



CITY OF MADISON POLICE DEPARTMENT
STANDARD OPERATING PROCEDURE



Identification Procedures

Eff. Date 01/03/2020

Purpose

This outlines procedures to be used for conducting all identification procedures (show-ups, photo arrays and in-person lineups).

Procedure

GENERAL RULES FOR ALL EYEWITNESS IDENTIFICATION PROCEDURES

When Unnecessary

An eyewitness identification procedure may be unnecessary when the witness:

1. Would be unable to recognize the perpetrator of the offense being investigated; or
2. Knew the identity of the suspect before the offense occurred or learned the suspect's identity without police assistance after the offense.

Avoiding Multiple Views

A suspect—or likeness (a photograph, composite drawing or sketch) of a suspect—should not deliberately be displayed to more than one witness at a time.

Avoid multiple identification procedures in which the same witness/victim views the same suspect more than once.

Avoiding Viewers' Suggestions

A witness who has taken part in an identification procedure must not be permitted to state conclusions within earshot of another person who is about to be, or has been, a viewer.

Avoiding Officers' Suggestions

A police officer must not, by word or gesture, suggest opinions to any witness that the suspect committed the crime. Witnesses making inquiries about an officer's opinion shall be informed of this restriction.

Maintaining a Record

A complete record of each identification procedure must be made. The time, location, and the identity of those present, including persons being viewed who are not the suspect, must be noted. Statements made by a witness viewing the suspect must be documented, along with any significant remarks made by an officer, lawyer or suspect.

Show-Ups

A show-up is a limited usage identification procedure in which a suspect is presented singly to the witness.

When Permissible

An officer may arrange a presentation between a suspect and a witness whenever the suspect is detained within a reasonable length of time. Consideration should be given to the freshness of the pursuit, the total amount of time elapsed since the offense and the distance from the crime scene. The witness must be cooperative and state they might recognize the person who committed the offense.

If there is probable cause to arrest, then no show-up should be conducted. In these cases, consideration should be given to completing a photo or in-person line-up as soon as feasible depending on the circumstances.

Show-up Following Temporary Detention

If an officer reasonably suspects that a person located has committed the offense, but probable cause to arrest the person is not present, the officer may detain the person for a reasonable period of time for show-up purposes. In exercising this authority, the officer may use such force (see MPD SOP *Stop and Frisk*) as is reasonably necessary to stop the person or to cause the person to remain in the officer's presence.

1. Location of Show-up: The witness should be brought to the scene of the detention as soon as possible. A suspect should not be taken to the police station for a one-to-one show-up. Only with consent, may the suspect be conveyed to the witness location.
2. Extending Detention: The suspect cannot be detained for longer than a reasonable period of time. If probable cause to arrest develops during the detention, an arrest should be made and no show-up shall be completed.
3. Release After Show-up: If the suspect is not identified by the witness and you lack probable cause, the suspect should be released after obtaining the suspect's name and DOB pursuant to appropriate departmental procedures.

Minimizing Suggestiveness

1. Obtain and document complete description of suspect(s) from witness separately from other witnesses if possible, before the show-up.
2. If possible, do not show the suspect handcuffed or in a squad car. If handcuffed, take measures to conceal this fact from the witness, when possible.
3. Do not convey to a witness before identification that police have a suspect. Advise the witness that the person may or may not be the perpetrator, and they should not feel compelled to make identification, and the investigation will continue whether or not they identify the suspect.
4. Police should not confirm a witness's positive identification; do not tell the witness they made the correct choice or provide information which corroborates the identification.
5. Document the procedure. Attempt to quote the witness's statements.
6. If there are multiple suspects, only show one suspect at a time to the victim/witness.
7. Document the process with in-car video if possible.

Multiple Witnesses

If there are several witnesses to a crime, and a show-up is feasible and proper, arrangements should be made for each witness to view the suspect separately. If an identification is made by the first witness, arrest is appropriate and further identification by other witnesses should not occur. Witnesses should be instructed not to discuss their identifications with others.

Cruising Area of Offense

Nothing in these guidelines bans the common procedure of transporting witnesses in police cars to cruise the general area in which a crime has occurred in hopes of spotting the perpetrator and arranging a show-up.

Emergency Presentations

In emergency circumstances, such as when a witness is in danger of death or blindness, or when a suspect is in danger of death, an immediate show-up may be arranged if medical authorities permit. In these situations, time and location limitations contained in the preceding guidelines can be disregarded. But if the suspect will be hospitalized for a lengthy period and is not in danger of death, then it is proper to follow the guidelines above.

