
Purpose

It is the purpose of this policy to establish guidelines for eyewitness identification procedures involving photographic and physical lineups, as well as field identifications or show-ups, when appropriate, during criminal investigations. 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.

Policy

The Bemidji Police Department recognizes that one of its primary responsibilities is to conduct investigations of crimes within its jurisdiction. The department is establishing this policy to ensure that investigations requiring the use of lineups and/or show-ups are conducted in a manner that ensures reliable witness identifications and testimony. 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.

Definitions

The following phrases have special meanings as used in this policy:

- A. CONFIDENCE STATEMENT: A statement from the victim/witness, in his or her own words, on how certain they are of the identification which is taken immediately after an identification is made. The "confidence statement" will be recorded in writing and signed by the victim/witness or otherwise memorialized.
- B. FIELD IDENTIFICATION/ LINE-UP/SHOW-UP: An identification procedure in which the victim/witness is presented with a single suspect (s) within a short time following the commission of a crime for the purpose of determining whether the victim/witness identifies the individual(s) as the perpetrator(s) or eliminates the individual(s) as a suspect.
- C. FILLERS: Individuals or photographs of individuals that resemble the suspect that are used in a line-up. A minimum of five (5) fillers will be used with a photographic or physical line-up.
- D. SEQUENTIAL/ SIMULTANEOUS PHOTOGRAPHIC LINE-UP: A non-suggestive array of photographs, including the suspect and five (5) individuals, who are similar in appearance that is presented one-at-a-time, or in a series to a victim/witness for identification purposes.
- E. 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

Procedures

A. Photographic Line-ups

1. Members of the Bemidji Police Department may use a sequential photo line-up described above. The photographs in these line-ups may be constructed using records management system (RMS), MRAP, jail booking photos, photographs clarified using digital software or from other agencies in accordance with data practices legislation. When composing a photographic line-up, Officers shall adhere to the following procedures to ensure that the suspect does not unduly stand out and to ensure reliability:
 - i. Line-ups should be assembled and conducted in a manner that promotes reliability, fairness, and objectivity in the identification process and in a manner that ensures that they are non-suggestive.
 - ii. Fillers should be reasonably similar in age, height, weight, and general appearance and be the same sex and race, in accordance with the witness's description of the offender.
 - iii. Create a consistent appearance between the suspect and the fillers with respect to any unique or unusual features (e.g., Scars, tattoos, facial hair) used to describe the perpetrator by artificially adding or concealing that feature on the fillers.
 - iv. Each victim/witness should view the line-up separately from any other victim/witness.
 - v. One suspect should appear in each individual line-up along with at least five (5) fillers or a minimum of six photographs. The fillers should generally resemble the eyewitness's description of the perpetrator while ensuring that the suspect does not unduly stand out from the fillers.
 - vi. When conducting multiple line-ups of more than (1) suspect, only one suspect should appear in each line-up array. Also, each filler can be used only once.
 - vii. When conducting a single line-up in an investigation with multiple victims/witnesses, each filler should be arranged in a different position from the previous line-up.
2. Officers shall utilize a blind presentation method whenever additional personnel is available.
 - i. During a blind presentation, no one who is aware of the suspect's identity should be present during the administration of the photo array.
 - ii. 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 a separate folder for a total of six.
 - 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 remaining fillers) such as 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 themselves so that they cannot see inside the folders as they are viewed by the witness
- 3. Officers shall instruct the witness using the standardized instructions form entitled, “*Photographic Line-Up Instructions*” (Appendix O261) or, if unavailable, similar documented or recorded verbal instructions.
- 4. All instructions shall be read to the witness viewing the line-up and Officers should ensure the following when applicable:
 - i. The instructions and entire viewing processes is recorded by either audio or video equipment.
 - a) This recording will be added to the case file.
 - b) 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.
 - ii. Instruct the victim/witness to place the date and time, and their initials next to the photograph of the individual that they have identified.
 - iii. Officers shall not provide the victim/witness with any feedback, in any manner, regarding his/her identification, or lack thereof.
 - iv. Officers should avoid 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.
 - v. Only one victim/witness should view the line-up at a given time.
 - vi. If possible, the photo array should only 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.
 - vii. Victims/witnesses should not be allowed to confer with one another before, during or immediately after the procedure.

