

2.310 EYEWITNESS IDENTIFICATION

These directives are adapted from the Maryland Police Training Commission's eyewitness identification model policy. See also **Public Safety (PS) § 3-506 & 3-506.1**.

2.310.02 Eyewitness Identifications – Generally

- A. Identification processes must be conducted fairly, reliably, and objectively.
- B. The facts, circumstances, and details of every show-up, photo array, line-up, voice identification, etc. will be included in police reports of the related incidents. This information includes, but is not limited to:
 - 1. Dates, times, and locations of the procedures;
 - 2. The names of all persons involved (police and citizens);
 - 3. The instructions that were given by officers to witnesses;
 - 4. Reactions by witnesses and/or statements in their own words about the identification procedure and certainty of their identifications or nonidentifications.
- C. When multiple witnesses are involved:
 - 1. Separate witnesses and tell them to avoid discussing details of the incident with other witnesses;
 - 2. If a positive identification is obtained from one witness, conduct further identification processes using photo arrays or line-ups for any remaining witnesses;
- D. Caution witnesses that the persons they are looking at may or may not be the suspects.
- E. Avoid saying anything to the witness that may influence their selection.
- F. Officers will not state or suggest that suspects have been arrested, booked, or have made any confessions, incriminating statements, or that incriminating evidence has been found.
- G. Other than thanking witnesses for their assistance, do not give feedback to witnesses after identification processes.
- H. A suspect's right to have counsel present during identification procedures:
 - 1. **Does not** apply when suspects are not physically present such as procedures involving photographs, sketches, or composites whether or not criminal proceedings have started;
 - 2. **Does not** apply during in-person identification procedures if complaints have been filed or charging documents obtained, but suspects have not been taken into custody; and
 - 3. **Does** apply to when suspects have been arraigned or indicted.

2.310.04 Show-ups (Field Identifications)

- A. When circumstances require the prompt display of subjects to witnesses, such as when officers locate potential suspects within close time and location proximity to crime locations or in exigent circumstances, such as the near death of available witnesses, officers should:
 - 1. Conduct these processes live rather than by using photographs;
 - 2. Determine and document suspect descriptions before show-ups;
 - 3. Transport witnesses to where suspects are detained;
 - 4. Position suspects so that they are not in police vehicles and handcuffs, if any, are not visible to witnesses;
 - 5. Not bring suspects into crime scenes nor have clothing or other articles recovered from crime scenes placed on or near suspects to prevent contaminating evidence and suspects
- B. Officers may take victims and witnesses in police vehicles to canvas areas where crimes just occurred so they may attempt to point out suspects.
- C. Suspects who are not positively identified will be promptly released and allowed to leave unless other evidence is obtained to establish probable cause. The personal identification information of everyone detained for show-ups must be included in related police reports.

2.310.06 Photo Arrays (42.2.11) {Revised: 08/08/16}

- A. The investigations unit may assist in coordinating and/or facilitating photo arrays. Photo sources include, but are not limited to departmental, Auxiliary Services (OneCards), and Maryland MVA (driver's licenses), and allied agencies.
- B. Officers who prepare photo arrays:
 - 1. Should ensure they are shown to witnesses as soon as possible after crimes have been committed and actual or probable suspects have been developed;
 - 2. Will use a separate array for each suspect; and
 - 3. Will include only one suspect and a minimum of five non-suspect filler photos.
 - a. Suspect photos should closely depict their appearance at the times of incidents.
 - b. Filler photos should generally fit suspects' descriptions without being so close a match that people who are familiar with suspects would have difficulty distinguishing the fillers.
 - c. Photos will not bear markings indicating previous arrests.
 - d. There must be a consistent appearance between suspect and filler photos with respect to any unique or unusual features such as facial scars or injuries by adding or covering the features, but without altering photos.
 - e. Officers will examine an assembled array to ensure that nothing about the suspect's photo makes it stand out.
 - f. Fillers will not be reused and shown to the same witness for different suspects.
 - g. Each photo will be placed and attached in its own folder that is numbered only on the inside.
- C. When showing photo arrays:
 - 1. An investigating officer develops the array, shuffles the folders so the officer does not know the photo order, and presents the photos one at a time so the witness sees only one photo at a time and the officer cannot see which photo is being viewed.
 - 2. Investigating and/or secondary officers will ensure that witnesses are read the appropriate instructions from the **Witness Identification Instructions (UPO.131.D)** and have witnesses sign to acknowledge the instructions;
 - 3. Officers will remind witnesses that all photos in the array must be viewed even if witnesses make an identification before all photos have been seen;
 - 4. Officers may reshuffle an array once if witnesses do not initially make an identification and believe that viewing arrays a second time may be helpful;
 - 5. Witnesses should be asked to state in their own words and without using a numerical scale, just how certain they are about any identifications they make;
 - 6. Separate arrays will be used for each witness; and
 - 7. They will be preserved as when they were presented and submitted consistent with **2.500 Property and Evidence**. Copies may be placed in investigative files for reference purposes.

