



MILWAUKEE POLICE DEPARTMENT

STANDARD OPERATING PROCEDURE

240 – EYEWITNESS IDENTIFICATION PROCEDURES

GENERAL ORDER: 2021-XX
ISSUED: May 24, 2021

EFFECTIVE: May 24, 2021

REVIEWED/APPROVED BY:

Inspector Paul Formolo

DATE: April 26, 2021

ACTION: Amends General Order 2014-68 (July 7, 2014)

WILEAG STANDARD(S): 6.3.2, 6.3.7, 11.1.2

240.00 PURPOSE

To establish guidelines for the use of eyewitness identification procedures involving photo arrays, live lineups, on-scene identifications (show-ups), and facial composites. To reduce the risk of wrongful conviction and aid in the detection and apprehension of the guilty, officers should adhere to procedures set forth here in order to maximize the reliability of identifications, minimize unjust accusations of innocent persons, and establish evidence that is reliable and conforms to established legal procedure.

If a member has questions regarding these procedures, the member should seek guidance from a supervisor, the duty district attorney, or refer to [Wis. Stat. § 175.50](#) Eyewitness Identification Procedures.

240.05 DEFINITIONS

A. PHOTO ARRAY

The sequential showing of multiple photographs, including a suspect, to an eyewitness.

B. LIVE LINEUP

The sequential presentation of a number of individuals one at a time, including a suspect, before an eyewitness.

C. ON-SCENE IDENTIFICATION / SHOW-UP

The presentation of one suspect to an eyewitness within a short time following the commission of a crime.

D. ADMINISTRATOR

A member who conducts the photo array, live line-up, or on-scene identification/show-up.

E. SUSPECT

A person suspected of committing a crime.

F. FILLERS

Individuals who are not suspected of the crime, but who are used to fill out the remaining spots in a live or photographic lineup.

240.10 PHOTO ARRAYS (WILEAG 6.3.7, 11.1.2)

A. COMPOSE THE ARRAY

1. Photographs

- a. The investigating officer shall gather at least six (6) photographs, including the suspect's photo and five (5) fillers. In general, the fillers should be contemporary photographs of individuals who are reasonably similar in age and general appearance and are of the same sex and race, in accordance with the witness' description of the suspect. Do not mix color and black and white photos; use photos of the same size and basic composition; never mix mug shots with other snapshots; and do not include more than one photo of the same suspect. When there is a limited/inadequate description of the suspect provided by the witness, or when the description of the suspect differs significantly from the appearance of the target, fillers should resemble the target in significant features.
- b. If the suspect is described as having an unusual identifying mark(s), all fillers should have similar markings or all photos should include similar coverings over the described area. Ensure that no person stands out from the rest.
- c. If multiple photos of the suspect are available, choose the photo that most resembles or fits the description of the suspect's appearance at the time of the crime.
- d. Avoid using fillers who so closely resemble the suspect that a person familiar with the suspect might find it difficult to distinguish the suspect from the fillers.
- e. If there are multiple suspects, include only one suspect's photo in each array.

2. Folders

- a. Gather folders, each of which is large enough to hold and fully conceal one photograph.
- b. Place a filler photograph in one folder and set that folder aside (lead filler).
- c. Take two empty folders and set them aside, separate from the lead filler folder.
- d. Randomly place the other photos (suspect and remaining fillers) into the remaining empty folders, one photograph per folder.
- e. Shuffle the folders so you no longer know which folder contains the suspect's

photo.

- f. Place the lead filler folder on the top of your pile.
- g. Place the two empty folders at the bottom of your pile.
- h. Number the folders.

B. CONDUCT THE ARRAY

1. Only one witness should be present during the photo viewing. Restrict availability of other array results to the witness, ensuring that no writings or information concerning previous identification results is visible to the witness.
2. The witness should not know how many photos will be shown.
3. The photo array administrator should position him/herself in a place where the witness will be able to open a folder and look at the photo without the administrator being able to see the photo.
4. The administrator shall give the witness a written copy of the *Photo Array Identification Form* (form PC-24), and shall read the instructions aloud at the beginning of each identification procedure. The witnesses shall sign and date the form. If the witness fails or refuses to sign, it shall be documented that the witness was appropriately instructed and the procedure should continue.
5. Present each folder to the witness in order. When the witness is done viewing each photo, have the witness mark the PC-24 accordingly and hand the folder back.
6. Show all folders to the witness, even if the witness makes an identification. If a witness asks why he/she must view the rest of the photos despite already making an identification, advise the witness that the procedure requires the officer to show the rest of the photos.
7. Do not give the witness any feedback regarding the individual selected or comment on the outcome of the identification procedure in any way.
8. Only upon request of the witness may the witness view photos again after the first photo procedure has been completed. If this occurs, it must be documented, and the entire photo array shall be viewed by the witness following the above procedures. The administrator should never suggest an additional viewing to the witness.
9. If the witness writes on, marks, or in any way alters identification materials, ensure those items are not used in subsequent procedures.

