



# ORONO POLICE DEPARTMENT

## STANDARD OPERATING PROCEDURES

Protect with Vigilance & Serve with Compassion and Excellence

<b>Subject:</b>	<b>Eyewitness Identification</b>	<b>Policy #</b>	<b>O-23</b>
<b>Effective Date:</b>	<b>June 16, 2025</b>	<b>Review Cycle:</b>	<b>2 Years</b>
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<b>MLEAP:</b>	<b>7.31. A, B, C, D</b>		
	<b><i>Rescinds All Previous Policies Related To This Current Policy</i></b>		
<b>Issuing Authority:</b>	<b>Chief of Police Daniel Merrill</b>		

### I. POLICY

Officers of the Orono Police Department shall strictly adhere to the procedures for conducting eyewitness identifications to maximize the reliability of identifications, minimize erroneous identifications, and gather evidence that conforms to contemporary eyewitness identification protocols.

This policy recognizes that sequential and simultaneous approaches are both valid methods of conducting an identification procedure and the policy does not favor one approach over the other. However, regardless of the method that an officer decides to utilize, the basic procedures outlined in this policy shall be followed.

### II. PURPOSE

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 discredits the reliability of a suspect identification procedure.

### III. DEFINITIONS

**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.

**Lineup:** The process of presenting individuals in person to an eyewitness to identify or eliminate suspects.

**Photo Array:** A means of presenting photographs to an eyewitness to identify or eliminate suspects.

**Administrator:** The law enforcement officers conducting the identification procedure.

**Blind Presentation:** A situation in which the administrator conducting the identification procedure does not know the suspect's identity.

**Blinded Presentation:** A situation in which 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.

**Confidence Statement:** A statement in the witness' own words taken immediately after identification is made reflecting his or her level of certainty in the identification.

**Filler:** A person or a photograph of a person, including in an identification procedure, who is not considered a suspect.

**Sequential:** Presentation of a series of photographs or individuals to a witness one at a time.

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

#### **IV. PROCEDURES**

##### **A. Show-ups**

The use of show-ups should be avoided whenever possible in favor of 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. **MLEAP 7.31.D**

1. Document the witness' description of the perpetrator before 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 alleged offense and within 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 an officer, unless safety concerns render that approach impractical.
6. Do not take a suspect to the witness' residence unless it is the scene of the crime.
7. Caution the witness that the person s/he is about to see may or may not be the perpetrator, and that 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 eyewitness 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 the 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. Videotape the identification process using an in-car camera or another recording device whenever possible.
17. Document the time and location of the show-up, the officer(s) present, the result of the procedure, and any other relevant information.

**B. Conducting a Lineup or Photo Array**

**MLEAP 7.31.A**

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 gender and race as defined by the witness' 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 concerning 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 suspect in each lineup or photo array.
  7. During a blind presentation, no individual 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 before the lineup or photo array.
  10. The witness shall be given a copy of instructions before viewing the lineup or photo array, and the administrator shall read the instructions (*Appendix 1*) out loud before the identification procedure.
- MLEAP 7.31.B**
11. The lineup or photo array should be shown to only one witness at a time; an officer 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 avoid the use of statements, cues, casual comments, or providing unnecessary or irrelevant information that, in any manner, may influence the witness' decision-making process or perception.
  14. Following an identification, the administrator shall ask the witness to provide a confidence statement and document the witness' 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 everyone in the lineup.

### C. **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 must 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:

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 shall 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 s/he 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.
- c. The witness should be asked if s/he recognizes the person in the photo before moving on to the next photo. If identification is made before all of the photos are shown, the administrator should tell the witness that s/he 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.

- d. Generally, the array should be shown to the witness only once. If upon viewing the entire array, the witness asks to see a 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.

#### D. 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 of the lineup on a date and at a time that is convenient for all concerned parties, including the prosecuting attorney, defense counsel, and witnesses.
- b. Ensuring compliance with any legal requirements for the transfer of the subject to the lineup location if s/he is incarcerated at a detention center.
- c. Planning to have persons act as fillers.
- d. Ensuring that the suspect's right to counsel is honored and that s/he 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 enough time to confer with his or her client before the lineup and to observe how the lineup is conducted.