2.310.08 Lineups (42.2.11)

- A. Lineups will be coordinated through the investigations unit supervisor, with consultation by the Office of the State's Attorney, and with the assistance of allied agencies that have the resources to conduct lineups.
- B. Officers will request that allied agencies use a blind, sequential process similar to that described in **2.310.06** except that this process uses an actual suspect and others as fillers. The process should be compliant with **Public Safety (PS) § 3-506 & 3-506.1**.
- C. Other factors that should be considered when conducting lineups include, but are not limited to:
 - 1. Suspects cannot be detained and compelled to participate in lineups without probable cause to arrest;
 - 2. The Office of the State's Attorney can apply for court orders that compel suspects to cooperate;
 - 3. Suspects who have been arraigned or indicted must be informed, preferably in writing, of their right to have legal counsel present during lineups;

4. Suspects' attorneys:
 - a. May make reasonable suggestions about the lineup composition and how it is conducted. This information will be included in the corresponding police report;
 - b. Will be given sufficient time to confer with clients;
 - c. May observe, but may not talk with lineup participants or witnesses;
 - d. Must leave the room before the lineup starts.
 - e. Must go through the Office of the State's Attorney to get names and addresses of witnesses who participate in lineups if their clients have not been arraigned or arraigned or indicted;
5. Lineup participants may be directed to wear certain clothing, to put on or take off certain clothing, to take certain positions or walk or move in a certain way. Clothing must be sized so that it does not fit only the suspect. All participants must be asked to perform the same actions;
6. Participants must not speak during lineups because voice identification procedures must be conducted separately consistent with **2.310.10**; and
7. Suspects who have been arrested may be required to participate in lineups, but may lawfully refuse if they have a post-arraignment or indictment right to have counsel present and their attorneys are not present through no fault of suspects or the attorneys.

3.310.10 Voice Identification

- A. Voice identifications will be coordinated through the investigations unit supervisor with consultation by the Office of the State's Attorney.
- B. When conducting voice identification processes:
 1. There should be one suspect and at least five fillers whose voices will be listened to by witnesses;
 2. Fillers should not be known to officers who administer the process;
 3. Suspects and fillers will not be visible to witnesses;
 4. All participants will be told to say the same words, in the same order, and in a neutral tone. The words will not be the same that were said by suspects during crimes; and
 5. Witnesses will be told, and officers conducting the processes will ensure, that the persons will be presented in different order when lineups and voice identifications are conducted.

2.310.12 Courtroom Identifications

- A. Officers should consult with the Office of the State's Attorney before conducting any courtroom identification processes.
- B. Suspects who have been arraigned or indicted have the right to counsel during courtroom identification processes.

2.310.14 Sketches & Composites

- A. Sketches made by trained artists are preferred over composites.
- B. Officers should document witnesses' full descriptions of suspects before sketches or composites are made.
- C. Identifications by sketch or composite should not be attempted if photo arrays or lineups are available.
- D. A person's mere resemblance to a sketch or composite does not establish probable cause to make an arrest.
- E. Original sketches and composites must be preserved as evidence. Copies may be made and distributed as needed for investigative purposes.

