I. PURPOSE

The purpose of this policy is to establish guidelines for obtaining accurate eyewitness identifications, consistent with the United States Bureau of Justice recommendations and to develop uniformed law enforcement state standards through the Maryland Police and Correctional Training Commissions which are in compliance with the Annotated Code of Maryland, Public Safety Article, Section 3-506.

II. BACKGROUND

The identification of a suspect by an eyewitness can be an important component of a criminal investigation, but can be equally significant in clearing an innocent suspect. Many people who have been convicted of serious crimes, only to later be exonerated by scientific evidence, were originally convicted based in large part on mistaken identification by a witness. Eyewitness misidentification is the single greatest cause of wrongful convictions nationwide, playing a role in approximately 75% of convictions overturned through DNA testing.¹ The Harford County Sheriff’s Office recognizes that it is as much the responsibility of law enforcement to protect the innocent from conviction as it is to assist in the conviction of the guilty.

The identification of criminal offenders must be approached with extreme caution as the court may exclude eyewitness evidence if it determines that law enforcement methods were unnecessarily suggestive.
III. POLICY

It is the policy of the Harford County Sheriff’s Office that:

1. Eyewitnesses will be given specific instructions prior to being shown a suspect;
2. Photo arrays and line-ups will be conducted using sequential rather than simultaneous presentation; and
3. Photos arrays and line-ups will be conducted using blind administration.

IV. DEFINITIONS:

Show-up: The live presentation of one suspect to an eyewitness shortly after the commission of a crime.

Field View: The exposure of an eyewitness to a group of people in a public place on the theory that the subject may be among the group. A field view differs from a show-up in that it may be conducted well after the commission of the crime, and may be conducted with or without a suspect in the group.

Photo Array: The showing of photographs of several individuals to an eyewitness for the purpose of obtaining an identification.

Line-up: The live presentation of a number of people to an eyewitness for the purpose of obtaining an identification. A line-up differs from a field view in that it is conducted in a controlled setting, such as a precinct, a known suspect is in the mix, and the participants are aware that an identification procedure is being conducted.

V. Right to Counsel during Identification Procedure

Once a suspect has been arraigned or indicted, their right to have counsel present at an in-person identification procedure attaches. No right to the presence of counsel exists simply because a complaint has been filed, even if an arrest warrant has been issued.

No right to counsel attaches for non-corporeal identification procedures, such as those involving photographs or composite drawings, whether conducted before or after the initiation of adversarial criminal proceedings.

VI. General Considerations

Due process requires that identifications be conducted in a fair, objective, and non-suggestive manner. Due process is violated when identification procedures conducted by law enforcement are unnecessarily suggestive and conducive to irreparable mistaken identification.

Upon response to the scene of a crime, a deputy should make an effort to prevent eyewitnesses from comparing their recollections of the offender or the incident. Deputies may accomplish this by promptly separating the witnesses and interviewing each out of the earshot of the others. Witnesses should not participate in identification procedures together. For example, witnesses should not be transported together to view a suspect during a show-up.
Deputies should use caution when interviewing eyewitnesses. Specifically, they should avoid whenever possible the use of leading questions.

Prior to asking an eyewitness to identify a suspect, deputies should obtain a detailed description of the offender.

The deputy should record the procedure and the witness’ statement of certainty. If not, the deputy should write down the witness’ exact words and incorporate them into their report. The witness should be asked to initial and date the front of the photograph selected.

A written report of every show-up, field view, photo array and line-up identification procedure, whether an identification is made or not, shall be submitted. The report shall include a summary of the procedure, the persons who were present for it, instructions given to the witness by the deputy (this should be accomplished by submitting the appropriate witness instruction form), any statement or reaction by the witness, and any comments made by the witness regarding the identification procedure.
Harford County Sheriff’s Office
Policy#MAN5400: Eyewitness Identification

5400.1 Eyewitness Identification Instructions

5400.1.1 A deputy conducting an identification procedure must read the witness a set of instructions from a Harford County Sheriff’s Office Show-Up Instruction Form (SO-159), Photo Array Instruction Form (SO-160) or Line-Up Instruction Form (SO-161).