#### E. Communicating with People who are Deaf, Hard of Hearing, or limited English language proficiency.

##### **MLEAP 7.31.C**

1. In the event the eyewitness requires special accommodations due to a disability (e.g., deaf/hard of hearing) or a language barrier (e.g., limited English proficiency and/or illiterate), officers attempting to identify a subject shall provide translation or communication services through an interpreter or sign-language professional. Officers should refer to policy *O-47 Hearing Impaired Disabled Communications* for guidance.

**PHOTO ARRAY INSTRUCTION FORM**

1. You are being asked to view a set of photographs.
2. You will be viewing the photographs one at a time and in random order.
3. I am required to show you the entire series, please look at all of them.
4. Please decide on each photograph before moving on to the next one.
5. The person you saw may or may not be in the set of photographs you are about to view.
6. You should remember that it is just as important to clear innocent persons from suspicion as to identify the guilty.
7. The officer showing the photographs does not know whether any of the people in the array are the person you saw.
8. The individuals in the photographs 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.
9. Regardless of whether you select a photograph, the police department will continue to investigate the incident.
10. If you select someone, the procedure requires the officer to ask you to state, in your own words, how certain you are.
11. If you do select a photograph, please do not ask the officer questions about the person you have selected, as no information can be shared with you at this stage of the investigation.
12. Regardless of whether you select a photograph, please do not discuss the procedure with any other witnesses in the case or the media.
13. Do you have any questions before we begin?

Witness Signature \_\_\_\_\_ Date \_\_\_\_\_

Officer Signature \_\_\_\_\_ Date \_\_\_\_\_

Administrator Signature \_\_\_\_\_ Date \_\_\_\_\_

**If an identification is made:**

“Without using a numeric scale, tell me how certain you are.”

**GUIDELINES FOR AN EFFECTIVE SHOW-UP**

- A. A show-up should be conducted shortly after the commission of the crime or the witness' observation of the suspect. A person should only be detained when the officer has reasonable suspicion to believe the person could be a suspect.
- B. Barring special circumstances, the witness should be transported to the suspect's location. When transporting a witness to a show-up, attempt to prevent the witness from hearing radio transmissions or other officer-to-officer conversations related to the suspect or the investigation.
- C. A suspect should only be viewed by one witness at a time out of the presence and hearing of other witnesses. Talking among witnesses should not be allowed.
- D. Minimize suggestiveness. Unless necessary for the safety of officers or others, show-ups should not be conducted if the suspect is seated in the rear of a police cruiser, in a cell, or in any other enclosure associated with custody. If the suspect is handcuffed, he should be turned so that the handcuffs are not visible to the witness.
- E. Do not tell the witness where the suspect was found, whether the suspect said anything or did anything suspicious, or whether the suspect was found with items potentially related to the crime.
- F. Once a witness has positively identified the suspect at a show-up, do not conduct additional show-ups with the same suspect.
- G. If the witness fails to make an identification or is not sure of identification, and probable cause to arrest cannot be immediately developed, the person must be permitted to leave.
- H. You should explain the following to a witness during a show-up;
  - 1. You are going to be asked to view some people.
  - 2. You should remember that it is just as important to clear innocent persons from suspicion as it is to identify the guilty.
  - 3. The person who committed the crime may or may not be the person you are about to view.
  - 4. Regardless of whether you identify the person, we will continue to investigate the incident.
  - 5. When we are done, our procedures require me to ask you to state, in your own words, how certain you are of any identification.
  - 6. If you do select someone, please do not ask us questions about the person you have selected, as no information can be shared with you at this stage of the investigation.
  - 7. *Regardless of whether you select a person, please do not discuss the procedure with any other witnesses in the case or the media.*
  - 8. *Do you have any questions before we begin?*

***If an identification is made, ask: "Without using a numerical scale, how certain are you?"***