2.310.16 Booking Photos

- A. Officers should not use this process unless other investigative avenues have been exhausted.
- B. When showing booking photos, officers should:
 1. Remove photos of people not likely involved in the incident to narrow the pool of photos as much as possible;

2. Record the names of everyone whose photos were viewed by witnesses;
3. Remove or hide any information on the photos that may unfairly or improperly influence witnesses;
4. Ensure the folders contain only one photo of each person and that the photos are reasonably current;
5. Use several photos of each format if various photo formats are used;
6. Let witnesses look at a number of photos before making any selection; and
7. Not call attention to any particular photo.

2.312 AIDS FOR DETECTING DECEPTION (42.2.6)

- A. The agency authorizes the use of polygraphs and computerized voice stress analyzers (CVSAs) as aids for detecting deception in criminal and administrative investigations as permitted by law.
- B. Polygraph and CVSA examiners:
 1. Must be graduates of institutions that provide training for the respective instruments; and
 2. Will conduct examinations consistent with the training and ethics of their respective professional organizations.
- C. Officers will submit requests for polygraph or CVSA exams through their chains of command to obtain approval and coordination.
- D. Juveniles will not be examined unless at least one parent, legal guardian, or juvenile court judge has granted written permission.
- E. Examinations will not be conducted when examinations are contraindicated by medical conditions or subjects are under the influence of alcohol, drugs, etc.
- F. Except when there is reasonable belief to believe alleged victims of sex offenses are filing false reports in violation of **CR § 9-501 False Statement to Law Enforcement Officer**, the agency will not, as prohibited in **42 USC 3796gg**:
 1. Ask or require victims of sexual offenses to submit to polygraph or other truth verification device examinations as a condition for proceeding with case investigations; or
 2. Refuse to investigate, charge, or assist in the prosecution of alleged sexual offenses if victims refuse to submit to polygraph or other truth verification device examinations.

2.314 TASK FORCES (42.2.5)

- A. The Chief may authorize officers to be members of long-term, multi-jurisdictional investigative task forces.
- B. Before officers are assigned to investigative task forces, directives must be in place addressing matters that include, but are not limited to:
 1. Task force purpose;
 2. Defining authority, responsibilities, and written agreements; and
 3. Evaluating results and the need for continued operations.

2.316 LIMITS ON DISCRETION (1.1.3, 1.2.6, 1.2.7) {Revised: 08/23/16}

- A. Officers will affirmatively support the filing of criminal charges by victims when on-view arrests are not made, but victims or officers could apply for charges through district court commissioners. To facilitate this process, officers will:
 1. Distribute “**How to File a Criminal Complaint in the District Court of Maryland**” (DC/CR 1BR) to crime victims; and
 2. Assist victims with applying for criminal charges when possible, such as completing Applications for Statement of Charges on behalf of victims, taking victims to the commissioner’s office, etc.
- B. Officers will ensure that discretionary prosecution decisions are made ethically and free of any improper bias. Officers may apply a limited amount of discretion only in misdemeanor or code violation situations that are:

1. Alcohol and marijuana related violations committed by Towson University students as specified in **2.433 Substance Abuse** and **2.357 Drug Enforcement** respectively; or
2. When officers could make on-view arrests or apply for charging documents, but reasons exist outside the control of law enforcement that precludes arresting, charging, and prosecuting offenders, such as when:
 - a. Restitution has already been made or will be obtained administratively by the university; or
 - b. Victims do not want to cooperate with investigations or criminal prosecutions.
- C. Commanders may order investigations be continued in order to possibly bring suspects to justice through other means even if victims do not want to cooperate with investigations or criminal prosecutions.
- D. Officers have an affirmative, law enforcement obligation to take law enforcement actions in all situations not listed in **B.** unless articulable, compelling reasons exist to forgo law enforcement actions and approval is granted by their supervisor and commander.
 1. An officer who wants to forgo law enforcement actions against suspects must complete a **Discretion Request (UPO.134.D)** for each suspect for whom discretion is being requested. Discretion to forgo law enforcement actions will be allowed only if approved by the officer's supervisor and commander.
 2. Verbal permission to forgo law enforcement actions in time critical situations may be sought verbally through the officer's supervisor and:
 - a. Commander during normal business hours; or
 - b. The Duty Officer during non-business hours.
 3. Verbal permission to forgo law enforcement actions must be promptly followed up by requesting officers completing and submitting Discretion Requests through their chain of command.