Right to a Lawyer

No person has a right to have a lawyer present at any show-up procedure.

When Single Photographs May be Used

If the victim/witness knows the suspect then a single photograph of the suspect can be presented to the victim/witness to confirm the suspect's identity. This procedure should only be considered if the officer can establish that the suspect is actually known to the victim/witness and when the victim/witness can identify the suspect sufficiently. If such a method is utilized, the photograph should be preserved through property tagging and described within the subsequent report (for example, "A Summit photograph of (name) was shown to (name)"). However, if the victim/witness does not know the suspect, or only knows the suspect by nickname or other partial identifier, a sequential photo array is the preferred method of identification procedure if an in-person lineup is not practical.

Sequential Photo Arrays

Identifying suspects in a timely matter is essential to resolving investigations. However, making these identifications as unbiased as possible is equally essential in ensuring the identifications withstand courtroom scrutiny. The sequential photo array is one such procedure utilized by the Madison Police for identification of suspects when the suspect is unknown or only partially known by the victim or witness.

Creating and Presenting the Sequential Photo Array

In order to ensure that inadvertent verbal cues or body language do not influence a witness identification, ***the person conducting the photo array should not know the identity of the suspect.*** The case detective may prepare the photo array, but another detective/officer (photo array administrator) who does not know the identity of the suspect should present the photo array to the victim/witness.

If it is not practical to utilize a photo array administrator, the case detective may utilize the folder system and administer the photo array him/herself.

In composing a photo array, the person administering the identification procedure should ensure that the photo array is comprised in such a manner that the suspect does not unduly stand out. However, complete uniformity of features is not required.

Creating the Sequential Photo Array Using an Administrator

1. Include only one suspect in each identification procedure.
2. Select fillers (non-suspects) who generally fit the witness' description of the perpetrator and resemble the suspect in significant features. (Case detective)

3. Select a suspect photo that resembles the suspect's description or appearance at the time of the incident, if multiple photos of the suspect are reasonably available to the investigator. Driver's License photos obtained from the Department of Transportation may not be used in photo arrays.
4. There should be five filler photographs and one suspect photograph. Do not reuse fillers in arrays shown to the same witness when showing a new suspect. Place photo in folder.
5. Give the administrator one folder with filler photograph to be used as the first photo shown. (Case Detective)
6. Give the administrator folders containing the suspect photo and remaining four filler photos and have him/her mix-up the folders and number them 2-6. Do not tell the administrator which photo is the suspect. (Case Detective and Administrator)
7. Folders 7 and 8 are empty and are not shown to the witness, but are used so the witness does not know when they are viewing the last photo. (Administrator)
8. Ensure that no writings or information concerning previous arrest(s) will be visible to the witness on the photos, folders, or any other materials available for the witness to see.

Creating the Sequential Photo Array Using the Folder System (Case Detective)

1. Include only one suspect in each identification procedure.
2. Select fillers (non-suspects) who generally fit the witness' description of the perpetrator and resemble the suspect in significant features.
3. Select a photo that resembles the suspect's description or appearance at the time of the incident, if multiple photos of the suspect are reasonably available to the investigator. Driver's License photos obtained from the Department of Transportation may not be used in photo arrays.
4. There should be five filler photographs and one suspect photograph. Do not reuse fillers in arrays shown to the same witness when showing a new suspect.
5. Place one filler photograph in folder number 1.
6. Have someone out of your sight place the remaining four filler photographs and the suspect photograph in folders 2 through 6. Or, you place the four filler photographs and the suspect photograph into the folders and shuffle the folders so you do not know which folder the suspect is in, then number the folders 2 through 6.
7. Folders numbered 7 and 8 are empty and are used so the witness does not know when they have seen the last photo.
8. Ensure that no writings or information concerning previous arrest(s) will be visible to the witness on the photos, folders, or any other materials available for the witness to see.

Sign "Witness Instructions for the Sequential Photo Lineup Procedure" form and attach to report.

