense and within a close physical proximity to the location of the crime.
3. Do not use a show-up procedure if probable cause to arrest the suspect has already been established.
4. Transport the witness to the location of the suspect whenever possible, rather than bringing the suspect to the witness.
5. 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.
6. Do not take a suspect to the witness's residence unless it is the scene of the crime.
7. 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.
8. Do not conduct the show-up with more than one witness present at a time.
9. Separate witnesses and do not allow communication between them before or after conducting a show-up.
10. If one witness identifies the suspect, use a lineup or photo array for remaining witnesses.

11. Do not present the same suspect to the same witness more than once.
12. Do not require show-up suspects to put on clothing worn by, speak words uttered by, or perform other actions of the perpetrator.
13. Officers should scrupulously avoid words or conduct of any type that may suggest to the witness that the individual is or may be the perpetrator.
14. Ask the witness to provide a confidence statement.
15. Remind the witness not to talk about the show-up to other witnesses until police or prosecutors deem it permissible.
16. When applicable, videotape the identification process using an in-car camera or other recording device where available.
17. Document the time and location of the show-up, the officers present, the result of the procedure, and any other relevant information.

C. Basic Procedures for Conducting a Lineup or Photo Array (**NCLEA 6.20**)

1. Whenever possible, a blind presentation shall be utilized. In cases where a blind presentation is not feasible, a blinded presentation should be used.
2. The lineup or photo array should consist of a minimum of six individuals or photographs. Use a minimum of five fillers and only one suspect.
3. 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.
4. 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.
5. 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.
6. If there is more than one suspect, include only one in each lineup or photo array.
7. During a blind presentation, no one who is aware of the suspect's identity should be present during the administration of the photo array. However, during a lineup, the suspect's attorney should be present.
8. Place suspects in different positions in each lineup or photo array, both across cases and with multiple witnesses in the same case.
9. Witnesses should not be permitted to see or be shown any photos of the suspect prior to the lineup or photo array.

10. The witness shall be given a copy of the following instructions prior to viewing the lineup or photo array and the administrator shall read the instructions aloud before the identification procedure.
 1. *The Suspect may or may not be in this line-up.*
 2. *The Officer does not know the identity of the suspect.*
 3. *You should not feel compelled to make an identification.*
 4. *It is as important to exclude innocent persons as it is to identify the suspect.*
 5. *The investigation will continue whether or not an identification is made*
11. The lineup or photo array should be shown to only one witness at a time; officers should separate witnesses so they will not be aware of the responses of other witnesses.
12. Multiple identification procedures should not be conducted in which the same witness views the same suspect more than once.
13. Officers should scrupulously avoid the use of statements, cues, casual comments, or providing unnecessary or irrelevant information that in any manner may influence the witnesses' decision-making process or perception.
14. Following an identification, the administrator shall ask the witness to provide a confidence statement and document the witness's response.
15. The administrator shall ask the witness to complete and sign a lineup or photo array form.
16. Lineup and photo array procedures shall be video and audio recorded, unless doing so is not possible. If a procedure is not recorded, a written record shall be created and the reason for not recording shall be documented. In the case of lineups that are not recorded, officers shall take and preserve a still photograph of each individual in the lineup.

D. Photographic Arrays

1. Creating a Photo Array
 - a. Use contemporary photos.
 - b. Do not mix color and black and white photos.
 - c. Use photos of the same size and basic composition.
 - d. Never mix mug shots with other photos.
 - e. Do not include more than one photo of the same suspect.
 - f. 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.

2. Conducting the Photo Array

- a. For both sequential and simultaneous procedures, the photo array should be preserved, together with full information about the identification process as part of the case file.
- b. The following are additional considerations that apply solely to sequential photo arrays:
 - (1) If a blind administrator is not available, the administrator shall ensure that a blinded presentation is conducted using the following procedures.
 - i. Place the suspect and at least five filler photos in separate folders. Include two additional folders each containing a blank sheet of paper, for a total of eight (or more depending on the number of fillers used).
 - ii. 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 separately set aside the two blank folders, which will be added to the end of the sequence. The administrator should then shuffle the remaining folders (containing one suspect and the remainder of fillers) such that he or she cannot see how the lineup members are ordered. These shuffled folders will follow the first filler photo and precede the two blank folders. The stack of photos is now ready to be shown to the witness.
 - iii. The administrator should position himself or herself so that he or she cannot see inside the folders as they are viewed by the witness.
 - (2) 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.
 - (3) 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.

E. Lineups

1. Conducting the Lineup
 - a. If a blind administrator is unavailable, the administrator shall take all reasonable precautions to avoid giving any unintentional cues to the witness.
 - b. Ensure that all persons in the lineup are numbered consecutively and are referred to only by number.
2. The primary investigating officer is responsible for the following:
 - a. Scheduling the lineup on a date and at a time that is convenient for all concerned parties, to include the prosecuting attorney, defense counsel, and any witnesses.
 - b. Ensuring compliance with any legal requirements for transfer of the subject to the lineup location if he or she is incarcerated at a detention center.
 - c. Making arrangements to have persons act as fillers.
 - d. Ensuring that the suspect's right to counsel is scrupulously honored and that he or she is provided with counsel if requested.
 - e. Obtaining proper documentation of any waiver of the suspect's right to counsel.
 - f. Allowing counsel representing the suspect sufficient time to confer with his or her client prior to the lineup and to observe the manner in which the lineup is conducted.

F. A photo lineup and/or photo array conducted by a local law enforcement agency is required to meet all of the above-mentioned requirements (via G.S. 15A-284.52).

G. In the circumstance where an eye witness may be deaf, hearing impaired or not speak English, officers will make appropriate accommodations to assist the eye witness with understanding the photo-lineup procedures. When a language barrier exists, Officers shall notify a supervisor who shall in turn contact agency resources as well as exterior resources to assist with the situation.