

# Eyewitness Identification Policy Framework

For Oregon Law Enforcement Agencies

*Eyewitness Identification Policy  
Framework Advisory Group*

*In Partnership with the Department of Public Safety Standards and Training*

OREGON ASSOCIATION CHIEFS OF POLICE AND  
OREGON STATE SHERIFFS' ASSOCIATION



Published (Updated): August, 2016

# Eyewitness Identification

## PURPOSE

The purpose of this policy is to provide procedures for obtaining objective results when preparing and conducting lineups and showups.

## POLICY

It is the policy of this agency that eyewitness identifications be conducted in a manner most likely to assess witnesses' true and reliable recollections and in compliance with state and federal constitutional requirements.

## DEFINITIONS

Blind Presentation – The presenter does not know who the suspect is. Also known as double-blind presentation.

Blinded Presentation – The equivalent of a blind presentation; conducted when the presenter knows who the suspect is. Also known as functionally equivalent presentation.

Confidence Statement – A witness's statement about his selection and of his confidence that his selection is the suspect; taken immediately after a pick has been made.

Photo Lineup – A presentation of photographs of persons.

Presenter – The officer presenting a lineup.

Showup – A presentation of a live person in the field that is close in time and proximity to the incident under investigation.

Sequential – A presentation of photographs one at a time, retrieving one photo before presenting another.

Simultaneous - A presentation at the same time of photographs arrayed together, either manually constructed or computer generated.

## DOCUMENTATION

- A. Instructions to witnesses shall be read from the *Eyewitness Identification* form, which form shall also include the witnesses' affirmation of their confidence statements.
- B. In addition to documentation in the incident report(s) and on *Eyewitness Identification* forms, when it is reasonable and practical presenters should record the presentations.
- C. Lineups, forms, and recordings shall be treated as evidence, with copies of the lineups and forms included in the case file, whether or not the witnesses made identifications.
- D. If a photo lineup is developed electronically, the lineup shall be printed for documentation.
- E. See also Post-Presentation Interview and Documentation.

## **WITNESSES WITH LIMITED ENGLISH PROFICIENCY**

If a witness to a criminal offense does not fluently speak the English language or otherwise has difficulty communicating (e.g. hearing impaired), officers should make reasonable efforts to arrange for an interpreter before proceeding with an eyewitness identification.

Before the interpreter is permitted to discuss any matter with the witness, the investigating officer should explain the process that will be utilized to the interpreter. Once it is determined that the interpreter comprehends the process and can explain it to the witness, the eyewitness identification may proceed as provided for within this policy.

## **PHOTO LINEUP**

When a photo lineup is used for suspect identification, a blind or blinded sequential presentation should be made; consequently, the procedures that appear below are designed primarily for blind or blinded sequential presentations. If another photo lineup method is used—including a simultaneous presentation or a sequential presentation that is not blind or blinded—the reason(s) for using that method shall be documented.

### **DEVELOPMENT OF A PHOTO LINEUP**

- A. Officers should obtain a thorough suspect description from each witness before developing a photo lineup. (Note that variant witness descriptions may require the presentation of different photo lineups to different witnesses.)
- B. A photo lineup shall consist of no fewer than six photographs, including one of the suspect.
- C. All photos should be similarly sized and none should be easily distinguished from the others.
  1. Filler photographs (not of a suspect) should generally fit the witness's(es's) description of the suspect. Because all photographs possess both common and variable features, the common features should be those that match the witness's(es's) description, whereas the remaining (i.e., nonrecalled or undescribed) features may vary.
  2. When there is limited or insufficient suspect description or when the suspect description differs significantly from the available photograph(s) of the suspect, the filler photographs should resemble the suspect photograph, not the description.
- D. The photos shall be numbered and shall be loose or in individual folders.
- E. When conducting a single lineup for multiple witnesses, the photographs should be renumbered for each witness.

## PRESENTATION OF PHOTO LINEUP

### A. Instructions to Witnesses

Prior to a presentation, the presenter shall read the witness instructions from the *Eyewitness Identification* form, ensuring and documenting that the witness understands the instructions.

### B. Blind Presentation

1. In a blind presentation, the identity of the suspect is not known to the presenter.
2. The presenter shall present the photos to the witness sequentially, with one photo replacing another so that no two are presented at the same time.
3. The presenter shall present each photo to the witness, even if the witness identifies a previous photo as the suspect.
4. If, during the same presentation, the witness asks to see one or more photos again, the presenter may conduct the same presentation a second time but must present all of the photos, using the same method.

