

EYEWITNESS IDENTIFICATION





Iowa County Attorneys Association Best Practices Working Group EYEWITNESS IDENTIFICATION Photo Line-Up Guide December 2018

This guide is intended to allow for the individual needs of law enforcement agencies in the State of Iowa, regardless of size or resource limitations. Law enforcement agencies are encouraged to customize these protocols to meet their regional needs. This policy is non-binding upon agencies and is meant to serve as a guide to be used in developing a department's individual policy. This document is not intended to create, does not create and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal. Nothing in this guide implies that an identification not done in accordance with it is unreliable or inadmissible in court.

I. PURPOSE

- A. The purpose of this guide is to establish protocols on how to conduct fair and reliable eyewitness identifications using photo line-ups.

II. POLICY

- A. Eyewitness identification is a valuable and frequently used investigative tool. It is anticipated that the use of the eyewitness identification guide will assist law enforcement in identifying or eliminating potential suspects, help maximize the reliability of those identifications, and minimize erroneous identifications.

III. DEFINITIONS

- A. **Photo Line-up:** A collection of photographs shown to a witness for the purpose of identifying or eliminating suspects.
- B. **Suspect:** Person sought to be identified or eliminated as the perpetrator of the crime.
- C. **Filler:** A person, other than the suspect, who is used in a photo line-up.
- D. **Administrator:** The person who is conducting the photo line-up procedure.
- E. **Blind (Independent) Administrator:** A term used when the administrator of the procedure does not know the identity of the suspect.
- F. **Blinded Procedure:** A procedure in which the administrator may know who the suspect is, but due to the procedure's administration, the administrator is unable to provide cues to the witness. For example, the use of a folder to conceal a photo line-up from the administrator blinds the procedure. Using this kind of procedure with a blind administrator makes the process "double blind."

- G. **Confidence Statement:** A statement from a witness, in their own words, immediately following an identification, as to their confidence or certainty of the accuracy of the identification.

IV. GENERAL PROCEDURES

- A. A minimum of five fillers should be used in any photo line-up.
- B. Multiple witnesses shall not view a photo line-up together. Efforts must be made to eliminate any communications between witnesses during the identification process. A photo line-up should be viewed by the witness out of earshot and view of others and in a location that avoids exposing the witness to information or evidence that could influence the witness's identification.
- C. Fillers should be similar in appearance to the suspect. Similarities may include gender, race, age, and extraordinary physical features. Other factors to consider include clothing, facial hair, or other distinctive characteristics.
- D. A filler should not be used if the administrator is aware that the filler is known to the witness.
- E. Only one suspect will be included in each photo line-up.
- F. If there is more than one suspect, then different fillers should be used in separate photo line-ups for each suspect.
- G. Photos should be as similar in layout and general appearance as possible. They must be free of any identifying information or other marks. Any identifying information contained on any photo must be covered and those areas of the other photos used should be similarly covered.
- H. Immediately prior to viewing the photo line-up, the administrator should verbally read instructions to the witness covering the areas listed below. Written instructions can also be given to the witness prior to conducting the photo line-up. If the instructions are provided in writing, the witness will be asked to sign the document as acknowledgement.
 1. As part of the ongoing investigation into a crime that occurred on (date) at (location) you are about to view a photo line-up.
 2. You will see [number] of people in the photo line-up. There will be a number assigned to each person.
 3. Take whatever time you want to view the photo line-up.
 4. The suspect may or may not be present.
 5. Do not assume that I know who the suspect is.

6. I want you to focus on the persons you are shown and not look to me or anyone else in the room for guidance about making an identification during the procedure.
 7. 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.
 8. If you do make an identification, I will ask you to describe your level of certainty about that identification using your own words.
 9. Do you understand or have any questions about these instructions?
- I. After the witness has had an opportunity to view the photo line-up, the following questions will be asked and information provided to the witness. The exact wording below is not required. If the witness makes a response to any of these points prior to being asked, the details of that response will be noted.
1. Do you recognize anyone?
 2. What is the number of the person you recognize?
 3. From where do you recognize the person?
 4. In your own words, how certain are you? Ask the witness to provide a confidence statement in which the witness describes his or her certainty about any identification made. The witness should use their own words and not a numerical scale. The response should be recorded verbatim.
 5. The investigation will continue regardless of whether or not you make an identification.
 6. Please do not discuss this procedure or any photograph that you may pick with any other witness in this case.
- J. No comment should be made by the administrator as to the witness' selection or the outcome of the identification procedure.
- K. Whenever reasonably possible, videotape or audiotape the identification procedure.

V. OPERATIONAL PROCEDURES

A. PHOTO LINE-UPS

1. When practicable, the photo line-up should be presented to the witness by an investigator or officer who is unaware of the identity of the suspect. A blind procedure should be used as well by placing the photo line-up into a folder before presenting it to the witness. The administrator should be positioned so they are not in the line of sight of the witness while viewing the photo line-up.

2. There are times when such “blind” administration may be impracticable, for example, when all of the officers in an investigating office already know who the suspect is, or when a victim-witness refuses to participate in a photo line-up unless it is administered by the investigating officer. In such cases, the administrator should adopt “blinded” procedures, so that he or she cannot see the order or arrangement of the photographs viewed by the witness or which photograph(s) the witness is viewing at any particular moment.
3. There may be exceptional circumstances in which it is not practicable to conduct either a blind or blinded photo line-up. In those instances, the administrator should document the reasons for the non-blind(ed) procedure and be prepared to explain the reasons for conducting such an alternative procedure.
4. If the witness identifies one of the photos, they should be asked to mark the photo they are identifying and place their signature next to the photo.
5. Investigators should avoid addressing whether a person is in custody unless specifically asked. Witnesses should not be informed about any supporting evidence such as confessions, other ID’s, or physical evidence that may have been obtained before presentation of the photo line-up.

VI. DOCUMENTING THE IDENTIFICATION PROCESS

- A. The entire identification procedure should be memorialized and documented in the most reliable way possible. Where practicable, preserve the identification using audio or video recording.
- B. If the photo line-up procedure cannot be recorded, it should be preserved by photograph. The witness should sign the photograph to verify that it is the photo line-up or live line-up that he or she viewed.
- C. Any physical or verbal reaction to the photo line-up should be memorialized in a standardized manner. If this is done in writing, anything said by the witness should be verbatim.
- D. Document where the procedure took place, who was present, and the date and time it was administered.
- E. Any and all photo line-ups created and viewed, whether identified or not identified, will be handled as provided in agency evidence handling policy.

*This Guide originated with a model policy created by the Best Practices Committee of the Kansas County and District Attorneys Association and the document from the U.S. Department of Justice entitled Eyewitness Identification. Our thanks go out to those entities for their earlier work on this issue.