

420.00 Eyewitness Identification Procedures

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Section 1. Introduction and Definitions

The Saint Paul Police Department is committed to using procedures for eyewitness identifications which are designed to safeguard against the fallibility of human memory. Eyewitness identification is an important tool used in law enforcement and the prosecution of criminals. The procedures outlined in this policy will assist officers and investigators in identifying potential suspects and maximizing the reliability of those identifications. The intent of this policy is to establish guidelines on how to conduct fair and reliable eyewitness identifications while using sequential photo displays and show-ups.

Definitions:

Non-Suspect Fillers – Photographs of individuals not suspected of committing the crime being investigated. These non-suspect filler photographs are used in the sequential photo displays to add additional photographs for identification purposes.

Functional Equivalent (FE) – An officer or investigator administering the sequential photo display, who does know the identity of the suspect. This photo display would be created by a different officer or investigator. The administering officer/investigator would not view the sequential photo display prior to presenting the photo display and therefore does not know, and cannot see, where the suspect is in the order of photos displayed.

Independent Administrator (IA) – Administers the sequential photo display and does not know the identity of the suspect. This officer/investigator did not create or build the sequential photo display.

Simultaneous Photo Display – The victim or witness is shown all the photographs in a photo display at once.

Sequential Photo Display – The victim or witness views only one photograph at a time, preferably in order.

Show-up – The presentation of a suspect to an eyewitness or witness 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 the same time frame and proximity to the crime.

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

Section 2. Sequential Photo Display

Several factors significantly reduce the likelihood of misidentification in a photo display. Using a sequential photo display instead of a simultaneous photo display and using an independent administrator (or a functional equivalent [FE]) can reduce misidentification.

The officer/investigator working on the case may assist with creating the photo display. Descriptors given by the witness, as well as the suspect's characteristics (if known), should be used to complete the photo display. At least five characteristics should be used if possible (e.g., age, gender, race, height, weight, hair, facial hair, eye color, etc.). Before finalizing the photo group, the creating officer/investigator should view the photo display in its entirety to verify the suspect does not stand out. The photographs should be numbered for future reference. When possible, officers/investigators should attempt to keep the suspect from position number one on the photo display (some programs such as Minnesota Repository of Arrest Photos [MRAP] automatically place the pictures and it is not possible to change the picture order). A ratio of fillers to suspects of at least 5:1 should be used (five non-suspect fillers plus the suspect for a total of at least six photographs). The Ramsey County Law Enforcement IWS 9 Imageware Systems and MRAP may be used to create and produce photo displays. The process used must be fair and the photo display must be created impartially. According to MN Statute §171.07 sub. 1a-(2), Minnesota DVS (Driver and Vehicle Services) photos may be used for the investigation and prosecution of crimes and may be used when other known database photographs are unavailable.

Section 3. Sequential Photo Display Procedure

1. An independent administrator should always be used, if possible. A functional equivalent can be used in cases where an independent administrator is not possible.

If an administrator with knowledge of the suspect's identity is present during the administration of the photo display, it is preferred they stay out of the view of the witness. If no independent administrator is available, a functional equivalent must be used. This ensures the administrator does not know which photo is of the suspect.

2. The sequential photo display procedure is the same for either method (independent administrator or functional equivalent). Regardless of method, investigators will be prepared to testify as to the unbiased method and fairness of a display.
 - A. The administrator will read the "Administrator Side" of the Sequential Photo Display form and fill out the appropriate box (IA or FE). Complete the information at the top of both sides of the form.