C. MULTIPLE SUSPECTS OR WITNESSES

1. To the extent possible, prevent witnesses from conferring with each other before,

during, and after the photo array procedure.

2. Each witness should be instructed outside the presence of the other witnesses.
3. If the same suspect needs to be shown to a new witness, and no identification has been made by a previous witness, the same array may be used. If an identification has been made from one array, a completely new array must be created for a new witness and the same fillers may be utilized.
4. When showing a different suspect to the same witness, do not reuse the same fillers from a previous array shown to that witness.
5. Avoid multiple identification procedures in which the same witness views the same suspect more than once.

D. DOCUMENT PROCEDURES AND RESULTS

1. Once the procedure is completed, have the witness complete the PC-24 and sign and date the form.
2. The photo array procedure must be documented on a supplemental report, regardless of whether an identification was made. The supplemental report shall include the administrator's name, date, time, and location of the procedure, the lighting conditions during the procedure, whether or not the witness was wearing any required corrective lenses or contacts (if applicable), the total number of filler photos and blank folders, names of persons present during the array, if additional viewing occurred, the inventory number of the photographs, and the name, date of birth, and booking number of the filler photographs.
3. After a positive identification, a follow-up interview shall be conducted to document any relevant factors that support the identification, such as special facial features, hair, marks, etc. Interview the witness as to the certainty of their identification.
 - a. Members shall not use percentages to ascertain the witness' level of certainty.
 - b. Document the exact words used by the witness without prompting the witness to elaborate. The witness' responses shall be included in the supplemental report.
 - c. The member shall have the witness sign and date the back of the photograph of the individual he/she identified during this procedure.
4. Preserve the photos and the order in which they were presented to the witness and place these photos, the lineup image page, the lineup data page, and *Photo Array Identification Form* (form PC-24) on MPD inventory.

240.15 LIVE LINEUPS (WILEAG 6.3.7)

A. COMPOSE THE LINEUP

1. Include only one suspect at a time in each lineup.
2. Include a minimum of four fillers per lineup. Fillers should include individuals who are reasonably similar in age, height, weight, and general appearance and are of the same sex and race, in accordance with the witness' description of the suspect. When there is a limited/inadequate description of the suspect provided by the witness, or when the description of the suspect differs significantly from the appearance of the target, fillers should resemble the target in significant features. If the suspect was described as having an unusual identifying mark, all fillers should have similar markings or similar coverings over the described area. Make sure that no person stands out from the rest.
3. Avoid using fillers who so closely resemble the suspect that a person familiar with the suspect might find it difficult to distinguish the suspect from the fillers.

B. CONDUCT THE LINEUP

1. Take precautions to ensure that witnesses do not encounter suspects or fillers at any time before or after the identification procedure.
2. Ensure that no writings or information concerning previous identification results is visible to the witness.
3. The lineup administrator shall give the witness a written copy of the *Lineup Identification Form* (form PC-25) and shall read the instructions aloud. The witness shall sign and date the form. If the witness fails or refuses to sign the form, it should be documented that the witness was instructed properly and the lineup should continue.
4. The witness should not know how many individuals will be shown.
5. Begin with all lineup participants out of the view of the witness. Always lead each lineup with a filler. Present each individual to the witness separately, in a previously determined order, removing those previously shown from the field of view.
6. Show all subjects to the witness, even if the witness makes an identification. If a witness asks why he/she must view the rest of the subjects despite already making an identification, advise the witness that the procedure requires the officer to show all the subjects.
7. Ensure that any identification actions (e.g., speaking, moving) are performed by all members of the lineup.
8. Do not give the witness any feedback regarding the individual selected or comment on the outcome of the identification procedure in any way.
9. Only upon request of the witness may the witness view the subjects again after the lineup has been completed. If this occurs, it must be thoroughly documented, and

the entire lineup shall be viewed by the witness following the above procedures. The administrator should never suggest additional viewing.

C. DOCUMENT PROCEDURES AND RESULTS

1. Photo documentation shall be of both the group and each individual. Photographs shall preserve the appearances of the suspect and fillers and the order of the lineup. If the lineup procedure was digitally recorded, this fact must be included in the supplemental report. Still photographs will not be required.
2. Once the lineup is completed, the witness shall complete the PC-25 and sign and date the form.

Note: The original PC-25 shall be forwarded to the Records Management Division for imaging.

