

 <p style="text-align: center;"><b>Winchester City Sheriff's Office</b> <b>Manual of General Orders</b></p> <p style="text-align: center;"><b>Operations</b> <b>311</b></p>	<b>Effective Date:</b> December 15, 2014 Accreditation Standards: OPR .02.03 OPR .02.07 OPR .02.08
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<b>Subject: Photo Lineups/ Eyewitness Identification</b>	<b>By Authority of:</b> <hr/> Les R Taylor, Sheriff

Effective /Review Date	Sections Changed	Changes	Reviewed by	Approved by
12-15-14	III D-I	Added Definitions areas D-I.	EAS	LRT
12-15-14	IV A-H	Changed overall process of photographic lineups	EAS	LRT
12-15-14	IV I-O	Changed overall process of show-ups identification	EAS	LRT

## I. PURPOSE

To establish a policy for the preparation and presentation of photographic and in-person lineups in accordance to Virginia Code § 19.2-390.02.

## II. POLICY

Given that the traditional system for conducting eyewitness identification procedures is not infallible and that the procedures did not incorporate the growing body of psychological study of eyewitness memory and behavior, the National Institute of Justice (Department of Justice), the International Association of Chiefs of Police, the Commission on Accreditation of Law Enforcement Agencies, the Police Executive Research Forum, the American Bar Association and others have issued reports and/or directives responding to a need for change in this area of police practice. These reports and recommendations attempt to take the basic elements of police investigations and suggest workable changes in order to achieve more consistent eyewitness results.

The following procedures for use in Virginia incorporate many of the recommendations issued by the United States Department of Justice in its *Eyewitness Evidence: A Guide for Law Enforcement* and also include those practices that have gained the support of social scientists and law enforcement practitioners since its publication. An identification obtained through a lineup composed in this manner should minimize the risk of misidentification and have stronger evidentiary value than one obtained without these procedures. Specifically, use of these procedures should maximize the reliability of identifications, minimize unjust accusations of innocent persons and establish evidence that is reliable and conforms to established legal procedure.

### III. DEFINITIONS

#### A. Lineup

A lineup is any procedure in which a witness to a crime or other incident is asked to identify one or more suspects from among a group of persons in order to determine or confirm the identity of the suspect(s). Such procedures involve either actually viewing of persons or viewing of photographs.

#### B. Photo Lineup

A photo lineup is any lineup procedure in which photographs are used instead of live persons. These procedures are often used when a suspect has not been identified or when such person has not been located or arrested.

#### C. Sequential Lineup

A sequential lineup is a particular method of conducting a suspect lineup in which persons or photographs are presented to the witness one at a time, rather than in any sort of grouping.

#### D. Blind Administrator

The person administering the line-up has no knowledge of which person in the photo/live line-up is the suspect.

#### E. Blinded Administration

This is a lineup procedure in which the administrator may know the identity of the suspect, but by virtue of the use of procedures and/or technology to accomplish this purpose, does not know which lineup member is being viewed by the eyewitness.

#### F. Confidence Statements

A statement in the victim/witness' own words, articulating their level of confidence in the identification taken at the time the identification is made.

#### G. Fillers

Non-suspect photographs or line-up members.

#### H. Folder Shuffle Method

A method requiring the lineup administrator to place a photograph of the suspect and filler photographs into blank folders with one photograph per folder. The folders are then "shuffled" before being presented individually to the witness.



## I. Show-up

A show-up procedure is an identification procedure in which an eyewitness is presented with a single suspect for the purpose of determining whether the eyewitness identifies this individual as the perpetrator.

## IV. PROCEDURES- Photographic Lineups

### A. Creation, Composition, and Utilization of Photographic and In-person Lineup

1. The deputy in charge should select an individual to serve as the blind administrator. The blind administrator must not know which member of the lineup is the “true” suspect to conduct any lineups in order to avoid inadvertent signs or body language that may lead or cause a witness to make an incorrect identification. The blind administrator should be thoroughly familiar with this procedure. Alternatively, a “blinded” administrator may be used, namely an individual who knows the suspect’s identity but is not in a position to see which members of the line-up are being viewed by the eyewitness. This can be accomplished, for instance, through the use of the folder shuffle method.
  - a. The “Folder System” was devised to address concerns surrounding limited personnel resources while allowing for blind administration. Should the investigating deputy of a particular case be the only law enforcement personnel available to conduct a photo lineup, the following instructions are recommended.
    - i. Use one suspect photograph that resembles the description of the perpetrator provided by the witness, five (5) filler photographs that match the description but do not cause the suspect photograph to unduly stand out, and ten (10) folders; four (4) of the folders will not contain any photographs and will serve as “dummy folders”.
    - ii. Affix one (1) filler photograph to Folder #1 and number the folder.
    - iii. The individual administering the lineup should place the suspect photograph and the other four (4) filler photographs into Folder #2-6 and shuffle the photographs so that he is unaware of which folder the suspect is in, and then number the remaining folders, including Folders #7-10, which will remain empty. This is done so that the witness does not know when he has seen the last photograph.
    - iv. The deputy should provide instructions to the witness. The witness should be informed that the perpetrator may or may not be contained in the photographs he is about to see and that the deputy does not know which folder contains the suspect.
2. A photo lineup should be composed so the fillers generally resemble the eyewitness’s description of the perpetrator, while ensuring that the lineup is comprised in such a manner that the suspect does not unduly stand out from the fillers. However, complete uniformity of features is not required. Avoid reusing filler photographs. If the eyewitness has previously viewed a photo lineup in connection with the identification of another person suspected of involvement in the offense, the fillers in the lineup should be different from the fillers used in prior lineups.
3. When there are multiple suspects, each identification procedure should include only one suspect.