2.317 COLD CASE INVESTIGATIONS (42.2.9) {Revised: 11/13/14}

- A. Cold cases are generally felonies or crimes of violence that have not been solved after at least one year, have not passed any statutes of limitations, and have been suspended from further regular investigation. These cases may be reactivated by the Chief, a commander, or the investigations supervisor when:
 1. Initial investigative files are available; and
 2. New information or evidence is received or possibly available that would impact the status of the case and has the potential to lead to its closure; or
 3. A routine or specific review of unsolved cases is completed and:
 - a. Fresh investigative insights are developed by reviewing case files; or
 - b. Having existing evidence reexamined through new or improved technology may produce new leads.
- B. Re-opened cold cases will be conducted and documented consistent with **2.304 Follow-up Investigations**.
- C. Other criteria that should be considered when conducting cold case investigations include, but are not limited to:
 1. Legal considerations such as the application or expansion of statutes of limitations;
 2. Technology such as the nature and condition of the evidence and the advancement of new technologies in solving crimes;
 3. The availability of victims, witnesses, and suspects; and
 4. Resource considerations such as time, money, and personnel.

2.318 SEARCH WARRANTS (IACLEA 2.2.4) {Effective: 11/13/14}

- A. Officers will attempt to obtain search and seizure warrants in situations where warrantless searches are not allowed.
- B. **Criminal Procedure (CP) § 1-203** contains statutes relevant to the application, issuance, service, etc. of search warrants.
- C. See also **Investigative Guide – Search Warrant (UPO.094.D)**.

2.318.02 Application

- A. Officers who believe that obtaining search warrants are necessary during investigations must obtain initial approval of their immediate supervisor and commander or the Duty Officer during non-business hours before proceeding.
- B. A commander may request assistance and / or review from the MD Office of the Attorney General or the Office of the State's Attorney during search warrant related investigations.
- C. The original and two copies of completed affidavit and search warrant must be presented to a judge of competent jurisdiction for review and approval.

2.318.04 Service {Revised: 1/8/2019}

- A. The Chief OR PATROL COMMANDER will designate a commander on a case-by-case basis to oversee the application and service of any search warrant.
- B. The duties and responsibilities of the commander overseeing the service of a search warrant includes, but is not limited to ensuring:
 - 1. All search warrant related activities are documented in initial and supplemental agency reports and as otherwise described in this directive;
 - 2. The case is deconflicted if necessary through MCAC, allied agencies, etc.;
 - 3. Any necessary allied agency assistance is requested for help with entering the location and serving the warrant; and
 - 4. A commander or supervisor oversees and manages execution of the search warrant.
- C. The duties and responsibilities of the commander or supervisor overseeing and managing search warrant execution includes, but is not limited to ensuring:
 - 1. A written operation plan is established, approved, and used to brief all involved personnel;
 - 2. The appropriate type of entry (knock and announce v. no knock) and method of entry (non-forced, forced, or high risk) is selected and approved;
 - 3. One officer is designated as the seizing officer who is responsible for the actual seizing of all evidence.
 - a. Other officers may be designated to assist in locating evidence, but the seizing officer will coordinate and document all evidence that is being seized.
 - b. No one will enter the search area without the permission of the seizing officer.
 - c. A written record will be kept of each person entering the search area. See also **Incident Scene Access Registry (UPO.038.D)**;
 - 4. All participating police officers are clearly identifiable as police officers (uniforms, badges, raid jackets labeled "POLICE," etc.) and wearing body armor;
 - 5. Once entry is made, all occupants are gathered into one area that has been cleared for safety and evidence concerns;
 - 6. All persons are identified and wanted checks conducted;
 - 7. Officers conduct pat-downs of anyone for which an articulable, reasonable belief exists that the person may possess a weapon;
 - 8. Officers search anyone who:
 - a. Is arrested;
 - b. Is named in the search warrant as one who is to be searched; or
 - c. Consents to being searched;