3. The lineup procedure must be documented on a supplemental report regardless of whether identification was made. The supplemental report shall include the administrator's name, date, time, and location of the lineup, whether or not the witness was wearing any required corrective lenses or contacts (if applicable), the total number of fillers, names of persons present during the lineup, whether additional viewing occurred, and the name and date of birth of the fillers.
4. After a positive identification, a follow-up interview shall be conducted to document any relevant factors that support the identification, such as special facial features, hair, marks, etc. Interview the witness as to the certainty of their identification. Members shall not use percentages to ascertain the witness' level of certainty. Document the exact words used by the witness without prompting the witness to elaborate. The witness' responses are to be included in the supplemental report.

D. PROCEDURES FOR MULTIPLE SUSPECTS OR MULTIPLE WITNESSES

1. To the extent possible, prevent witnesses from conferring with each other before, during, and after the lineup procedure.
2. Each witness should be given a separate PC-25 and the administrator will read the instructions to the witness' verbatim.
3. Place the suspect in different positions in each lineup. Position all other members of the lineup randomly.
4. Avoid multiple identification procedures in which the same witness views the same suspect more than once.
5. When showing a different suspect to the same witness, do not reuse the same fillers from a previous lineup shown to that witness.

240.20 ON-SCENE IDENTIFICATION (SHOW-UPS) (WILEAG 6.3.7)

The Wisconsin Supreme Court has recognized that on-scene identification (show-up) procedures may be unnecessarily suggestive. Evidence obtained from an on-scene identification procedure will not be admissible unless, based on the totality of the circumstances, the procedure was necessary. On-scene identification is not necessary unless the police lack probable cause to make an arrest or, as a result of other exigent circumstances, could not have conducted a lineup or photo array. If the suspect is arrested, show a photo array or conduct a line up. Conduct the array using the photo of the suspect from the current arrest.

- A. Before any on-scene identification procedure is to be conducted, district shift commanders are to contact the appropriate Criminal Investigation Bureau division supervisor for guidance and instruction.
- B. If an on-scene identification procedure is to be conducted, the on-scene administrator shall give the witness a written copy of the *Show-up Identification Form* (form PC-26) and shall read the instruction aloud at the beginning of the on-scene identification procedure.
- C. Once the on-scene identification procedure is completed, the witness shall complete the PC-26 and sign and date the form.

Note: The original PC-26 shall be forwarded to the Records Management Division for imaging.

- D. Photograph the on-scene identification procedure to preserve the appearances of the suspect at the time of the identification.
- E. Separate witnesses and prevent them from conferring with each other before, during, and after the on-scene identification. If a positive identification is made by one witness, use a photo array or lineup for any remaining witnesses.
- F. Document the procedure in the same manner as with photo arrays and lineups.

240.25 FACIAL COMPOSITES (WILEAG 6.3.7)

- A. All requests for use of a facial composite shall be made to the appropriate Criminal Investigation Bureau division or Sensitive Crimes Division supervisor. If approved, the following procedure shall be followed:
 - 1. Assess the ability of the witness to provide a description of the suspect.
 - 2. Select the procedure to be used from those available (e.g., identikit-type templates, artist, or computer-generated images).
 - 3. Avoid showing the witness any photos prior to development of the composite.
 - 4. Select an environment for conducting the procedure that minimizes distractions.

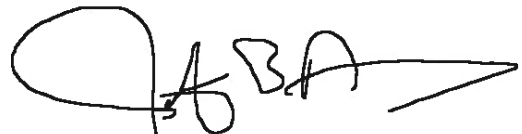
5. Conduct the procedure with each witness separately.
- B. The composite shall be distributed to all districts and divisions if it determined it will aid in the identification of the suspect. Place a copy of the composite, signed and dated by the victim, on inventory and forward a copy to the Records Management Division.
- C. Only the appropriate assistant chief, inspector, or designee shall authorize the release of a composite drawing to the public or news media.

240.30 MUG BOOK–PHOTO COLLECTION DISPLAYS

“Mug books” (e.g., collections of photos/images of previously arrested persons) may be useful in cases in which a suspect has not yet been determined and other reliable sources have been exhausted. This technique may provide investigative leads, but results should be evaluated with caution. Avoid individual photos/images that are suggestive or cause any one to stand out unnecessarily (see SOP 360 for further guidance on the computer mug book system procedures).

240.35 DEPARTMENT OF TRANSPORTATION (DOT) PHOTOGRAPHS

- A. Police members may obtain digitized photographs from the Wisconsin Department of Transportation (DOT) for investigative purposes, including missing persons and the identification of accident victims and deceased persons.
- B. Photographs are not to be used for the administration of a photo array.
- C. Members may mail or fax a *Request for D.O.T. Photograph* (form PP-60) to DOT after the form has been signed by a district commander. Form PP-60 may be downloaded from the directives intranet.
- D. The photograph will be emailed to the requesting member by DOT.
- E. The requesting member shall destroy the photograph when it is no longer needed. If the photograph is retained as evidence, it shall be disposed of in accordance with current retention schedules.



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