

**SILVER BAY POLICE DEPARTMENT**  
**EYEWITNESS IDENTIFICATION PROCEDURES MODEL POLICY**  
Minnesota Statutes, Section 626.8433

**POLICY M-13**

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**I. PURPOSE**

It is the purpose of this policy to establish guidelines for eyewitness identification procedures involving photo line ups and show ups.

Erroneous eyewitness identifications have been cited as the factor most frequently associated with wrongful convictions. 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.

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**II. POLICY**

It is the policy of the Silver Bay Police Department to 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. Photo line-ups will be conducted by displaying the suspect and fillers sequentially using a blind or blinded administration.

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**III. DEFINITIONS**

- A. Photo Line-Up Array:** A means of presenting photographs to an eyewitness for the purpose of identifying or eliminating suspects.
- B. Show-up:** The presentation of a suspect to an eyewitness 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 a contemporaneous time frame and proximity to the crime.
- C. Independent Administrator:** A peace officer conducting a photo line-up array who does not know the identity of the suspect.
- D. Functional Equivalent:** A peace officer conducting a photo line-up array, who knows the identity of the suspect(s), does not know the order of the photographs and cannot see the photographs being viewed by the witness.

- E. Blind Presentation:** The Independent Administrator does not know the identity of the suspect and does not know which photo line-up member is being viewed by the eyewitness at any given time.
  - F. Blinded Presentation:** The Functional Equivalent knows the identity of the suspect but does not know which photo line-up array member is being viewed by the eyewitness at any given time.
  - G. Confidence Statement:** A statement in the witness's own words taken immediately after an identification is made stating his or her level of certainty in the identification.
  - H. Filler:** A photograph of a person, included in an identification procedure who is not considered a suspect.
  - I. Sequential:** Presentation of a series of photographs or individuals to a witness one at a time.
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#### **IV. PROCEDURE**

##### **A. PHOTO LINE-UP ARRAY**

###### **1. CREATION OF A PHOTO LINE-UP ARRAY:**

- a. The photo line-up array should consist of a minimum of six photographs. Use a minimum of five fillers and only one suspect.
- b. Ensure that all photographs in the photo line-up are numbered.
- c. Use contemporary photos.
- d. Do not mix color and black and white photos.
- e. Use photos of the same size and basic composition.
- f. Never mix mug shots with other photos and ensure consistent appearance of photograph backgrounds and sizing.
- g. Do not include more than one photo of the same suspect.
- h. Cover any portions of mug shots or other photos that provide identifying information on the subject – and similarly cover other photos used in the array.
- i. Where the suspect has a unique feature, such as a scar, tattoo, or mole or distinctive clothing that would make him or her stand out in the photo line-up array, filler photographs should include that unique feature either by selecting the photographs of fillers to the extent necessary to achieve a consistent appearance.
- j. The same fillers should not be used in arrays for different suspects shown to the same witness.
- k. 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.

- l. Avoid the use of 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.
- m. If there is more than one suspect, include only one suspect photo in each photo line-up array.
- n. Place suspects in different positions in each photo line-up array, both across cases and with multiple witnesses in the same case.

## **2. PHOTO LINE-UP ARRAY CONSIDERATIONS:**

- a. A “Blind Presentation” shall be utilized whenever possible. In cases where a “Blind Presentation” is not feasible, a “Blinded Presentation” shall be used.
- b. Place the suspect and at least five filler photos in separate folders for a total of six (or more depending on the number of fillers used.)
- c. The independent administrator or functional equivalent will take one folder containing a known filler and place it to the side. This will be the first photo in the series. The independent administrator or functional equivalent should then shuffle the remaining folders (containing one suspect and the remainder of fillers) such that 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.
- d. Witnesses should not be permitted to see or be shown any photos of the suspect prior to the photo line-up array.
- e. The photo line-up array should be shown to only one witness at a time; officers should separate witnesses so they will not be aware of the responses of other witnesses.
- f. Multiple identification procedures should not be conducted in which the same witness views the same suspect more than once.
- g. Peace officers should scrupulously avoid the 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.

## **3. CONDUCTING THE PHOTO LINE-UP ARRAY**

- a. The independent administrator or functional equivalent should position himself or herself so that he or she cannot see inside the folders as they are viewed by the witness.
- b. The witness shall be given a copy of the following instructions prior to viewing the photo line-up array, and the independent administrator or functional equivalent shall read the instructions aloud before the identification procedure.

