



Identification Process	Related Policies:
<i>This policy is for internal use only and does not enlarge an employee’s civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only form the basis of a complaint by this department for non-judicial administrative action in accordance with the laws governing employee discipline.</i>	
Applicable Arkansas Statutes:	
CALEA Standard: 42.2.11; 42.2.12	
Date Implemented:	Review Date:

- I. **Purpose:** The purpose of this policy is to outline the manner in which criminal suspects will be subjected to identification proceedings.
- II. **Policy:** It is the policy of this department to respect the rights of all persons during any law enforcement operation in which witness identification will be conducted.
- III. **Definitions**
 - A. **Show-Up/Drive-by:** The process by which a complainant or witness is driven to a suspect who has been stopped in the area of a crime for purposes of excluding or verifying the suspect as the person responsible.
 - B. **Photo-Array:** The process by which a complainant or witness is shown a series of photographs which may contain a suspect in a crime for purposes of excluding or verifying the suspect as the person responsible.
 - C. **Single Photo Verification:** The process by which a complainant or witness is shown a single photograph because they have a thorough familiarity with the person who is suspected in the criminal activity and law enforcement is simply verifying that the suspect identified by the police is the same subject known to the witness.
 - D. **Line-up:** The process by which a complainant or witness is allowed to view a group of individuals, in person, for purposes of excluding or verifying the suspect as the person responsible for the crime.
- IV. **Procedure:** In all identification procedures, officers should take steps to ensure that the procedure is not suggestive by the manner in which it is carried out. Thus, officers should use caution as to the manner in which suspects are presented so that a suspect may not later claim that the officer influenced the witness’ identification of the suspect. Each eyewitness who views a lineup or photo spread shall sign a form containing the following information:
 - i. The suspect might not be in the lineup or photo spread and the eyewitness is not obligated to make an identification.

- ii. The eyewitness should not assume that the person administering the lineup or photo spread knows which person is the suspect in the case.

B. The Validity of Identification Procedures Rests on the Following Considerations

- i. Witness' opportunity to view suspect at the time of the crime;
- ii. Witness' focus of attention at time of crime;
- iii. Accuracy of witness' description of suspect prior to identification procedure;
- iv. Level of certainty exhibited by the witness in making the identification; and
- v. The length of time that has passed between the crime and the identification.

Note: Police should document the existence/lack of existence of these points when compiling reports on identification procedures.

C. Show-Up/Drive-by Identification: Although the United States Supreme Court has not affixed a duration of time within which these procedures are to be conducted, generally this type of identification occurs within a short period of the crime and within a reasonable proximity (geographically) from the crime.

- i. Unless an extreme emergency exists, the complainant or witness shall be taken to the location where the suspect has been stopped. The movement of the suspect to the witness' location may constitute an arrest for which probable cause is required. To the extent that probable cause is lacking without identification, movement may be determined to have been an unlawful arrest.
- ii. To the extent that an officer may safely do so, the officer should take steps to minimize the suggestiveness of the identification. The following should be considered:
 - a. Have suspect standing outside of any law enforcement vehicle rather than in the vehicle;
 - b. Have the suspect standing without handcuffs or with handcuffs not visible to the witness;
 - c. The appearance that the suspect maintains his or her freedom will undercut suggestiveness;
 - d. If items taken or used in the crime have been recovered, do not allow the witness to view or become aware of the recovery until after the identification proceeding is complete; and
 - e. The witness' failure to recognize the subject stopped must be documented and included in any materials forwarded to the prosecutor who ultimately handles the case. Such evidence may be exculpatory to the suspect who is charged with the crime. As such, it must be forwarded to the prosecutor. Additionally, if the witness identifies a suspect in the future, this failure to identify the first subject presented to them may add credibility to their identification.

D. Photo-Array/Photo-Pack

In composing a photo lineup:

- i. Officers shall complete the eyewitness identification form prior to the identification procedure.
- ii. Include only one suspect in each identification procedure;
- iii. Select fillers who generally fit the witness' description of the perpetrator;
- iv. If multiple photos of the suspect are reasonably available to the investigator, select a photo that resembles the suspect description or appearance at the time of the incident;
- v. Include a minimum of five fillers (non-suspects) per identification procedure;
- vi. Consider that complete uniformity of features is not required. 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;
- vii. Create a consistent appearance between the suspect and fillers with respect to any unique or unusual feature (i.e. scars, tattoos, etc.) used to describe the perpetrator by artificially adding or concealing that feature;
- viii. Consider placing suspects in different positions in each lineup, both across cases and with multiple witnesses in the same case. Position the suspect randomly in the lineup;
- ix. When showing a new suspect, avoid reusing fillers in lineups shown to the same witness;
- x. Ensure that no writings or information concerning previous arrest(s) will be visible to the witness;
- xi. View the spread, once completed, to ensure that the suspect does not unduly stand out;
- xii. Preserve the presentation order of the photo lineup. In addition, the photos themselves should be preserved in their original condition;
- xiii. All photos must include persons of the same race and sex as the suspect;
- xiv. Photos should be presented in a way that does not suggest that the subjects in the photos are criminals (i.e. mug-shot with numbers (Mug shots may be used, but portions of photo that would indicate that photo is a mug-shot should be cropped or hidden from the witness));
- xv. Sequential Presentation: Photos will not be shown at the same time as an array or six-pack, instead the photos will be shown from a stack, held by the presenter who shall present the photographs one at a time as if dealing a deck of cards to the witness;
- xvi. Double-blind Presentation: The officer who conducts the photo-array should be someone who is not aware of which photo in the array is that of the suspect in the case. The witness should be told the officer conducting the photo-array does not know who the suspect is;

