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# HARFORD COUNTY SHERIFF'S OFFICE OPERATIONS POLICY

## Eyewitness Identification

<b>Distribution:</b>	<b>All Personnel</b>	<b>Policy Number:</b>	<b>OPS 1205</b>		
<b>Responsible Unit:</b>	<b>Criminal Investigations Division</b>	<b>Rescinds:</b>	<b>MAN5400 dated 10-15-13</b>		
<b>Original Issued Date:</b>	<b>03/14/22</b>	<b>Revision #:</b>	<b>1</b>	<b>Latest Revision Date:</b>	<b>03/03/25</b>
<b>Latest Required Review was Completed:</b>	<b>03/03/25</b>	<b>Next Review Due:</b>	<b>03/31/28</b>		

### 1. Purpose

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 (MPCTC) which are in compliance with the Maryland Code Annotated, Public Safety Article, Section 3-506.

### 2. Policy

The Harford County Sheriff's Office (HCSO) will ensure that eyewitnesses are given specific instructions prior to being shown photo arrays, line-ups, or a suspect to obtain accurate identifications.

### 3. Definitions

**ADMINISTRATOR:** the person conducting an identification procedure.

**BLIND:** the administrator does not know the identity of the suspect.

**BLINDED:** the administrator may know who the suspect is but does not know which line-up member is being viewed by the eyewitness.

**EYEWITNESS:** a person who observes another person at or near the scene of an offense.

**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.

**FILLER:** a person or a photograph of a person who is not suspected of an offense and is included in an identification procedure.

**FOLDER SHUFFLE METHOD:** a system for conducting a photo lineup that is conducted by placing photographs in folders, randomly numbering the folders, shuffling the folders, and then presenting the folders sequentially so that the administrator cannot see or track which photograph is being presented to the eyewitness until after the procedure is completed.

**IDENTIFICATION PROCEDURE:** a procedure in which a live lineup is conducted or an array of photographs, including a photograph of a suspect and additional photographs of other persons not suspected of the offense, is displayed to an eyewitness in hard copy form or by computer for the purpose of determining whether the eyewitness identifies the suspect as the perpetrator.

**IDENTIFICATION STATEMENT:** a documented statement that is sought by the administrator when identification is made from the eyewitness. This statement should be in the own words of the eyewitness, describing the eyewitness's confidence level that the person identified is the perpetrator of the crime. This statement should be given at the time of the viewing by the eyewitness during the identification procedure and given before the eyewitness is given feedback.

**LIVE LINE-UP:** a procedure in which a perpetrator is placed among a group of other persons whose general appearance resembles the perpetrator. 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.

**PERPETRATOR:** a person who committed an offense.

**PHOTO ARRAY:** the showing of photographs of several individuals to an eyewitness for the purpose of obtaining a suspect identification.

**SHOW UP:** the live presentation of one suspect to an eyewitness shortly after the commission of a crime.

**SUSPECT:** a person who is suspected of committing an offense.

#### **4. References**

Maryland Code Annotated, Public Safety Article, Section 3-506.

#### **5. Procedures**

##### **A. Legal Considerations**

1. 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.
2. 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.

##### **B. General Considerations**

1. 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.
2. Upon response to the scene of a crime, a deputy should try 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.
3. Deputies should use caution when interviewing eyewitnesses. Specifically, they should avoid whenever possible the use of leading questions.

4. Prior to asking an eyewitness to identify a suspect, deputies should obtain a detailed description of the offender.
5. 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.
6. A written report of every show-up, field view, photo array and line-up identification procedure, whether an identification is made or not, will be submitted. The report will 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.

C. Eyewitness Identification Instructions

1. A deputy conducting an identification procedure must read the appropriate instruction form, depending on the type of identification procedure, to the witness. Forms are:
  - a. Show-Up Instruction Form (SO-159);
  - b. Photo Array Instruction Form (SO-160); or
  - c. Line-Up Instruction Form (SO-161).

D. Show-ups

1. Show-up identification procedures should only be used soon after a crime has been committed, typically within two hours.
2. Time restraints may be extended under exigent circumstances, such as the near death of the only available witness.
3. Every show-up must be as fair and non-suggestive as possible.
4. Transporting the witness to the site of the stop is preferred.
5. 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.
6. 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.
7. Show-ups should be conducted live whenever possible and not photographically.
8. Deputies should ensure that the suspect is placed in an area with sufficient lighting for the victim/witness to be able to easily observe the suspect.

9. **Deputies should ensure the victim/witness has sufficient time to view the suspect.**
10. The suspect should be viewed by one witness at a time and out of the presence or hearing of other witnesses. Witnesses who have viewed the suspect should not be permitted to communicate with those who have not.
11. If the suspect is handcuffed, they should be positioned so that the handcuffs are not visible to the witness.
12. When a show-up is arranged in an emergency, 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 will be conducted in a non-suggestive manner.
13. The suspect should not be viewed when they are inside a deputy's vehicle, in a cell, or in jail clothing.
14. If the witness fails to make a positive identification and additional evidence has not been developed to provide probable cause to make an arrest, the suspect must be permitted to leave, and his identity should be recorded and included in the deputy's report.
15. Suspects should not be brought into a crime scene as contamination may result.
16. A suspect should not be brought back to the home of a victim or witness.
17. Clothing articles found at the crime scene should not be placed on or in contact with a suspect.
18. Deputies must not do or say anything that might convey to the witnesses that they have evidence of the suspect's guilt.
19. Deputies should turn down their radios so the witness they are transporting does not pick up information about the stop of the suspect.
20. 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.
21. Deputies may transport victims or witnesses in sheriff's office vehicles to cruise the area where a crime has just occurred for them to attempt to point out the perpetrator.
22. While conducting a field view with a witness, or checking the area, deputies must be careful not to make any statements or comments to the witnesses which could be considered suggestive.
23. Deputies should make written notes of any identification and any statements made by witnesses at the time of confrontation with the suspect.
24. 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.
25. Deputies should ask the witness not to use a numerical scale, but rather to indicate certainty in their own words.

