

56.1 PURPOSE

- .1 The procedures outlined in this chapter are based on scientific research into psychological factors that can cause well-meaning eyewitnesses to make mistakes. These procedures are intended to address such factors, reduce error, and ensure that the highest quality evidence possible is obtained from eyewitnesses.
- .2 The approved methods to be used by HPD personnel for eyewitness identification are:
 - Photo Array (preferred method)
 - Show-up
 - Live Line-upThe procedures for each are described in this chapter.
- .3 While these procedures are intended to provide information regarding legal requirements and best practices surrounding collection and preservation of eyewitness evidence, they may not address all the circumstances and/or exigencies that are encountered in the field. In such circumstances, they should be used as guidelines when encountering circumstances and factors not specifically covered.

56.2 OBTAINING INFORMATION FROM THE WITNESS(ES)

- .1 Principle: The manner in which the preliminary investigating officer obtains information from a witness has a direct impact on the amount and accuracy of that information.
- .2 Policy: The preliminary investigating officer shall obtain and accurately document and preserve information from the witness(es).

56.3 CONDUCTING PHOTO ARRAYS

- .1 Gather Photographs. This step should be conducted by the investigating officer. In total, gather one suspect's photo, a minimum of five filler (non-suspect) photos, and at least two blank photos.
- .2 Prepare the Folders.
- .3 Conduct the Array.
- .4 Document Procedures and Results.

56.4 SHOW-UPS (ONE-ON-ONE IDENTIFICATION)

- .1 A show-up occurs when law enforcement officials show one suspect to one witness for the purpose of eyewitness identification.
- .2 Show-ups can have benefits for both public safety and innocent suspects, however they can also have risks, as well.

Benefits: First, in situations in which police lack probable cause to arrest but have temporarily detained a suspect who matches a general eyewitness description, show-ups allow police to conduct an eyewitness identification procedure rather than simply releasing a potentially guilty perpetrator. Second, show-ups benefit innocent suspects because they have the potential to immediately clear an innocent person from suspicion without suffering the indignity of arrest or further investigation.

Risks: First, show-ups can be suggestive, in the sense that they are likely to convey the impression to witnesses that the police think they have caught the perpetrator and want confirmation. In addition, research shows that show-ups produce a greater risk for innocent suspects than properly conducted photo arrays and lineups. While eyewitnesses make identifications at an equal or lesser rate for show-ups than for photo arrays, show-ups are riskier for innocent suspects because some eyewitness errors made during photo arrays are harmless identifications of fillers known to be innocent, while all false identifications during show-ups result in false evidence against innocent suspects.

- .3 LIMITATIONS ON THE USE OF SHOW-UPS: Because of the benefits and risk factors, the use of show-ups needs to strike a delicate balance. Accordingly, show-ups will only be used if the following factors exist:
- the police lacked probable cause to make an arrest, or;
 - as a result of other exigent circumstances, the police cannot conduct a lineup or photo array.

It is not possible to list all the factors that figure in to the decision to use show-ups, nor is it possible to devise a precise formula for when show-ups are appropriate. However, certain factors are clearly relevant. For instance, law enforcement officers should consider the proximity— both geographic and temporal—of the suspect to the crime. Show-ups should generally be avoided if they cannot be conducted close in time and place to the crime. In any case, *if officers plan to make an arrest with or without a show-up, they should consider conducting a photo array or lineup after the arrest instead of a show-up.* Finally, officers should consider exigent circumstances such as the future availability of witnesses. If a witness will be unavailable in the future, a show-up may be necessary. Otherwise a proper lineup or photo array will ordinarily be more appropriate as it avoids the inherent suggestiveness of the show-up.

56.5 SHOW-UP PROCEDURES

- .1 Prepare for the Show-up.
2. Conduct the Show-up.
3. Document Procedures and Results.
4. Multiple Suspects. If there are two suspects, the witness should view two separate show-ups, each conducted in accordance with these procedures. Two or more suspects should not be shown to the witness at the same time.

56.6 CONDUCTING LIVE LINEUPS

In those rare situations in which a live lineup is necessary, live lineups are to be conducted by an independent administrator, i.e. someone who does not know which person in the lineup is the suspect. Investigators may utilize another sworn HPD member or a sworn member of another agency for this purpose.

- .1 Compose the Lineup.
- .2 Conduct the Lineup (*This must be done by an independent administrator.*)
- .3 Document Procedures and Results.