*You will be asked to look at a series of photographs. The suspect may or may not be present in the identification procedure.*

***If you are acting as an Independent Administrator:***

*I don't know whether the person being investigated is included in this series.*

***Or;***

***If you are acting as Functional Equivalent:***

*I don't know the order of the photographs.*

*Sometimes a person may look different in a photograph than in real life because of different hairstyles, 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.*

*You should not feel that you have to make an identification. It is just as important to clear innocent persons from suspicion as it is to identify guilty parties. Regardless of whether you make an identification, we will continue to investigate the incident.*

*You will only see one photo at a time. The photographs are not configured in any particular order. Take as much time as you need to look at each photograph. If you make an identification, I would still ask that you view any photographs that remain in the photo line-up array.*

*Since this is an ongoing investigation, you should not discuss the identification procedures or results.*

*If you do identify someone, I will ask you to describe in your own words how certain you are.*

*Please initial \_\_\_\_ here, if you understand these instructions.*

- c. Following an identification, the independent administrator or functional equivalent shall ask the witness to provide a confidence statement and document the witness's response.
- d. The independent administrator or functional equivalent shall ask the witness to complete and sign an Eyewitness Identification Procedure Form.
- e. The witness should be asked if he or she recognizes the person in the photo before moving onto the next photo. If an identification is made before all of the photos are shown, the independent administrator or functional equivalent should tell the witness that he or she must show the witness all of the photos and finish showing the sequence to the witness, still asking after each photo if the witness recognizes the person in the photo.

- f. If possible, the array should be shown to the witness only once. If, upon viewing the entire photo line-up 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.

#### **4. PRESERVATION OF THE PHOTO LINE-UP:**

- a. The photo line-up array should be preserved, together with full information about the identification process as part of the case file, and documented in a report.
- b. If a photo line-up array is not recorded, a written record shall be created and the reason for not recording shall be documented.
- c. In the event the witness identifies a suspect from the photo line-up array, the independent administrator or functional equivalent shall ask the witness to sign and date the numbered photo they have identified as the suspect.
- d. Upon completion of the photo line-up array, the independent administrator or functional equivalent shall have the witness complete the appropriate portion of the Sequential Line-up form.

### **B. SHOW-UPS**

The use of show-ups should be avoided whenever possible in preference to the use of a photo line-up array procedure. However, when circumstances require the prompt presentation of a suspect to a witness, the following guidelines shall be followed to minimize potential suggestiveness and increase reliability.

#### **1. SHOW-UP CONSIDERATIONS:**

- a. Conduct a show-up only when the suspect is detained within a reasonable time frame after the commission of the offense and within close physical proximity to the location of the crime.
- b. Do not use a show-up procedure if probable cause to arrest the suspect has already been established.
- c. 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.
- d. Do not conduct the show-up with more than one witness present at a time.
- e. Separate witnesses and do not allow communication between them before or after conducting a show-up.
- f. If one witness identifies the suspect, use a photo line-up array for the remaining witnesses.
- g. Do not present the same suspect to the same witness more than once.
- h. Do not require show-up suspects to put on clothing worn by, speak words uttered by, or perform other actions of the perpetrator.
- i. Officers should scrupulously avoid words or conduct or any type that may suggest to the witness that the individual is or may be the perpetrator.

## **2. CONDUCTING THE SHOW-UP:**

- a. Document the witness's description of the perpetrator prior to conducting the show-up.
- b. 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
- c. Ask the witness to provide a confidence statement.
- d. Remind the witness not to talk about the show-up to other witnesses until police or prosecutors deem it permissible.

## **3. PRESERVATION OF THE SHOW-UP:**

- a. Video record the identification process using an in-car camera or other recording devices when feasible.
- b. Document the time and location of the show-up, the officers present, the result of the procedure, and any other relevant information.

## **C. LINE-UPS**

The use of live persons to conduct a “Line-Up” shall not be used by peace officers of the Two Harbors Police Department.

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## **V. REFERENCES**

Eyewitness Identification Procedure Form  
Sequential Photo Display Form

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**VI. SUPERVISORS SIGNATURES**

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Cole W. Ernest  
Chief of Police

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Sergeant

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**VII. EFFECTIVE DATE:**

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**VIII. REVISED DATE:**