26. All statements by the witness should be incorporated into the report.

E. Preparation of a Photo Array

1. Photo arrays should be shown to witnesses as soon as possible after the commission of a crime.
2. Include one suspect and a minimum of five fillers (non-suspects) in each array.
3. Mark the back of each photo with sequential numerals.
4. Use a separate array for each suspect.
5. Use photographs of the same size and basic composition.
6. Do not include more than one photograph of the same person.
7. Use a photo of the suspect that closely depicts their appearance at the time of the incident.
8. Select fillers who generally fit the witness' description of the offender.
9. Avoid fillers who so closely match the suspect that a person familiar with the suspect would have difficulty distinguishing the filler.
10. Ensure that photos bear no markings indicating previous arrests.
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.
12. Once the array has been assembled, examine it to ensure that nothing about the suspect's photo makes him/her stand out.
13. In cases with multiple witnesses, changing the order of photos from one witness to the next.
14. When showing a witness an array containing a new suspect, avoid using fillers from a previous array.
15. All photo arrays will be prepared by the Forensic Services Unit (FSU) and the digital photographs, reformatted photographs, and filler information will be stored on Agency drive - S:\CID\Photo Arrays.

F. Conducting a Photo Array

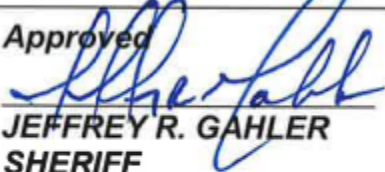
1. The procedure must be conducted in a manner that promotes reliability, fairness, and objectivity.
2. If practicable, the deputy should record the procedure.
3. Allow each witness to view the photographs independently, out of the presence and hearing of the other witnesses.

4. Never make suggestive statements that may influence the judgment or perception of the witness.
5. A second deputy who is unaware of which photograph depicts the suspect should show the photographs.
6. If a blind administrator is not available, the administrator will ensure that a blinded presentation is conducted using the following procedures.
  - a. Place the suspect and at least five filler photos in separate folders.
  - b. Include two additional folders each containing a blank sheet of paper, for a total of eight (or more depending on the number of fillers used).
  - c. 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.
  - d. The administrator should separately set aside the two blank folders, which will be added to the end of the sequence.
  - e. The administrator should then shuffle the remaining folders (containing one suspect and the remainder of fillers) such that he or she cannot see how the lineup members are ordered.
  - f. These shuffled folders will follow the first filler photo and precede the two blank folders. The stack of photos is now ready to be shown to the witness.
7. If a blind administrator is available, standard procedure for the administration of the photo array will be followed wherein the folders containing the suspect and fillers are shown in the order given on the Photo Array Information Form.
8. 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.
9. 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.
10. 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.
11. 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.
12. The investigating deputy and the administrator should also sign and date the form.
13. Deputies should explain to the witness that the deputy showing the array does not know the identity of the people in the photographs.

14. The investigating deputy should leave the room while the array is being shown by the administrator.
15. The deputy should show the photographs to a witness one at a time.
16. When the witness signals for the next photograph, the deputy should move the first photograph so that it is out of sight.
17. The procedure should be repeated until the witness has viewed each photograph.
18. 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.
19. 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.
20. 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.
21. If the witness identifies the suspect, the deputy should ask the witness how certain they are of the identification.
22. 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.
23. In the case of a blinded administration, once the photo array has been shown, the administering deputy should notate the order of the array shown using the numbers on the back of the photographs.
24. The photo array has evidentiary value and as such the originals that have been presented to a witness, regardless of whether an identification was made, will be persevered as evidence by submitting to the Property Management Unit (PMU).
  - a. The chain of custody of the array begins at the date/time when the Deputy makes the presentation to the witness.
  - b. Photo arrays that have not been presented and are deemed unnecessary for the investigation may be discarded without being submitted to PMU.
25. A copy of the Property/Evidence Record (SO-258) and photo array will be scanned and attached to the report in the Law Enforcement Records Management System.
26. If more than one witness is to view an array, a separate unmarked array will be used for each witness.

## 6. Summary of Changes

- A. On 03/03/25 the required 3-year review of this policy was conducted and the following edits were made:
1. Revised text under Procedures: Section 5.D.8 to communicate the need to ensure that the suspect is placed in an area with sufficient lighting for the victim/witness to be able to easily observe the suspect.
  2. Added text under Procedures: Section 5.D.9 to communicate the need to ensure the victim/witness has sufficient time to view the suspect.

Approved  
  
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DATE 3-10-25