Eyewitness Identification

604.1 PURPOSE AND SCOPE

This policy sets forth guidelines to be used when members of this department employ eyewitness identification techniques (Minn. Stat. § 626.8433).

604.1.1 DEFINITIONS

Definitions related to the policy include:

Eyewitness identification process - Any field identification, live lineup or photographic identification.

Field identification - A live presentation of a single individual to a witness following the commission of a criminal offense for the purpose of identifying or eliminating the person as the suspect.

Live lineup - A live presentation of individuals to a witness for the purpose of identifying or eliminating an individual as the suspect.

Photographic lineup - Presentation of photographs to a witness for the purpose of identifying or eliminating an individual as the suspect.

604.2 POLICY

The Lewiston Police Department will strive to use eyewitness identification techniques, when appropriate, to enhance the investigative process and will emphasize identifying persons responsible for crime and exonerating the innocent.

604.2.1 POST MODEL POLICY

It is the policy of the Lewiston Police Department to follow the requirements of the Eyewitness Identification Procedures model policy, established and published by the Minnesota Board of Peace Officer Standards and Training (POST) (Minn. Stat. § 626.8433).

See attachment: Eyewitness Identification Procedures model policy.pdf

604.3 INTERPRETIVE SERVICES

Members should make a reasonable effort to arrange for an interpreter before proceeding with eyewitness identification if communication with a witness is impeded due to language or hearing barriers.

Before the interpreter is permitted to discuss any matter with the witness, the investigating officer should explain the identification process 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.

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604.4 EYEWITNESS IDENTIFICATION PROCESS AND FORM

The Chief of Police shall be responsible for the development and maintenance of an eyewitness identification process for use by members when they are conducting eyewitness identifications.

The process should include appropriate forms or reports that provide:

(a) The date, time, and location of the eyewitness identification procedure.

(b) The name and identifying information of the witness.

(c) The name of the person administering the identification procedure.

(d) If applicable, the names of all individuals present during the identification procedure.

(e) An instruction to the witness that it is as important to exclude innocent persons as it is to identify a perpetrator.

(f) An instruction to the witness that the perpetrator may or may not be among those presented and that the witness is not obligated to make an identification.

(g) If the identification process is a photographic or live lineup, an instruction to the witness that the perpetrator may not appear exactly as he/she did on the date of the incident.

(h) An instruction to the witness that the investigation will continue regardless of whether an identification is made by the witness.

(i) A signature line where the witness acknowledges that he/she understands the identification procedures and instructions.

(j) A statement from the witness in the witness's own words describing how certain he/she is of the identification or non-identification. This statement should be taken at the time of the identification procedure.

(k) Any other direction to meet the requirements of the POST model policy.

The process and related forms should be reviewed at least annually and modified when necessary.

604.4.1 POST REQUIREMENTS

The Patrol supervisor should remain familiar with the requirements contained in the Eyewitness Identification Procedures model policy issued by POST and incorporate these, as necessary, into the eyewitness identification process for use by members when conducting photographic and live lineups.

604.5 EYEWITNESS IDENTIFICATION

Members are cautioned not to, in any way, influence a witness as to whether any subject or photo presented in a lineup is in any way connected to the case. Members should avoid mentioning that:

- The individual was apprehended near the crime scene.
- The evidence points to the individual as the suspect.
- Other witnesses have identified, or failed to identify, the individual as the suspect.

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In order to avoid undue influence, witnesses should view suspects or a lineup individually and outside the presence of other witnesses. Witnesses should be instructed to avoid discussing details of the incident or of the identification process with other witnesses.

Whenever feasible, the eyewitness identification procedure should be audio and/or video recorded and the recording should be retained according to current evidence procedures.

604.5.1 PHOTOGRAPHIC AND LIVE LINEUP CONSIDERATIONS

When conducting a live lineup, the member presenting the lineup should not be involved in the investigation or know the identity of the suspect (Minn. Stat. § 626.8433).

When conducting a photographic lineup, if practicable, the member presenting the lineup should not be involved in the investigation of the case or know the identity of the suspect. In no case should the member presenting a lineup to a witness know which photograph or person in the lineup is being viewed by the witness.