5400.2 Show-ups

5400.2.1 Show-up identification procedures should only be used soon after a crime has been committed, typically within two hours, or under exigent circumstances, such as the near death of the only available witness.
5400.2.2 Show-ups should be conducted live whenever possible and not photographically.
5400.2.3 Deputies should not attempt to obtain identifications using driver’s license photos on their patrol vehicle’s MDC, unless a dire emergency exists.
5400.2.4 When a show-up is arranged in an emergency situation, where either a witness or a victim is in imminent danger of death or in critical condition in a hospital, and the circumstances are such that an immediate confrontation is imperative, the emergency identification procedure shall be conducted in a non-suggestive manner.
5400.2.5 Every show-up must be as fair and non-suggestive as possible.
5400.2.6 If the suspect is handcuffed, they should be positioned so that the handcuffs are not visible to the witness.
5400.2.7 The suspect should not be viewed when they are inside a deputy’s vehicle, in a cell, or in jail clothing.
5400.2.8 Detaining a person who fits the description of a suspect in order to arrange a show-up is lawful where the deputy has reasonable suspicion that the suspect has committed a crime, even if probable cause to arrest has not yet developed.
5400.2.9 If the witness fails to make a positive identification and additional evidence has not developed to provide probable cause to make an arrest, the suspect must be permitted to leave and his/her identity should be recorded and included in the deputy’s report.
5400.2.10 If a suspect is stopped within a short time after the commission of the crime, they may be taken to a location where they can be viewed by a witness for possible identification; or, they may be detained at the site of the stop and the witness taken there to view them.
5400.2.11 Transporting the witness to the site of the stop is preferred.
5400.2.12 Suspects should not be brought into a crime scene as contamination may result.
5400.2.13 Clothing articles found at the crime scene should not be placed on or in contact with a suspect.
5400.2.14 A suspect should not be brought back to the home of a victim or witness unless that was the scene of the crime.
5400.2.15 Deputies must not do or say anything that might convey to the witnesses that they have evidence of the suspect’s guilt.
5400.2.16 Deputies should turn down their radios so the witness they are transporting does not pick up information about the stop of the suspect.
5400.2.17 The suspect should be viewed by one witness at a time and out of the presence or hearing of other witnesses.
5400.2.18 Witnesses who have viewed the suspect should not be permitted to communicate with those who have not.
5400.2.19 Once one witness has positively identified the subject during a show-up, further identifications should be attempted by means of a photo array or line-up.
5400.2.20 Deputies may transport victims or witnesses in sheriff’s office vehicles to cruise the area where a crime has just occurred in order for them to attempt to point out the perpetrator.
5400.2.21 While checking the area, deputies must be careful not to make any statements or comments to the witnesses which could be considered suggestive.
5400.2.22 Deputies should make written notes of any identification and any statements made by witnesses at the time of confrontation with the suspect.
5400.2.23 Once a witness has indicated their opinion regarding the identity of the subject, the deputy should ask the witness how certain they are of the identification.
5400.2.24 Deputies should ask the witness not to use a numerical scale, but rather to indicate certainty in their own words.
5400.2.25 All statements by the witness should be incorporated into the report.

5400.3 Preparing a Photo Array

5400.3.1 Photo arrays should be shown to witnesses as soon as possible after the commission of a crime.
5400.3.2 Include one suspect and a minimum of five fillers (non-suspects) in each array.
5400.3.3 Mark the back of each photo with sequential numerals.
5400.3.4 Use a separate array for each suspect.
5400.3.5 Use photographs of the same size and basic composition.
5400.3.6 Do not include more than one photograph of the same person.
5400.3.7 Use a photo of the suspect that closely depicts their appearance at the time of the incident.
5400.3.8 Select fillers who generally fit the witness’ description of the offender.
5400.3.9 Avoid fillers who so closely match the suspect that a person familiar with the suspect would have difficulty distinguishing the filler.
5400.3.10 Ensure that photos bear no markings indicating previous arrests.
5400.3.11 Without altering the photo of the suspect, create a consistent appearance between the suspect and fillers with respect to any unique or unusual feature such as facial scars or severe injuries by adding or covering the feature.
5400.3.12 Once the array has been assembled, examine it to ensure that nothing about the suspect’s photo makes him/her stand out.
5400.3.13 In cases with multiple witnesses, changing the order of photos from one witness to the next.
5400.3.14 When showing a witness an array containing a new suspect, avoid using fillers from a previous array.