- B. Select the applicable IA or FE language on the “Witness Side” of the form. Read and check off the six instructions to the witness on the Witness Side of the form. The witness should initial that they understand the instructions. The alternate simplified version (form revised 6/8/11) may be used for children, mentally impaired adults, and persons with limited knowledge of English. This form can also be used for other types of photo displays such as vehicles, guns, homes, weapons, etc.
 - C. Display the photos to the witness in sequential order with only one photo visible at a time. The administrator should not give the witness any feedback during or after the photo display.
 - D. Record any comments the witness makes while examining the photos and any other relevant observations (e.g., physical reactions).
 - E. If the witness makes an identification, ask the witness how certain they are of the identification. The witness’ response should be recorded on the “Administrator Side” of the form. If the witness asks about what type of scale, grading method, or certainty percentage should be given, tell them to use which ever method seems right to them.
 - F. Do not show the photo display more than once *unless* the witness requests it. If requested, show the entire photo display, in the same order as originally shown, even if the witness requests only one or multiple pictures be shown.
 - G. At the conclusion of the photo display, the witness should complete the lower section on the “Witness Side” of the form. The investigator is permitted to assist the witness with this portion of the form, if requested by the witness.
 - H. If a witness is deaf, hard of hearing, has hearing loss and/or limited English proficiency, officers or investigators administering the photo display must provide auxiliary aids (any item which may assist in ensuring effective communication) or may provide an interpreter or CART provider (Communication Access Real-time Translation, aka real-time captioning) as necessary to communicate effectively (Saint Paul Police General Order 409.01).
3. Written and photo record of photo identification or non-identification:
- A. The lower section on the “Witness Side” of the form is the record, in the witness’ own handwriting, of whether any identification was made and, if so, how certain the witness is of their identification (encourage the witness to put comments in their own words). The witness should sign and date the form. If the witness refuses to sign, write "refused" below the space for the witness' signature. This written record must be maintained whether or not the witness identifies any person.
 - B. The photo display use must be preserved. The six-person template for simultaneous photo displays may be used for this purpose. If identification is made, have the witness sign and date in the space underneath the identified photo.
 - C. The “Administrator Side” of the form must also be completed. This includes "How certain are you of your identification?" It must also include how many times the display was shown, the administrator's summary of witness comments made during the photo display, and any other relevant observations.
 - D. In addition to this form, the administrator’s actions regarding the photo display will be detailed in a supplemental police report.

4. **Exception for Children 12 and Under:**
Scientific research does not demonstrate the superiority of the sequential method for witnesses 12 and under. Use the simultaneous method in these cases. However, an independent administrator should still be used, whenever possible. Rather than using the Sequential Photo Display form, use the alternate simplified instructions, if appropriate. The supplemental report should also include any comments made by the witness, any physical reactions while examining the photo display, a statement of whether the witness selected any photo, and if a selection was made, the witness' level of certainty. Older children may be asked to sign and date the picture selected.
5. **Multiple Perpetrators:**
When there are multiple perpetrators, the same ratio of non-suspect fillers to suspects should be used (at least 5:1) for each perpetrator. A new photo display must be made, and new Sequential Photo Display form must be used for each suspect.
6. **Multiple Witnesses:**
If more than one witness views the photo display, separate the witnesses while administering the photo displays. Also, consider placing the suspect's photo in a different position for each witness. Be sure to preserve a photo record of the order of photos shown to each witness and to have each witness sign and date any photo selected on separate photo displays.
7. **Follow-up Interview by Investigator:**
After the independent administrator has completed the photo display, the assigned investigator may follow up with any supplemental interviews, as needed. The investigator should refrain from talking to the witness about their selection until the case is closed and a suspect has been charged. If the witness is concerned for their safety and wants to know if the suspect is in custody, that question may be answered.
8. **The Sequential Photo Display form must be scanned into evidence.com.** After scanning, the officer/investigator submitting the paper evidence must go into evidence.com and confirm the scanned version is an exact copy of the original. Once the officer/investigator has verified the scanned version is an exact duplicate of the original, the original document may be shredded (Saint Paul Police Policy 439.12 Property Room Unit Procedures).

Section 4. Show-up Procedure

While allowing a crime victim or witness to view a potential suspect in a show-up can sometimes be necessary to establish probable cause for an arrest, it can be suggestive in nature and should only be used in limited circumstances. Specifically, use of this process should be limited to those circumstances in which there is insufficient probable cause for an arrest and there are public safety concerns if the suspect were to be released without attempting the identification.

However, when circumstances require the prompt presentation of a suspect to a witness, the following guidelines will minimize potential suggestiveness and increase reliability.

1. Document the witness's description of the perpetrator prior to conducting the show-up.
2. Conduct a show-up only when the suspect is detained within a reasonable time frame after the commission of the offense and within a close physical proximity to the location of the crime.
3. Do not use a show-up procedure if probable cause to arrest the suspect has already been established.
4. 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.
5. 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.
6. If there is more than one suspect, only present one suspect at a time to the witness.
7. Do not conduct the show-up with more than one witness present at a time.
8. Separate witnesses and do not allow communication between them before or after conducting a show-up.
9. If one witness identifies the suspect, use a sequential photo display for the remaining witnesses.
10. Do not present the same suspect to the same witness more than once.
11. Do not require show-up suspects to put on clothing worn by, speak words uttered by, or perform other actions of the perpetrator.
12. Officers should avoid words or conduct of any type that may suggest to the witness that the individual is or may be the perpetrator.
13. Ask the witness to provide a confidence statement.
14. Remind the witness not to talk about the show-up to other witnesses until police or prosecutors deem it permissible.
15. Use in-car camera or body worn cameras to record the identification process.
16. Document the time and location of the show-up, the officers present, the result of the procedure, and any other relevant information in a report.

Section 5: Line-ups

St. Paul Police Department does not conduct line-ups.

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