B. Show-up / Field Identification

- 1. A show-up occurs when law enforcement officials show one suspect to one witness for the purpose of eyewitness identification. Courts recognize that show-up procedures can be suggestive, but acknowledge show-ups have benefits for both public safety and innocent parties. Show-ups may be conducted, subject to the following conditions:
 - i. In situations in which probable cause to arrest does not exist, but officers have temporarily detained a subject who matches a general eyewitness description, officers may conduct a show-up for the following reasons:
 - a) To identify a potential suspect, or
 - b) To immediately clear an innocent person from suspicion.
 - ii. Officers may detain subjects/suspects where he/she is located in the least restrictive manner possible that will ensure the presence of the subject/suspect and the safety of officers for a reasonable period of time to confer or refute whether the person is the perpetrator.

- a) Officers should not display a subject/suspect detained in handcuffs, physically restrained or in a police vehicle unless safety concerns make this impractical.
 - b) When circumstances dictate that a suspect must be controlled and/or separated from the victim/witness, officers should take practical steps to minimize the suggestiveness of the procedure.
 - c) Show-ups should not occur at a police station, or other law enforcement building.
 - d) Officers shall 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.
- iii. Whenever practical, officers should transport the victim/witness to the suspect (as opposed to transporting the suspect to the victim/witness)
 - iv. Officers should ensure their BWC and/or SCVC is recording the transport.
 - a) The recording will be included in the case file.
 - v. Officers should instruct the victim/witness, prior to the show-up, that the suspect being detained may or may not be the perpetrator and that the victim/witness should not feel compelled to make an identification.
 - vi. Officers should refrain from using words or conduct of any type that may suggest to the victim/witness that the individual is or may be the perpetrator.
 - vii. If the victim/witness makes identification, officers should not confirm or corroborate the identification. Officers should discreetly advise the detaining officer of the victim/witness response or identification.
 - viii. If the victim/witness indicates that he/she recognizes or identifies the suspect, the officer shall ask the circumstances from which the victim/witness recognizes the individual and how certain he/she is of his/her identification.
 - ix. In the case of multiple victims/witnesses, show-ups should not be conducted with more than one victim/witness at a time. When feasible, after one witness makes an identification during a show-up, that identification should provide probable cause for an arrest, and the remaining witnesses should ordinarily be shown a photo line-up rather than participate in a show-up.
 - x. In the case of multiple suspects, the victim/witness should view each suspect in separate show-ups conducted in accordance with these procedures.
 - xi. Officers should separate witnesses and do not allow communication between them before or after conducting a show-up.
 - xii. Whenever possible, officers should photograph the suspect at the time of the show-up.
 - xiii. Officers should document each victim/witness's identification confidence or lack thereof in a report in their case file.
 - xiv. Officers will not require suspects to put on clothing worn by, speak words uttered by, or perform other actions of the perpetrator.

C. Live line-ups

The process of presenting live individuals to an eyewitness for the purpose of identifying or eliminating suspects

1. The primary investigating officer is responsible for the following;
 - i. 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.
 - ii. 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.
 - iii. Making arrangements to have persons act as fillers.
 - iv. 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.
 - v. 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.

2. Conducting Live Line-ups
 - i. Live line-ups shall be conducted using a blind administrator.
 - ii. Ensure that all persons in the line-up are numbered consecutively and are referred to only by number.
 - iii. Record the entire event and include that recording in evidence.
 - iv. Officers shall instruct the witness following the standardized instructions form entitled, "*Photographic Line-Up Instructions*" (Appendix O261) or, if unavailable, similar documented or recorded verbal instructions. The instructions should be tailored to accommodate a live showing rather than photographs.

Reference or Revision Date(s):

- A. Rhode Island Police Chiefs Association – Model Policy
- B. Minnesota Eyewitness Identification Procedures- Model Policy 07/20/2020
- C. REVISION DATE(S):
 - a. 11/10/2020