Individuals in the lineup should reasonably match the description of the perpetrator provided by the witness and should bear similar characteristics to avoid causing any person to unreasonably stand out. In cases involving multiple suspects, a separate lineup should be conducted for each suspect. The suspects should be placed in a different order within each lineup.

The member presenting the lineup to a witness should do so sequentially (i.e., show the witness one person at a time) and not simultaneously. The witness should view all persons in the lineup.

A live lineup should only be used before criminal proceedings have been initiated against the suspect. If there is any question as to whether any criminal proceedings have begun, the investigating officer should contact the appropriate prosecuting attorney before proceeding.

604.5.2 FIELD IDENTIFICATION CONSIDERATIONS

Field identifications, also known as field elimination show-ups or one-on-one identifications, may be helpful in certain cases, where exigent circumstances make it impracticable to conduct a photo or live lineup identification. A field elimination show-up or one-on-one identification should not be used when independent probable cause exists to arrest a suspect. In such cases a live or photo lineup is the preferred course of action if eyewitness identification is contemplated.

When initiating a field identification, the member should observe the following guidelines:

(a) Obtain and document a complete description of the suspect from the witness.

(b) Assess whether a witness should be included in a field identification process by considering:

1. The length of time the witness observed the suspect.
2. The distance between the witness and the suspect.
3. Whether the witness could view the suspect’s face.
4. The quality of the lighting when the suspect was observed by the witness.
5. Whether there were distracting noises or activity during the observation.

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6. Any other circumstances affecting the witness's opportunity to observe the suspect.
7. The length of time that has elapsed since the witness observed the suspect.

(c) If safe and practicable, the person who is the subject of the show-up should not be handcuffed or in a patrol vehicle.

(d) When feasible, members should bring the witness to the location of the subject of the show-up, rather than bring the subject of the show-up to the witness.

(e) The person who is the subject of the show-up should not be shown to the same witness more than once.

(f) In cases involving multiple suspects, witnesses should only be permitted to view the subjects of the show-up one at a time.

(g) The person who is the subject of the show-up should not be required to put on clothing worn by the suspect, to speak words uttered by the suspect, or to perform other actions mimicking those of the suspect.

(h) If a witness positively identifies a subject of the show-up as the suspect, members should not conduct any further field identifications with other witnesses for that suspect. In such instances members should document the contact information for any additional witnesses for follow up, if necessary.

604.6 DOCUMENTATION

A thorough description of the eyewitness process and the results of any eyewitness identification should be documented in the case report.

If a photographic lineup is utilized, a copy of the photographic lineup presented to the witness should be included in the case report. In addition, the order in which the photographs were presented to the witness should be documented in the case report.

604.6.1 DOCUMENTATION RELATED TO RECORDINGS

The member conducting the lineup should document the reason that an audio and/or video recording was not obtained, if applicable.

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Attachments

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Eyewitness Identification Procedures Model Policy.pdf

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EYEWITNESS IDENTIFICATION PROCEDURES MODEL POLICY

Minn. Stat. 626.8433

POLICY:

Officers shall adhere to the procedures for conducting eyewitness identifications set forth in this policy, in order to maximize the reliability of identifications, minimize erroneous identifications, and gather evidence that conforms to contemporary eyewitness identification protocols. Photo arrays and line-ups will be conducted by displaying the suspect and fillers sequentially using a blind or blinded administration.

Purpose:

It is the purpose of this policy to establish guidelines for eyewitness identification procedures involving show-ups, photo arrays, and line-ups. Erroneous eyewitness identifications have been cited as the factor most frequently associated with wrongful convictions. Therefore, in addition to eyewitness identification, all appropriate investigative steps and methods should be employed to uncover evidence that either supports or eliminates the suspect identification.

Definitions:

Show-up: The presentation of a suspect to an eyewitness within a short time frame following the commission of a crime to either confirm or eliminate him or her as a possible perpetrator. Show-ups, sometimes referred to as field identifications, are conducted in a contemporaneous time frame and proximity to the crime.

Line-up: The process of presenting live individuals to an eyewitness for the purpose of identifying or eliminating suspects.

Photo Array: A means of presenting photographs to an eyewitness for the purpose of identifying or eliminating suspects.

