

Waltham Police Department

CHAPTER 42A

PHOTOGRAPHIC ARRAYS

Effective Date: 06/2012, 06/2014, 12/2015, 09/2020, 06/2024, 09/2024
Accreditation Standard #: 42.2.11

POLICY:

The photographic array is a series of photographs depicting different individuals. The suspect's photograph appears among the other photos in the array when it is presented to a witness. This procedure may be very beneficial to police investigations and procedures must be closely followed so as to avoid making the process suggestive, unconstitutional and inadmissible.

1. **COMPOSING PHOTO ARRAYS: [42.2.11-3A]** Photo arrays should be constructed by officers who are familiar with both the witness's description of the perpetrator and the identity or image of the suspect.
 - a. Create an array for each witness, based on their individual description of the perpetrator.
 - b. If two witnesses provide similar descriptions the same group of photos may be utilized but the suspect must be in a different position in each array. **[42.2.11-3C]** Multiple witnesses shall be separated and photo arrays shall be conducted independently.
 - c. Select a photo of the suspect that most resembles their appearance at the time of the incident.
 - d. Select photos of fillers (non-suspects) who generally fit the witness's description of the perpetrator. When the witness's description is limited, inadequate, or varies noticeably from the suspect, the fillers should resemble the suspect in significant features.
 - e. Include a minimum of six fillers with the photo of the suspect.
 - f. Do not use fillers that so closely resemble the suspect that someone familiar with them might have a difficult time distinguishing between them.
 - g. Be as consistent as possible regarding photo size, pose, lighting, color/black & white, photo background etc.

- h.** Ensure no writing or information is visible on the photos or array.
 - i.** When composing additional arrays for the same witness, do not re-use the same fillers.
 - j.** Review the array to make sure the suspect does not unduly stand out.
 - k.** Record identifying information for each photo in the array on the “Composition Checklist” (FORM 42A-1).
 - l.** Note a letter identifier for each photo on the (FORM 42A-1) and record it on the back of the photo.
 - m.** Circle the letter of the photo selected to be presented in the first position on the (FORM 42A-2).
 - n.** Avoid re-using the same physical photo in different arrays as the selection process may result in it being marked or made distinguishable.
- 2.** **“BLIND” PRESENTATION:** Photo arrays should be conducted as a “Blind” presentation when possible.

An officer other than the primary individual working on the case should conduct the presentation.

This “Blind” presenter must not know the identity of the suspect in the array or which photo is of the suspect.

If the department is unable to employ the “Blind” technique the presenting officer should use extra care and caution to avoid unintentionally influencing the witness’s decision through verbal and non-verbal means.

When possible, video and/or audio tape the presentation and array procedure [42.2.11-3B].

- 3.** **CONDUCTING A “SEQUENTIAL” PRESENTATION:** [42.2.11-3D] The District Attorney recommends that police departments utilize the sequential method of presentation.
 - a.** Avoid saying or doing anything that may influence the witness’s selection.
 - b.** Photos must be individual and not grouped on one piece of paper.
 - c.** Excluding the previously selected first position photo, shuffle the remaining photos to create a random presentation order.

- d. Record the presentation order on page 1 of the “Identification Checklist”. (FORM 42A-2).
 - e. Provide the witness with the advisements on page 2 of (FORM 42A-2).
 - f. Confirm the witness understands the procedure.
 - g. When the witness is seated and comfortable hand them one photo at a time.
 - h. Completely retrieve the prior photo before offering a new one.
 - i. As the witness views the array ensure no other photos are visible to them, including previously seen and unseen photos.
 - j. If the witness made an identification, if necessary, remind them to place their initials and the date below the photo of the suspect, clearly marking it as their selection.
 - k. Continue showing the remaining photos, even if an identification has been made.
 - l. While not to be offered, the officer may show the witness the array again if they ask.
 - m. If showing the array again repeat all the above procedures and document the request.
 - n. Do not provide the witness with any feedback or comment on the results of the procedure in any way. [42.2.11-3F]
4. **RECORDING THE RESULTS:** [42.2.11-3G] It is very important that the Identification Checklist be completed fully and accurately. This is regardless of whether an identification and/or arrest are made, as this information could be required for trial discovery.
- a. Record all procedural information on the top half of the Identification Checklist.
 - b. Check-off and have witness sign the advisements given.
 - c. After the witness is finished indicate on the form whether Identification was made, and which letter/order # photo was selected.
 - d. Ensure the witness has signed and dated the selected photo.
 - e. Ascertain and document the witness’s level of confidence. [42.2.11-3E]

- f. Record statements made by others in presence of the witness during the photo array procedure.
 - g. Have the witness sign and date the Identification Checklist.
 - h. The officer conducting the array must sign and date the Identification Checklist.
 - i. When finished, preserve the Identification Checklist (FORM 42A-2) the Composition Checklist (FORM 42A-1); the actual photo array seen (and possibly marked by the witness); and any other material used to conduct the array.
5. **PHOTO COLLECTIONS / MUG BOOKS:** Mug books and photo collections are appropriate to show to a witness when a suspect has yet to be identified. It is best to narrow the photo collection to some descriptive factor offered by the witness. The general provisions of the array guidelines should be followed, including giving advisements, avoiding suggestiveness and recording results.
6. **LINE-UPS AND VOICE SAMPLES:** [42.2.11-2] Physical line-ups and voice identifications are used less frequently and most often involve the suspect's having a right to counsel. Due to the infrequency and increased complexities of these procedures they shall be conducted by the District Attorney's Office, with Waltham Police assisting as directed.