### C. Blinded Presentation

If the presenter knows who the suspect is, an extra measure should be taken to prevent the presenter from knowing which photo is being shown to the witness.

1. The photos shall be placed in identical folders, with the folders shuffled and numbered, and each photo shall be presented such that only the witness can see the photo; the presenter is thus “blinded” to the process and cannot be suggestive.
2. The presentation shall continue as in B.2 above.

### D. Post-Presentation Interview and Documentation

1. Following the presentation of a photo lineup, the presenter should avoid any words or actions that might identify the suspect or hinder further investigation.
2. If the witness picks a photo, the presenter shall ask the witness to describe why the photo was selected and to describe the confidence he or she has in the selection. The presenter should obtain a *description* of that confidence, not just a scaled assessment (e.g., not “90% sure” or “six out of ten”). The witness’ responses to the questions—commonly referred to together as a “confidence statement”—shall be carefully documented on the *Eyewitness Identification* form and, later, more completely in the report.
3. The presenter shall ask the witness to affirm the confidence statement on the *Eyewitness Identification* form.

## **DUPLICATION OF PRESENTATIONS**

Presentations separated by time but involving the same suspect are discouraged. It is recommended that a suspect not be presented for identification more than once in any form. If this does occur, the reason(s) why a subsequent presentation was made shall be documented.

## **SHOWUPS**

Photo lineups are preferable to showups; however, some circumstances require the prompt display of a suspect to a witness. Showups should be conducted as follows:

- A. Consider if a photo lineup can be conducted instead.
- B. Obtain a thorough description of the suspect from each witness prior to the showup.
- C. Ensure all officers avoid suggestive words or conduct while preparing for the presentation.
- D. If possible, avoid unnecessarily tarnishing the suspect by, for example, presenting a suspect in handcuffs or from the backseat of a patrol car.
- E. Transport the witness, not the suspect.
- F. Separate witnesses to avoid communication between them.
- G. Read the instructions from the *Eyewitness Identification* form, ensuring and documenting that the witness understands the instructions.
- H. Document the witness's statement on the *Eyewitness Identification* form.
- I. When possible, record the presentation.

## **TRAINING**

All sworn personnel shall receive training on this policy and the presentation of lineups and showups.

# EYEWITNESS IDENTIFICATION FORM

## PHOTO LINEUP

Case Number: \_\_\_\_\_

Presenter Name: \_\_\_\_\_

Date and Time of Presentation: \_\_\_\_\_

Witness Name: \_\_\_\_\_

### INSTRUCTIONS (READ BY OFFICER TO WITNESS)

In a moment I'm going to show you some photographs. A photograph of the person who committed the crime may or may not be among them. You will be shown all of the photographs and you may take your time looking at them.

If you see the person who committed the crime, pick that photograph. If not, don't pick any photograph.

If you pick a photograph, I'm going to ask you to explain why you picked that photograph and to describe how confident you are.

Do you understand these instructions? \_\_\_\_\_

### WITNESS STATEMENT (WRITTEN BY OFFICER)

Witness picked photograph number: \_\_\_\_\_

---

---

---

---

I, \_\_\_\_\_, affirm that

- I read or was read the instructions above,
- I understood the instructions, and
- The statement written by the officer accurately reflects what I said.

Finally, I understand that I should not talk to other people about the photos or tell them which photo I picked, if any.

\_\_\_\_\_  
Signature of Witness

# EYEWITNESS IDENTIFICATION FORM

## SHOWUP

Case Number: \_\_\_\_\_

Presenter Name: \_\_\_\_\_

Date and Time of Presentation: \_\_\_\_\_

Witness Name: \_\_\_\_\_

### INSTRUCTIONS (READ BY OFFICER TO WITNESS)

In a moment a person is going to be shown to you. Just because the person is being shown to you or because police officers are standing nearby does not mean the person committed the crime or any other crime.

If you tell me you recognize the person as the person who committed the crime, I'm going to ask you to explain why you recognize him or her as the same person and to describe how confident you are.

Do you understand these instructions? \_\_\_\_\_

### WITNESS STATEMENT (WRITTEN BY OFFICER)

---

---

---

---

I, \_\_\_\_\_, affirm that

- I read or was read the instructions above,
- I understood the instructions, and
- The statement written by the officer accurately reflects what I said.

\_\_\_\_\_  
Signature of Witness