

Title: GFPD 1 - Photo Array

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Policy:

Photo Array Identification Procedures; It is the policy of this department that officers shall use the following guidelines when conducting photo arrays. It is anticipated that the use of eyewitness identification procedures will assist in identifying potential suspects and maximize the reliability of those identifications.

Purpose and Scope:

To establish guidelines on how to conduct fair and reliable eyewitness identifications

Definitions:

- **Photo Array:** A collection of photographs that are shown to a witness to determine if the witness can recognize a person involved with the crime.
- **Suspect:** Person the police believe has committed the crime.
- **Filler:** A person, other than the suspect who is used in either a live line up or a photo array.
- **Administrator:** The person who is conducting the identification procedure.
- **Blind Administrator:** A term used to describe the administrator of the procedure where the administrator does not know the identity of the suspect.
- **Blinded Procedure:** A description of the procedure, meaning that the administrator may know who the suspect is, but by virtue of the procedure’s administration, the administrator is unable to inadvertently provide cues to the witness. For example, the use of a folder or envelope to conceal an array from the administrator, blinds the procedure.
- **Double-Blind Procedure:** Where a blind administrator is used, the procedure is considered to be double-blind.
- **Confidence Statement:** A statement from an eyewitness immediately following their identification regarding their confidence or certainty about the accuracy of their identification. The witness should be asked to provide their level of certainty in their own words as opposed to using a numerical scale.

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Procedure:

Photo Arrays

A. Selection of fillers

1. Fillers should be similar in appearance to the suspect in the array.
2. Similarities should include gender, clothing, facial hair, race, age, height, extraordinary physical features, or other distinctive characteristics.
3. An administrator should not use a filler if the administrator is aware that the filler is known to the witness.
4. There should be at least five fillers, in addition to the suspect.
5. Only one suspect should be in each array.
6. If there is more than one suspect, then different fillers should be used in separate arrays for each suspect.
7. Photo quality, color and size should be consistent. Administrators should ensure that the photos do not contain any stray markings or information about the subject. Color and black and white photos should not be mixed.
8. Any identifying information contained on any of the photos should be covered and those areas of the other photos used should be similarly covered.

B. Inviting the witness to view the array

1. When a suspect is known and the investigator calls a witness to arrange for the viewing of a photo array, the investigator should simply advise the witness that he/she intends to conduct an identification procedure and should not say to the witness: "We'd like you to come in to view a photo array in connection with the crime committed on *(date and location)*."
2. The investigator should avoid addressing whether or not a person is in custody unless specifically asked.
3. Investigators should give no opinion on their perception of the witness's ability to make an identification.

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4. Investigators should not inform the witness about any supporting evidence such as confessions, other ID's, or physical evidence that may have been obtained.
5. Witnesses should be prevented from speaking to the victim and any other witnesses about the identification procedure when they arrive to view the array.

C. Instructions to witness

1. Consideration should be given to providing written instructions to the witness. The instructions should be communicated in various languages when appropriate. The instructions should be read to the witness and signed by the witness after being read.
2. Before the procedure begins, the administrator should tell the witness what questions will be asked during the identification procedure.
3. The investigator should tell the witness that as a part of the ongoing investigation into a crime that occurred on the *(date)* at *(location)* the witness is being asked to view the photo array to see if the witness recognizes anyone involved with the crime.
4. These instructions let the witness know that they should not seek assistance from the administrator in either making a selection or confirming an identification. They also address the possibility of the witness feeling any self-imposed or undue pressure to make an identification. The instructions are as follows:
 - a. The perpetrator may or may not be pictured.
 - b. Do not assume I know who the perpetrator is.
 - c. I want you to focus on the photo array and not to ask me or anyone else in the room for guidance about making an identification during the procedure.
5. Instructions to the witness about the quality of the photographs.
 - a. Individuals presented in the photo array may not appear exactly as they did on the date of the incident because features such as head and facial hair are subject to change.
 - b. Photographs may not always depict the true complexion of a person; it may be lighter or darker than shown in the picture.
 - c. Pay no attention to any markings that may appear on the photos, or any other differences in the type or style of the photographs.

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6. The witness should be informed that if they make an identification at the conclusion of the procedure, they will be asked to describe their level of certainty about that identification in their own words and should avoid using a numerical scale of any kind.
7. The witness should be advised that the investigation will continue regardless of whether or not they make an identification.
8. Where the procedure is to be recorded by the use of audio or video, the witness should be informed prior to the start of the procedure, and their consent should be requested prior to the recording.
 - a. The witness should sign the form indicating their consent or lack of consent.
 - b. If the witness does not consent, the officer should not record the procedure.