Administrator: The law enforcement official conducting the identification procedure.

Blinded Presentation: The administrator may know the identity of the suspect, but does not know which photo array member is being viewed by the eyewitness at any given time.

Confidence Statement: A statement in the witness's own words taken immediately after an identification is made stating his or her level of certainty in the identification.

Filler: A live person, or a photograph of a person, included in an identification procedure who is not considered a suspect.

Sequential: Presentation of a series of photographs or individuals to a witness one at a time.

Simultaneous: Presentation of a series of photographs or individuals to a witness all at once.

Procedure:

1. Show-ups

The use of show-ups should be avoided whenever possible in preference to the use of a lineup or photo array procedure. However, when circumstances require the prompt presentation of a suspect to a witness, the following guidelines shall be followed to minimize potential suggestiveness and increase reliability.

a. Document the witness's description of the perpetrator prior to conducting the show up.

b. Conduct a show-up only when the suspect is detained within a reasonably time frame after the commission of the offense and within a close physical proximity to the location of the crime.

c. Do not use a show-up procedure if probable cause to arrest the suspect has already been established.

d. If possible, avoid conducting a show-up when the suspect is in a patrol car, handcuffed, or physically restrained by officers, unless safety concerns make this impractical.

e. Caution the witness that the person he or she is about to see may or may not be the perpetrator—and it is equally important to clear an innocent person. The witness should also be advised that the investigation will continue regardless of the outcome of the show-up.

f. Do not conduct the show-up with more than one witness present at a time.

g. Separate witnesses and do not allow communication between them before or after conducting a show-up.

h. If one witness identifies the suspect, use a line-up or photo array for remaining witnesses.

i. Do not present the same suspect to the same witness more than once.

j. Do not require show-up suspects to put on clothing worn by, speak words uttered by, or perform other actions of the perpetrator.

k. Officers should scrupulously avoid words or conduct of any type that may suggest to the witness that the individual is or may be the perpetrator.

l. Ask the witness to provide a confidence statement.

m. Remind the witness not to talk about the show-up to other witnesses until police or prosecutors deem it permissible.

n. Videotape the identification process using an in-car camera or other recording device when feasible.

o. Document the time and location of the show-up, the officers present, the result of the procedure, and any other relevant information.

Line-up and Photo Array Procedures

2. Basic Procedures for Conducting a Line-up or Photo Array

a. Line-ups will not typically be utilized for investigations, unless conducting a photo array is not possible.

b. Whenever possible, a blind presentation shall be utilized. In cases where a blind presentation is not feasible for a photo array, a blinded presentation should be used. Live line-ups must be conducted using a blind presentation.

c. The line-up or photo array should consist of a minimum of six individuals or photographs. Use a minimum of five fillers and only one suspect.

d. Fillers should be reasonably similar in age, height, weight, and general appearance and be of the same sex and race, in accordance with the witness's description of the offender.

e. Avoid the use of 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.

f. Create a consistent appearance between the suspect and the fillers with respect to any unique or unusual feature (e.g., scars, tattoos, facial hair) used to describe the perpetrator by artificially adding or concealing that feature on the fillers.

g. If there is more than one suspect, include only one in each line-up or photo array.

h. During a blind presentation, no one who is aware of the suspect's identity should be present during the administration of the photo array. However, during a line-up, the suspect's attorney should be present.

i. Place suspects in different positions in each line-up or photo array, both across cases and with multiple witnesses in the same case.

j. Witnesses should not be permitted to see or be shown any photos of the suspect prior to the line-up or photo array.

k. The witness shall be given a copy of the following instructions prior to viewing the line-up or photo array and the administrator shall read the instructions aloud before the identification procedure.

You will be asked to look at a series of individuals.

The perpetrator may or may not be present in the identification procedure.

It is just as important to clear innocent persons from suspicion as it is to identify guilty parties.

I don't know whether the person being investigated is included in this series.

Sometimes a person may look different in a photograph than in real life because of different hair styles, facial hair, glasses, a hat or other changes in appearance. Keep in mind that how a photograph was taken or developed may make a person's complexion look lighter or darker than in real life.