The Sequential Photo Array Procedure

1. Create photo array as outlined above.
2. Read the "Witness Instructions for the Sequential Photo Array Procedure" to the witness and sign the form. Have the witness sign the form to indicate the instructions were read to them as well. Confirm that the witness understands the nature of the sequential procedure. The witness should not know how many folders will be shown.
3. Present each folder to the witness separately, in the previously determined order, removing those folders shown as the array continues. If the case detective is present during the photo array, they must be in a position that they cannot see who is in the photo. The witness should be informed not to show any of the photos to the case detective (if present). As the witness looks at each photo, ask if they recognize the person in the photo as the one they previously observed (in connection with the crime being investigated). If an identification is made, ask the witness how certain they are. Use similar language for each photo presented.
4. Avoid any statements or actions that may influence the witness' selection. No one should be present during the photo identification procedure who knows the suspect's identity, unless the

folder system is being utilized (in which case the case detective should not know the suspect's position in the photo array or be able to see the photos).

5. Document in writing the array procedure, including:
 - a. Identification information and source of all photos used; for example, include jail ID numbers if Summit used to create array, Facebook URL's, or other source.
 - b. Names of all persons present at the photo array.
 - c. Date and time of the identification procedure.
6. When conducting a photo array, the array administrator or investigator shall preserve the outcome of the procedure by documenting any identification or no identification results obtained from the witness. When conducting an identification procedure, the array administrator or investigator should:
 - a. Record identification (suspect or filler), partial identification and no identification results in writing, including the witness' own words.
 - b. Ensure that the photos are signed and dated by the witness when possible on the bottom or back of the photo if identification is made. This marking should not obscure the photo itself.
 - c. Ensure that no materials indicating previous identification results are visible to the witness.
 - d. Ensure that the witness does not write on or mark any materials that will be used in other identification procedures.
 - e. Do not give any feedback to the witness on an identification or non-identification.
 - f. After the full photo array has been presented, the administrator or investigator should do a follow-up interview and document the victim/witness statements thoroughly.
7. The witness, if requested, may view one or more of the photos again after the sequential photo array procedure has been completed. This should occur only if the witness requests it after the procedure is completed and **should never be at the suggestion of the person administering the photo array**. All photos in the array should be viewed even if an identification is made.
8. The photo identification procedure should be recorded (video or audio) unless it is impractical to do so or the victim/witness declines to have the procedure recorded.
9. Preserve the presentation order of the photo array.
10. The photo array will be preserved as indicated below (Recording and Preserving).

Recording and Preserving

An adequate record of each photograph shown in each display must be made. Photographs must be preserved so that the display can be reconstructed at trial, and all photo arrays be properly tagged as evidence in their entirety. Include the original folders (in order they were presented) and the "Witness Instructions for the Sequential Photo Array Procedure" form. A copy of the array and the "Witness Instructions for the Sequential Photo Array Procedure" form should also be scanned (in color) as an attachment to your report as well.

Right to a Lawyer

No person has a right to have a lawyer present at any pictorial identification procedure, whether it takes place before or after arrest.

Sketches and Composites

When there is no viable suspect and the use of the photo array is impractical due to lack of suspect leads, a composite drawing may be utilized. A composite drawing is an investigative tool, used to develop additional leads that may contribute to probable cause for arrest. It shall not be relied upon solely as probable cause for arrest.

Facial composite sketches may be appropriate under certain circumstances:

- The victim/witness is relatively certain that he or she recalls the suspect description and can provide it.
- The suspect is a stranger to the victim/witness.
- A photo array or in-person lineup is not practical due to a lack of suspect leads.
- The suspect's facial features were not significantly covered or masked at the time of the incident.

Command approval is required for performing a composite sketch process, and for releasing a facial composite to the public. The following process should be utilized:

- Avoid showing the witness any photos immediately prior to the development of the composite (unless part of the procedure).
- The most reliable witness to the appearance of the suspect should be utilized for the composite. Generally, only one sketch per suspect/incident should be created.
- Once the drawing is finished, the witness shall be shown the drawing to make any recommendations for adjustments by the artist. Once the victim/witness is satisfied that the drawing most accurately represents their recollection of the suspect's appearance, the drawing is then complete.
- The original composite should be property tagged, with a copy scanned into LERMS with the case.
- Once the sketch is completed, any leads that are developed should be followed and documented. If a suspect is developed, a photo or in-person lineup procedure is permissible.

IN-PERSON LINEUPS

An in-person lineup is an identification procedure in which a suspect is placed in a live group setting and presented to a witness. In-person lineups are generally appropriate when the use of photographs would not be suitable for a victim/witness to identify a suspect or if the display of additional characteristics is needed (voice, gesture, walking, etc.).