D. Administering the procedure

1. Photo arrays must always be conducted using either a “blinded procedure” or “double-blind procedure”. A “double-blind procedure” is preferable where circumstances allow and it is practicable.
2. One method to accomplish a blinded procedure is by placing the array into a folder before handing it to the witness. Additional methods can be employed to further enhance the “blinded” nature of the procedure, such as:
 - a. “Two-person shuffle” – the array is assembled by an officer other than the investigator and then it is placed into a folder for the investigating officer.
 - b. “One-person shuffle” – multiple arrays are created by the investigating officer and the suspect’s position is difference in each. Three folders containing the arrays are provided to the witness who selects one to use.
3. Regardless of the method of administration that is to be used, the administrator should be positioned in such a way so they are not in the witness’ line of sight during the viewing of the array. Where practicable, the administrator should still be able to view the witness and hear what they say.
4. If there are multiple witnesses viewing the array, they should be prevented from speaking to each other about the identification procedure before, during, and after the process.
5. The witnesses must view the array separately. Multiple copies of the same array may be used for the same suspect for each new witness viewing the array.

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6. To protect the integrity of the identification procedure, the administrator must remain neutral so as not to, even inadvertently, suggest a particular photograph to the witness.
7. Attention should be given to the location of the procedure so that the witness is not influenced by items in the room such as wanted posters or BOLO (be on the lookout) information.

E. Post viewing questions

1. After viewing the array ask the witness the following questions:
 - a. Do you recognize anyone?
 - b. If so, what number photograph do you recognize?
 - c. From where do you recognize the person?
2. If the witness' answers are vague or unclear, the administrator will ask the witness what he or she meant by the answer.

F. Confidence Statement

- a. Ask the witness to describe his/her certainty about any identification that is made.
- b. Ask the witness to use his/her own words and not a numerical scale.

G. Documentation

1. Document any changes made to any of the photographs used.
2. Document where the procedure took place. Who was present, the date and time that it was administered.
3. Preserve the photo array in the original form that was shown to each witness.
4. Each witness should complete a standardized form after viewing the array and the actual array used should be signed and dated by each witness.

H. Recording the Procedure

1. The entire identification procedure should be memorialized and documented in the most reliable way possible. Where practicable and appropriate, the procedure should be memorialized using audio or video recording – provided

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that the procedure to be recorded is admissible in a court of law, pursuant to CPL 60.25 or 60.30.

2. Where the procedure is to be recorded by the used of audio or video, the witness' consent should be obtained and documented on a form prior to recording. If the witness does not consent to the recording, the officer should not record the identification procedure and should request that the witness sign a form saying he/she refused to be recorded.
3. Audio or video recording may not always be possible or practicable. Some reasons that may prevent that identification procedure from being recorded include, but are not limited to: witness safety; recording equipment malfunctions; recording equipment is not available; identification procedure is conducted at a location not equipped with recording devices and the reasons for using that location are not to subvert the intent of this policy, e.g., the witness is out of state, in a hospital or is in a corrections facility; inadvertent error or oversight occurs that was not the intended conduct of law enforcement personnel.
4. Any physical or verbal reaction to the array should be memorialized in a standardized manner. If this is done in writing, anything said by the witness should be verbatim.
5. The confidence statement should be documented verbatim.
6. Where an identification is made, complete a CPL 710.30 Notice. Note: Failure to provide this notice should prevent its use in court.

I. Speaking with the witness after the procedure

1. The administrator, or other appropriate person, should document the statements, comments or gestures of the witness about next steps.
2. Once the identification procedure is concluded and documented, the administrator can talk to the witness about how the case will proceed or what the next steps in the case may be.
3. The administrator should not comment or make gestures on the identification itself by saying things such as: "Great job" or "We knew you would recognize him" or even nodding his/her head in agreement.

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4. The witness should be told not to discuss what was said, seen, or done during the identification procedure with other witnesses, nor should the investigator discuss any other identification procedures with the witness.

All members who will be involved in the administration of the photo array shall receive training on how to properly administer photo arrays.

Authority:

A handwritten signature in black ink, appearing to read "J Boisclair". The signature is written in a cursive style with a long horizontal stroke at the end.

Joseph Boisclair
Chief of Police