5400.4 Showing a Photo Array

5400.4.1 The procedure must be conducted in a manner that promotes reliability, fairness and objectivity.
5400.4.1.1 If practicable, the deputy should record the procedure.
5400.4.2 Allow each witness to view the photographs independently, out of the presence and hearing of the other witnesses.
5400.4.3 Never make suggestive statements that may influence the judgment or perception of the witness.
5400.4.4 A second deputy who is unaware of which photograph depicts the suspect should actually show the photographs.
5400.4.4.1 This technique, called double-blind administration, is intended to ensure that the witness does not interpret a gesture or facial expression by the deputy as an indication as to the identity of the suspect.
5400.4.4.2 The technique also allows the prosecution to demonstrate to the judge or jury that it was impossible for the deputy showing the photographs to indicate to the witness, intentionally or unintentionally, which photograph they should select.
5400.4.5 If a second deputy is not available, the deputy showing the array must employ a so-called ‘blinded’ technique so the deputy does not know when the witness is viewing a photograph of the suspect.
5400.4.6 The investigating deputy or the second deputy (the administrator) should carefully instruct the witness by reading from a departmental Photo Array Instruction Form, and the witness should be asked to sign the form indicating that they understand the instructions.
5400.4.7 The investigating deputy and the administrator should also sign and date the form.
5400.4.8 Deputies should explain to the witness that the deputy showing the array does not know the identity of the people in the photographs.
5400.4.9 The investigating deputy should leave the room while the array is being shown by the administrator.
5400.4.10 The deputy should show the photographs to a witness one at a time.
5400.4.11 When the witness signals for the next photograph, the deputy should move the first photograph so that it is out of sight.
5400.4.12 The procedure should be repeated until the witness has viewed each photograph.
5400.4.13 If the witness identifies a subject before all the photographs have been viewed, the deputy should remind the witness that they are required to show the rest of the photographs.
5400.4.14 If the witness fails to make an identification, but asks to view the array a second time, the deputy administering the identification should ask the witness if they were able to make an identification from the original viewing.
5400.4.15 If the witness is unable to make an identification, but feels that it would be helpful to repeat the procedure, then it is permissible to show the entire array a second time; however an array may not be shown more than twice.
5400.4.16 If the witness identifies the suspect, the deputy should ask the witness how certain they are of the identification.
5400.4.17 Deputies should ask the witness not to use a numerical scale, but rather in their own words articulate the confidence they have in the identification made.
5400.4.18 The photo array should be preserved as evidence in the same configuration as when the identification was made.
5400.4.19 If more than one witness is to view an array, a separate unmarked array shall be used for each witness.

5400.5 Line-ups

5400.5.1 Line-ups shall be conducted under the direction of a Criminal Investigation Division supervisor only after consultation with the State’s Attorney’s Office.
5400.5.2 The procedure should be visually and audio recorded.
5400.5.3 A suspect cannot be detained and compelled to participate in a line-up without probable cause to arrest.
5400.5.4 If a suspect refuses to participate in a line-up, the State’s Attorney’s Office may be asked to apply for a court order to compel the suspect to cooperate.
5400.5.5 Before any suspect who has been arraigned or indicted is shown to eyewitnesses in a line-up or other live identification procedure, they must be informed of their right to have an attorney present at the line-up.
5400.5.6 Unless a valid waiver is voluntarily and knowingly made, in writing if possible, no such identification may proceed without the presence of the suspect's attorney.
5400.5.7 Deputies shall select a group of at least five fillers who fit the description of the subject as provided by the witness(es).
5400.5.8 Because line-ups will be administered by a deputy who does not know the identity of the suspect, the fillers selected should not be known to the deputy administering the line-up.
5400.5.9 In selecting line-up fillers, abide by the guidelines for photo array fillers as described above.
5400.5.10 All persons in the line-up should carry cards that identify them only by number and should be referred to only by their number.
5400.5.11 As with photo arrays, each witness must view the line-up independently, out of the presence and hearing of the other witnesses.
5400.5.12 The investigating deputy should explain to the witness that a second deputy (the line-up administrator) will be conducting the line-up, and they will not know the identity of the people participating.
5400.5.13 The investigating deputy should carefully instruct the witness by reading from the agency Line-up Instruction Form, and the witness should be asked to sign the form indicating that they understand the instructions.