9. People are detained only as long as necessary to verify their identities and whether or not there is probable cause for their arrest;
10. Photographs are taken of areas to be searched before and after the search is conducted;
11. Property is not unnecessarily damaged, disturbed, soiled, etc. Damaged areas will be photographed;
12. The seizing officer documents all items seized consistent with **2.500 Property & Evidence**, completes the search warrant return, and leaves copies of the inventory, warrant, application and supporting affidavit with the person from whom the property was taken or left in a conspicuous place where it is reasonably protected from loss or damage if an owner/agent is not present. However, only a warrant copy will be left if the affidavit is sealed;
13. All evidence, including photographs, is promptly submitted consistent with **2.500 Property & Evidence**;
14. The served search warrant, its return, and inventory are submitted to the issuing or designated judge not later than 10 days after the warrant was served.

2.318.08 Non-Premises Search Warrants

- A. Search warrants for vehicles, motor homes, garages, electronic devices, or handwriting or other physical evidence from persons do not require written operation plans, but specific duties should be assigned and reviewed by the overseeing supervisor or commander.
- B. For search situations involving people, officers:
 1. May seek to obtain search warrants when they believe subjects have on their persons items subject to seizure;
 2. May obtain court orders to compel subjects provide exemplars for comparison; and
 3. May enter a premises under the same circumstances, in the same manner, and use reasonable force as allowed for the execution of any other search warrant.

2.318.10 Assisting Allied Agencies

Notifications that allied agencies plan to serve search warrants on university property must be promptly referred to the commander responsible for the investigations function, "investigations commander," during business hours or the Duty Officer during non-business hours. This commander will:

- A. Confirm that warrants have been authorized by a court of competent jurisdiction and have not expired;
- B. Determine and arrange for the assignment of appropriate resources and assistance; and
- C. Ensure a police report is completed that contains information including, but not limited to:
 1. Name of the allied agency and its on-scene representative;
 2. Nature of the offense;
 3. Names and roles of all employees from this agency who participated in the event; and
 4. Identification information for everyone who was detained, searched, or arrested during the execution of the search warrant.

2.319 WARRANTLESS SEARCH & SEIZURE (1.2.4)

- A. Officers will conduct warrantless searches and seizures consistent with Constitutional provisions, case law, and statutes.
- B. Officers may also attempt to obtain search and seizure warrants in situations where warrantless searches are not allowed.

2.319.02 Consent Searches

- A. Consent searches are considered by the courts to be legitimate, but not the best method for legitimizing searches.
- B. Silence in response to requests for consent searches is not considered to be affirmative answers.

- C. When attempting to conduct consent searches, particularly of rooms, offices, or other building spaces, officers will:
 - 1. Ensure persons giving consent to search have valid, lawful authority to give that consent;
 - 2. Not make any threats or inducements to secure consent searches;
 - 3. Ask for consent and must reasonably believe that consent was given clearly, voluntarily, and of free will;
 - 4. Unless exigent circumstances exist, document the consent by having persons who grant consent execute **Consent to Search (UPO.056.D)** forms;
 - 5. Inform and get the approval of the on-duty patrol supervisor or a commander; and
 - 6. Complete related reports regardless if consent was obtained or searches were conducted.
- D. It is unusual for officers to need or attempt to conduct consent searches in circumstances described in **2.319.04** through **2.319.14**. If consent searches are attempted outside the criteria given in those sections, the process of attempting to gain consent, citizens' responses, and documenting the information will be consistent with **A.** through **C.** of this section.

2.319.04 Stop & Frisk (Terry Stops)

- A. When officers observe unusual conduct that leads them reasonably to conclude in light of their experience that criminal activity may be afoot, officers may:
 - 1. Briefly stop suspicious persons;
 - 2. Make reasonable inquiries aimed at confirming or dispelling their suspicions; and
 - 3. When justified by believing that the individuals whose suspicious activities they are investigating at close range are armed and presently dangerous to officers or others, conduct pat-down searches to determine if the persons are in fact carrying weapons.
- B. Stops and frisks usually involve ongoing criminal conduct, but officers are permitted to stop and, when appropriate, frisk persons suspected of being involved in crimes.
 - 1. The purpose of frisks or limited searches is to allow officers to pursue their investigations without fear of harm or violence.
 - 2. Stops and frisks must be based on specific, objective, and articulable facts and logical conclusions from which officers' experiences enable them to develop reasonable suspicion.
 - 3. Officers may use information from sources other than their own personal observations on which to initiate stops and frisks.
 - 4. Frisks are no more than limited searches of the outer clothing in attempt to discover weapons.
 - 5. Officers who reasonably suspect that motorists are dangerous and may gain control of weapons in vehicles may conduct brief, limited searches in areas limited to where weapons might be placed or hidden.
 - 6. Items that are not reasonably believed to be weapons or clearly identifiable as contraband cannot be removed from persons' clothing during stops and frisks.
 - 7. Stops and frisks should be conducted in well-lighted areas and with other officers present in order to afford maximum protection unless the exigency of circumstances dictates otherwise.