Time of the Lineup

A lineup, when conducted, should take place as soon as practicable after the arrest of a suspect.

Right to a Lawyer

A suspect has the right to a lawyer for any in-person lineup and has the right to have a lawyer appointed for this purpose if he/she cannot afford one.

Advising the Suspect of the Right to a Lawyer

The suspect shall be told of the right to have a lawyer present to observe the lineup procedure; that if he/she cannot afford a lawyer, one will be provided free of charge; and that the lineup will be delayed for a reasonable time until the lawyer appears.

1. Counsel Already Retained: If the suspect already has a lawyer—whether retained or appointed—and indicates he/she wants the lawyer to attend the lineup, he/she must be allowed to notify the lawyer about the planned lineup and the offense involved.
2. Non-Indigent Suspect Without Lawyer: If the suspect has no lawyer but wants one to attend the lineup, and the suspect states that he/she can afford a lawyer, a reasonable time to retain a lawyer must be allowed.
3. Indigent Suspect Without Lawyer: If the suspect has no lawyer, cannot afford a lawyer, but wants an attorney to attend the lineup, the officer conducting the lineup should contact the District Attorney's Office to provide a lawyer.

Preparing the Lineup

1. The appropriate district detective lieutenant will oversee all in-person lineups. A planning detective should be assigned to prepare the lineup.
2. Prior to the lineup, the case detective should coordinate with the District Attorney's office to ensure the presence of a District Attorney's Office representative at the lineup. The case detective should also work with the District Attorney's Office to coordinate the presence of the suspect's defense counsel.
3. Utilize five fillers (non-suspects) in addition to the suspect in each lineup.
4. Persons placed in the lineup should have approximately similar physical characteristics. Factors such as age, height, weight, hair length and color, and physical build should be considered. Sex and race should be the same for all participants, except in unusual cases where the characteristic is difficult to determine. The planning detective should select the fillers, and contact the DCSO Jail Officer in Charge one day before the planned lineup to coordinate access to inmates.
5. The planning detective should coordinate any special needs (clothing, dialogue, etc.) with the case detective. Similar attire and numbered placards should be arranged for all lineup participants. If a witness describes the suspect as wearing a distinctive item of clothing, and the item (or something similar) is in police custody, the suspect can be compelled to wear the item. Each participant must don the clothing in the order of their appearance in the lineup.
6. The planning detective should coordinate with the detective lieutenant to arrange for adequate personnel to provide for transportation and security of lineup participants.
7. The case detective should arrange for FSU assistance at the lineup to photograph and video record the procedure. FSU personnel assisting with the lineup should not know who the suspect is.
8. Prior to the lineup, all lineup participants should be conveyed to the holding area and evaluated for similarity of appearance. All participants should be photographed at this time.
9. Lineup participants should be instructed on how to conduct themselves during the procedure. The suspect can be instructed to utter specified words, make gestures, or assume a particular pose, if the viewer so desires. All participants should do whatever reasonable act is required of the suspect. The non-suspects in the lineup should be instructed to conduct themselves so as not to single out the actual suspect.
10. The planning detective should then establish the sequence in which the participants will be presented to the victim/witness. The first person presented must be a filler.
11. If possible, perform a preview practice run of the lineup (with no victims/witnesses present) with both attorneys present.
12. The planning detective will complete a supplemental report documenting the identities of all lineup participants and an overview of the procedure.

Lineup Procedure

1. Assign one detective to each victim/witness. Each victim/witness should be provided with instructions on the lineup process. Detectives assigned to victims/witnesses should not know who the suspect is.
2. The suspect should be allowed to consult with his/her attorney prior to the lineup.
3. The planning detective should coordinate forming the lineup in the holding area. Ensure that witnesses do not encounter the suspect or fillers at any time before or after the lineup procedure.