HAGERSTOWN POLICE DEPARTMENT EYEWITNESS IDENTIFICATION INSTRUCTIONS SEQUENTIAL PHOTO ARRAY



Case Number: _____

Witness Name: _____ DOB: _____

Address: _____

To be read to the eyewitness by the officer conducting the sequential photo array:

The folders in front of you contain photos. In a moment, I am going to ask you to look at the photos.

The suspect who committed the crime may or may not be included in the photos.

Although I placed the photos into the folders, I have shuffled the folders so that right now I do not know which folder contains a particular photo.

Even if you identify someone during this procedure, I will continue to show you all photos in the series.

Keep in mind that things like hair styles, beards, and mustaches can be easily changed and that complexion colors may look slightly different in photographs.

You should not feel you have to make an identification. It is as important to exclude innocent persons as it is to identify the perpetrator.

You will look at the photos one at a time and, since I have shuffled them, they are not in any particular order. When you open a folder, please open it in a manner that does not allow me to see the photo inside the folder.

Take as much time as you need to look at each one. When you have finished looking at a photo, close the folder and hand it to me. I will then ask you, "Is this the person you saw (*enter description of act here*) _____?" Take your time answering the question. If you answer "Yes," I will ask you, "In your own words, can you describe how certain you are?"

Because you are involved in an ongoing investigation, in order to prevent compromising the investigation, you should avoid discussing this identification procedure or its results.

Do you understand the way the photo array procedure will be conducted and the other instructions I have given you?

Eyewitness acknowledgment of instructions (to be read to the eyewitness):

I have read these instructions, or they have been read to me, and I understand the instructions. I am prepared to review the photographs, and I will follow the instructions provided on this form.

Signed: _____

Date and Time: _____



HAGERSTOWN POLICE DEPARTMENT EYEWITNESS IDENTIFICATION INSTRUCTIONS



SHOW-UP (ONE-ON-ONE)

Case Number: _____

Witness Name: _____ DOB: _____

Address: _____

To be read to the eyewitness by the officer conducting the show-up:

In a moment, I am going to show you an individual. That person may or may not be the true perpetrator. I do not know if the person is the true perpetrator.

You should not feel you have to make an identification. It is as important to exclude innocent persons as it is to identify the perpetrator.

After you have observed the individual, I will ask you, "Is this the person you saw (*enter description of act here*) _____

_____?" Take your time answering the question. If you answer "Yes," I will then ask you, "In your own words, can you describe how certain you are?"

Because you are involved in an ongoing investigation, in order to prevent compromising the investigation, you should avoid discussing this identification procedure or its results.

Do you understand the way this procedure will be conducted and the other instructions I have given you?

Eyewitness acknowledgment of instructions (to be read to the eyewitness):

I have read these instructions, or they have been read to me, and I understand the instructions. I am prepared to observe the individual who will be presented to me, and I will follow the instructions provided on this form.

Signed: _____

Date and Time: _____



HAGERSTOWN POLICE DEPARTMENT EYEWITNESS IDENTIFICATION INSTRUCTIONS



LIVE LINEUP

Case Number: _____

Name: _____ DOB: _____

Address: _____

To be read to the eyewitness by the officer conducting the live lineup:

In a moment, I am going to show you a series individual. The person who committed the crime may or may not be included.

I do not know whether the person being investigated is included. Even if you identify someone during this procedure, I will continue to show you all individuals in the series.

Keep in mind that things like hair styles, beards, and mustaches can be easily changed.

You should not feel you have to make an identification. It is as important to exclude innocent persons as it is to identify the perpetrator.

The individuals will be shown to you one at a time and are not in any particular order. Take as much time as you need to look at each one. After each individual, I will ask you, "Is this the person you saw (*enter description of act here*) _____

_____?" Take your time answering the question. If you answer "Yes," I will then ask you, "In your own words, can you describe how certain you are?"

Because you are involved in an ongoing investigation, in order to prevent compromising the investigation, you should avoid discussing this identification procedure or its results.

Do you understand the way the lineup procedure will be conducted and the other instructions I have given you?

Eyewitness acknowledgment of instructions (to be read to the eyewitness):

I have read these instructions, or they have been read to me, and I understand the instructions. I am prepared to review the individuals who will be presented to me, and I will follow the instructions provided on this form.

Signed: _____

Date and Time: _____