2.319.06 Vehicle Searches

- A. This section provides general, but not exhaustive guidelines for searching vehicles in certain circumstances.
- B. Officers may stop vehicles, and if impractical to obtain warrants, conduct warrantless searches because vehicles could be moved or evidence destroyed before warrants could be obtained. These searches are defined by the objects of the searches and places in vehicles where they may be found (*Carroll v. US*).
- C. Officers may search vehicles when they reasonably believe based on articulable facts that people may pose a danger if they were allowed to reenter vehicles. These searches must be limited to passenger compartments where weapons may be placed or hidden (*Michigan v. Long*).

- D. Officers with probable cause to believe contraband is concealed in vehicles may conduct warrantless searches by opening locked areas, containers and any other parts of vehicles that may contain objects of the searches. These searches are defined by what is being searched for and places where there is probable cause to believe they may be found (*US v. Ross*).
- E. Officers may search containers in vehicles without warrants when they have probable cause to believe these containers may hold contraband or evidence (*California v. Acevedo*).
- F. Searches incident to arrest can be made in an arrestee's "lunging area," which is an area from where an arrestee might get a weapon or destroy evidence (*Chimel v. California*).
- G. Entire vehicle compartments and containers therein may be searched when conducting searches incident to arrest of vehicle occupants (*New York v. Belton*).
- H. Vehicle searches incident to arrest may be justified even if occupants have gotten out of vehicles, closed doors, and walked a short distance away before being arrested (*Thornton v. US*).
- I. For searches incident to arrest of a vehicle's passenger compartment, officers must articulate:
 - 1. They were unable to sufficiently restrain arrestees during searches so that arrestees may have reasonably accessed vehicles; or
 - 2. Reasonable belief that evidence of the crime for which occupants were arrested may be found during searches of passenger compartments (*Arizona v. Gant*).
- J. There are many arrestable traffic violations, such as driving suspended, where there is are probably no reasons to believe vehicles contains relevant evidence. Other cases, such as CDS possession, give officers acceptable reasons for searching passenger compartments and containers therein (*Arizona v. Gant*).

2.319.08 Searches at Crime Scenes

- A. Limited sweeps for other persons may be conducted in homes or premises where lawful arrests have been made if officers reasonably believe there are others present who may pose danger to those on arrest scenes.
- B. Officers should attempt to obtain search warrants for crime scenes in residences, premises or other similar locations unless exigent circumstances or reasonable expectations exist that evidence may be damaged or destroyed.
- C. Officers may search and seize property reasonably believed to be abandoned.
- D. The "open field" doctrine allows entry and search of unoccupied or undeveloped areas outside the curtilage of dwellings.

2.319.10 Exigent Circumstances & Emergencies

- A. Officers may conduct other warrantless searches:
 - 1. Of anything or any place at any time it is reasonably necessary to save lives or prevent injuries; or
 - 2. If they have probable cause to believe that evidence is in places or things to be searched and reason to believe that evidence may be destroyed before warrants can be obtained.
- B. Protective sweeps of locations such as residence hall suites may be made during arrests if officers reasonably believe there are others present who may pose danger to those on arrest scenes.
- C. Officers will apply for search warrants if they do not know if exigent circumstances exist to justify warrantless searches.

2.319.14 "Plain Feel"

The "plain feel" principle allows officers to lawfully seize any drugs or contraband identified during *Terry* frisks or limited pat-downs of suspects if the articles are plainly felt and identified by officers acting in good faith.