- xvii.** Witness instruction. The person viewing the photo-array should be told that the perpetrator may or may not be in the photo-array and that the investigation will continue regardless of whether identification is made or not;
 - xviii.** Witnesses should be segregated before, during and after the procedure and instructed not to discuss the identification process with each other;
 - xix.** During the identification process, officers shall not, in any way, prompt the witness toward a particular photo;
 - xx.** At the time of the identification, the eyewitness should provide a statement in his/her own words indicating their level of confidence in the identification;
 - xxi.** The presentation/order of presentation must be documented. The witness who selects a photo as the suspect should sign and date the photo they have selected with a full signature and initial and date the other photos presented to them; and
 - xxii.** The witness' selection of a photo that is not the suspect, must be documented, and included in any materials forwarded to the prosecutor who ultimately handles the case. Such evidence may be exculpatory to the suspect who is charged with the crime. As such, it must be forwarded to the prosecutor.
 - xxiii.** If an independent administrator is not available, the investigative officer shall follow the following procedures:
 - a.** Place the suspect photo and filler photos in separate folders. Include four (4) blank folders that contain no photograph for a total of ten (10).
 - b.** Shuffle the folders before giving them to the witness.
 - c.** The officer administering the array should position himself or herself so that he or she cannot see inside the folders.
 - d.** Allow the eyewitness to open the folders one at a time to view the single photograph.
- E.** Single-Photo Verification: This process shall only be used where the witness is thoroughly familiar with the suspect and the officer is merely attempting to ensure that the witness and the officer are both referring to the same person.
- F.** Line-Ups
- i.** Officers shall complete the eyewitness identification form prior to the identification procedure.
 - ii.** A line-up must be conducted with at least six persons and include at least some persons who are similar in appearance to the suspect i.e. facial hair, glasses, general age etc.
 - iii.** All persons in the line-up must be of the same race and sex of the suspect.
 - iv.** Double-blind presentation: The officer who conducts the line-up shall be someone who is not aware of which person in the line-up is the suspect in the case. The witness should be told the officer conducting the Line-up does not know who the suspect is.

- v. Because line-ups will be administered by an officer who does not know the identity of the suspect, the fillers selected should not be known to the officer administering the line-up. In selecting line-up fillers, abide by the guidelines for photo array fillers as described above.
- vi. All persons in the line-up should carry cards that identify them only by number and they should be referred to only by their number. As with photo arrays, each witness must view the line-up independently, out of the presence and hearing of the other witnesses.
- vii. The investigating officer should explain to the witness that a second officer (the line-up administrator) will be conducting the line-up, and that he/she does not know the identity of the people in the photographs.
- viii. The investigating officer should carefully instruct the witness by reading from a departmental Line-up Instruction Form, and the witness should be asked to sign the form indicating that he/she understands the instructions. The officer should also sign and date the form.
- ix. The investigating officer should leave the room while the line-up administrator conducts the line-up.
- x. The line-up should be conducted so that the suspect and fillers do not actually line up, but rather so that they are displayed to the witness one at a time. This can be accomplished either by having them stand with their back to the witness and then face the witness one at a time, or by having them enter the room individually and leave before the next one enters.
- xi. The procedure for showing the participants to the witness and for obtaining a statement of certainty is the same as for photo arrays. If practicable, the officer should record the procedure with audio and video.
- xii. During the process officers/deputies in any way, shall not, prompt the witness toward a particular subject in the line-up.
- xiii. Although suspects do not have a right to refuse to stand in a line-up, a line-up should not be conducted where the suspect's resistant conduct will set him or her apart from the other participants in the line-up.
- xiv. Suspects may be required to speak during a line-up for comparison purposes only. If officers/deputies are going to require a suspect to speak, they must require all persons participating to speak the same words in turn.
- xv. Suspects may be required to put on clothing recovered from the crime for identification purposes. If officers/deputies are going to require the suspect to put on the recovered clothing, they must require all persons participating in the line-up to put on the clothing in turn.
- xvi. All line-ups must be documented by photographing or video-recording the line-up as presented to the witness. The photo will document positions of the participants as well as the inclusion of the participants.
- xvii. At the time of the identification, the eyewitness should provide a statement in his/her own words indicating their level of confidence in the identification.
- xviii.

- xix.** The witness' selection of a person that is not the suspect must be documented and included in any materials forwarded to the prosecutor who ultimately handles the case. Such evidence may be exculpatory to the suspect who is charged with the crime. As such, it must be forwarded to the prosecutor.

G. Attorneys

- a.** A suspect does not have a right to counsel at a line-up, which is conducted before the suspect has reached a "critical stage" in the justice process. A critical stage is reached when the suspect is arraigned, indicted, or otherwise formally charged with a crime.
- b.** A suspect has the right to counsel at a line-up if the suspect has reached a critical stage in the justice process.
- c.** If the suspect has an attorney, but has not yet reached a critical stage, officers should consider allowing the attorney's presence at the identification proceeding. The presence of an attorney undercuts later claims that the process was somehow suggestive with respect to the suspect.