5400.5.14 The deputy should also sign and date the form.

5400.5.15 The investigating deputy should leave the room while the line-up administrator conducts the line-up.

5400.5.16 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.

5400.5.17 This can be accomplished by having them enter the room individually and leave before the next one enters.

5400.5.18 The procedure for showing the participants to the witness and for obtaining a statement of certainty is the same as for photo arrays.

5400.5.19 When an attorney for the suspect is present, the attorney should be permitted to make reasonable suggestions regarding the composition of the line-up and the manner in which it is to be conducted.

5400.5.20 Any suggestions made by the suspect's attorney should be included as part of the line-up report.

5400.5.21 Allow counsel representing the accused sufficient time to confer with their client prior to the line-up.

5400.5.22 Once the line-up is commenced, attorneys should function primarily as observers and should not be permitted to converse with the line-up participants, or with the witnesses, while the line-up is underway.

5400.5.23 The concept of blind administration requires that no one know who knows the identity of the suspect.

5400.5.24 For this reason, the attorney should leave the room before the line-up begins.

5400.5.25 An attorney who does not know which person is the defendant may attend the line-up in place of the suspect's attorney.

5400.5.26 The suspect's attorney is not legally entitled to the names or addresses of the witnesses attending a line-up if the suspect has not yet been arraigned or indicted.

5400.5.27 If an attorney in such a situation insists on having information about line-up witnesses, advise them to direct their request to the State's Attorney's Office.

5400.5.28 During a line-up, each participant may be directed to wear certain clothing, to put on or take off certain clothing, to take certain positions or to walk or move in a certain way.

5400.5.29 If deputies are to ask the participants to wear an article of clothing, they must guard against circumstances where the article only fits the suspect.

5400.5.30 All line-up participants shall be asked to perform the same actions.

5400.5.31 Line-up participants must not speak during the line-up.

5400.5.32 If identification of the suspect's voice is desired, a separate procedure must be conducted.

5400.5.33 After a person has been arrested; they may be required to participate in a lineup regarding the crime for which they were arrested.
5400.5.34 After arrest, a suspect may lawfully refuse to participate in a line-up only if they have a right to have counsel present (post arraignment/indictment) and the counsel is absent through no fault of the suspect or their attorney.

5400.6 Drawings and Identi-Kit Composites

5400.5.1 An artist's sketch, composite sketch or a computerized drawing can sometimes aid an investigation if the witness has a good recollection of the offender's facial features.
Note: research has shown that a person selected based on resemblance to composite is more likely to be mistakenly identified. Additionally, building a composite has been shown to lower a witness' accuracy for identifying the offender's face. For these reasons, deputies should proceed with extreme caution.
5400.5.2 Prior to creating a sketch or composite, deputies should take from the witness and document a full description of the offender.
5400.5.3 A sketch prepared by a trained artist is preferred over a composite.
5400.5.4 Sketches and composites should not be attempted prior to the showing of a photo array or line-up.
5400.5.5 Once the sketch or composite has been completed, the witness should be asked to state in his/her own words how accurately the composite reflects how the suspect appeared during the crime and a report should be prepared regarding the sketch or composite procedure.
5400.5.6 The fact that a suspect resembles the likeness of a sketch or composite is not enough alone, without additional evidence to develop probable cause for an arrest.

1 *The Innocence Project*

*Reference CALEA 42. 2. 11 and 42. 2. 12*