4. Utilize the MPD lineup facility, and ensure a quiet environment in the area. Ensure that no one who knows the suspect's identity (other than defense counsel) is present during the lineup procedure.
5. The entire lineup procedure should be video recorded.
6. Escort victim/witness into viewing area. If multiple victims/witnesses are involved, conduct individual lineups for each victim/witness or set up physical barriers in the lineup room to ensure that the victims/witnesses do not influence one another. If multiple lineups are conducted, the planning detective should ensure that the suspect is placed in a different position for each lineup conducted.
7. Present lineup participants to victim/witness one at a time. Have each lineup participant enter the lineup area with their placard displayed. They should then follow the instructions provided to them, including any special instructions (dialogue, etc.). The planning detective should observe each participant to ensure that all actions are performed by each lineup participant.
8. After each participant is shown, the victim/witness should mark the lineup form if an identification is made. Do not provide any feedback to the victim/witness regarding any identification they make.
9. Once one lineup participant has left the lineup area, the next can enter. The planning detective should coordinate this movement, allowing for time after each individual is displayed for the victim/witness to make identification to the detective accompanying them. All lineup participants should be shown to the victim/witness, even if identification is made.
10. Only upon request of the victim/witness, the victim/witness may view one or more of the lineup subjects again after the lineup have been completed. If this occurs it must be thoroughly documented. The detective should never suggest additional viewing.
11. After the procedure is completed, the non-suspect fillers should be returned to jail. The suspect should be allowed to consult with his/her attorney. The detective assigned to the victim/witness should do a follow-up interview and document the victim/witness statements thoroughly.
12. The planning detective should thoroughly document the lineup procedure (identities of suspect and fillers, all people present for procedure, etc.).

Refusal to Participate

Suspects who refuse to participate in a lineup, or to perform as required by the Lineup Procedure shall be informed that they have no right to refuse, and that evidence of their refusal may be used against them at trial. A record of the precise words of the refusal should be made for subsequent use.

If suspects continue to refuse, they should not be physically forced to participate in the lineup or to perform a certain act. Instead, a court order should be obtained directing the suspect to cooperate and participate in the lineup.

Role of the Lawyer

1. The suspect's lawyer shall be allowed to consult with the suspect prior to the lineup, and to observe the lineup procedure. The lawyer may make suggestions, but may not control nor obstruct the procedure.
2. Any suggestions the lawyer makes about the procedure should be considered and recorded. Those suggestions which would render the procedure more consistent with these guidelines should be implemented.
3. A lawyer should be permitted to be present when a witness states a conclusion about the lineup. However, the lawyer should be instructed to remain silent during both the lineup and the giving of the witness' conclusion. The lawyer may speak with any witness after the procedure if the witness agrees to speak with the lawyer.
4. Witnesses taking part in a lineup procedure may be told that they are under no obligation to speak with the lawyer, but that they are free to speak with the lawyer if they wish. The witness' name and address will not be revealed to the lawyer without consent.

INFORMAL IDENTIFICATION PROCEDURES

An “informal” identification procedure occurs when an officer arranges to take a witness to observe a suspect who is at liberty. Generally, the suspect will be unaware of the observation.

General Rule

“Informal” identification procedures may be used when a suspect is not in custody because there has been no offense charged.

1. Exceptional Circumstances: Released on Bail – If a suspect has been charged with the offense but has been released on bail, “informal” identification procedures shall not be used, unless the Hospitalization Exception (below) applies. Rather a court order shall be obtained directing the suspect to appear in a lineup.
2. Exceptional Circumstances: Hospitalization – In addition, an “informal” identification procedure may be used when prompt identification is essential and a suspect has been charged with the offense under investigation, but the suspect is hospitalized for extended treatment under non-emergency circumstances. An attorney for the suspect shall be present if the suspect so desires.

Specific Procedures

1. Single Locale: A witness may be taken to a single locale where the suspect is likely to appear, provided the locale is a place where a large number of people of physical characteristics roughly similar to the suspect are likely to be, or pass by at random. This technique can be used when the suspect is known, or when the suspect is unknown but is believed to frequent the locale chosen for viewing.
2. Multiple Locales: When no single locale is likely to meet the above requirement, then the witness may be taken to five or more similar locales—at one of which the suspect is believed to be.

Recording Informal Procedures

A detailed record of any “informal” identification procedure must be made. Such a record should include (a) the precise location of any observation; (b) the approximate number of people, similar in description to the suspect, that were viewed; (c) the time period during which the identifications were made; (d) the suspect’s reaction if they became aware that they were being observed; and (e) the witness’ reaction upon seeing the suspect.

WHEN FOREGOING PROCEDURES MAY BE MODIFIED

Whenever a situation arises in which there is a need for eyewitness identification, and none of the foregoing guidelines appear to be adequate or appropriate for the situation presented, alternate procedures may be utilized with the approval of a commanding officer.

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