You should not feel that you have to make an identification. If you do identify someone, I will ask you to describe in your own words how certain you are.

The individuals are not configured in any particular order.

If you make an identification, I will continue to show you the remaining individuals or photos in the series.

Regardless of whether you make an identification, we will continue to investigate the incident.

Since this is an ongoing investigation, you should not discuss the identification procedures or results

l. The line-up or photo array should be shown to only one witness at a time; officers should separate witnesses so they will not be aware of the responses of other witnesses.

m. Multiple identification procedures should not be conducted in which the same witness views the same suspect more than once.

n. Officers should scrupulously avoid the use of statements, cues, casual comments, or providing unnecessary or irrelevant information that in any manner may influence the witnesses' decision-making process or perception.

o. Following an identification, the administrator shall ask the witness to provide a confidence statement and document the witness's response.

p. The administrator shall ask the witness to complete and sign an Eyewitness Identification Procedure Form.

q. Line-up and photo array procedures should be video or audio recorded whenever possible. If a procedure is not recorded, a written record shall be created and the reason for not recording shall be documented. In the case of line-ups that are not recorded, agents shall take and preserve a still photograph of each individual in the line-up.

3. Photographic Arrays

a. Creating a Photo Array

1. Use contemporary photos.
2. Do not mix color and black and white photos.
3. Use photos of the same size and basic composition.
4. Never mix mug shots with other photos and ensure consistent appearance of photograph backgrounds and sizing.
5. Do not include more than one photo of the same suspect.
6. Cover any portions of mug shots or other photos that provide identifying information on the subject – and similarly cover other photos used in the array.
7. Where the suspect has a unique feature, such as a scar, tattoo, or mole or distinctive clothing that would make him or her stand out in the photo array, filler photographs should include that unique feature either by selecting fillers who have the same features themselves or by altering the photographs of fillers to the extent necessary to achieve a consistent appearance.
8. Fillers should not be reused in arrays for different suspects shown to the same witness.

b. Conducting the Photo Array

1. The photo array should be preserved, together with full information about the identification process as part of the case file and documented in a report.

2. If a blind administrator is not available, the administrator shall ensure that a blinded presentation is conducted using the following procedures.
    a. Place the suspect and at least five filler photos in separate folders for a total of six (or more depending on the number of fillers used).
    b. The administrator will take one folder containing a known filler and place it to the side. This will be the first photo in the series. The administrator should then shuffle the remaining folders (containing one suspect and the remainder of fillers) such that he or she cannot see how the line-up members are ordered. These shuffled folders will follow the first filler photo. The stack of photos is now ready to be shown to the witness.
    c. The administrator should position himself or herself so that he or she cannot see inside the folders as they are viewed by the witness.
3. The witness should be asked if he or she recognizes the person in the photo before moving onto the next photo. If an identification is made before all of the photos are shown, the administrator should tell the witness that he or she must show the witness all of the photos and finish showing the sequence to the witness, still asking after each photo if the witness recognizes the person in the photo.
4. If possible, the array should be shown to the witness only once. If, upon viewing the entire array the witness asks to see a particular photo or the entire array again, the witness should be instructed that he or she may view the entire array only one additional time. If a second viewing is permitted, it must be documented.

4. Line-ups
    a. Conducting the Line-up
        1. Live line-ups shall be conducted using a blind administrator.
        2. Ensure that all persons in the line-up are numbered consecutively and are referred to only by number.
    b. The primary investigating officer is responsible for the following:
        1. Scheduling the line-up on a date and at a time that is convenient for all concerned parties, to include the prosecuting attorney, defense counsel, and any witnesses.
        2. Ensuring compliance with any legal requirements for transfer of the subject to the line-up location if he or she is incarcerated at a detention center.
        3. Making arrangements to have persons act as fillers.
        4. Ensuring that the suspect's right to counsel is scrupulously honored and that he or she is provided with counsel if requested. Obtaining proper documentation of any waiver of the suspect's right to counsel.
        5. Allowing counsel representing the suspect sufficient time to confer with his or her client prior to the line-up and to observe the manner in which the line-up is conducted.

References:

Eyewitness Identification Procedure Form
Sequential Photo Display Form