4. Avoid mixing color and black and white photographs. Photographs should be either all black and white or all color.
5. Cover any portions of mug shots or other photographs that provide identifying information. Ensure that no writings or information concerning previous arrest(s) will be visible to the witness. If it is necessary to block-out or cover a notation, such as a name on one photograph, then similar blocking-out or covering marks should be placed on all photographs so that they will appear alike.
6. Use photographs of the same size and basic composition, and never mix mug shots with other snapshots or include more than one photograph of the same suspect.
7. Select fillers (non-suspects) who generally fit the witnesses' description of the offender. When there is a limited or inadequate description of the offender provided by the witness, or when the description of the offender differs significantly from the appearance of the suspect, fillers should resemble the suspect in significant features.
8. Select a photograph that resembles the suspect's description or appearance at the time of the incident, if multiple photographs of the suspect are reasonably available to the deputy.
9. Ensure that the photographs are reasonably contemporary.
10. Include a minimum of five (5) fillers (non-suspects) per photograph identification procedure.
11. Create a consistent appearance between the suspect and fillers so that the photographs depict individuals who are reasonably similar in age, height, weight, and general appearance, and are the same sex and race. However, avoid using 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.
12. Create a consistent appearance between the suspect and fillers with respect to any unique or unusual feature, such as a scar or tattoo, used to describe the perpetrator by concealing or artificially concealing that feature. If the suspect, for instance, has a facial scar or tattoo, black out, conceal or otherwise cover up that area of the suspect's face and then do the same for each of the lineup members to achieve consistency across all lineup members.
13. If there are multiple eyewitnesses, each eyewitness will view the lineup independently and separately and the suspect should be placed in a different position in the photo lineup for each eyewitness.
14. Review the array, once completed, to ensure that the suspect does not unduly stand out.
15. Assign each photo lineup an identification number. Record the identification number on the back of each photograph. Refer to that photograph only by that number. The nature of the identification number should be purposely complex to the witness, so that any inadvertent glance should not significantly hinder the identification process or alert the witness as to the identity of the actual suspect.
16. After each photograph has been assigned an identification number, record the number along with all other pertinent information on the Lineup Identification Form.
17. Record the presentation order of each lineup and ensure that a complete written record of the identification proceeding is made and retained. The record should include:



- a. All identification and non-identification results obtained during the procedure and signed by the eyewitness, including the eyewitness's confidence statement.
- b. The names of all of the persons present at the identification procedure.
- c. The date and time of the identification procedure.
- d. The sources of all photographs used in the identification procedure.
- e. The photographs, themselves, should also be preserved in their original condition.

#### B. Conducting the Identification Procedure

1. The identification procedure should be conducted in a manner that promotes the accuracy, reliability, fairness and objectivity of the witness' identification. These steps are designed to ensure the accuracy of identification or non-identification.
2. Assure that all law enforcement and/or prosecutorial personnel present and involved in the case are knowledgeable about the procedure so that they will not interfere or influence any witness during the process. Unnecessary personnel should be removed from the location where the process is being conducted.
3. When presenting the lineup, the person administering the lineup should use the approved standard instruction for witnesses prior to the lineup that the offender might or might not be among those in the photo array, and therefore, the witness should not feel compelled to make identification.
4. Assure the witness prior to the lineup that regardless of whether identification is made, the police will continue to investigate the incident.
5. Instruct the witness that if the offender is seen in the lineup, he might not appear exactly the same as on the date of the incident because features such as clothing, head or facial hair can change. Additionally, photographs do not always depict the true complexion of a person, which might be lighter or darker than shown in the photograph. Be careful not to imply or lead the witness to believe that the suspect's appearance has actually changed in any way.
6. Instruct the witness that the procedure, only if identification is made, requires the investigator to ask the witness to state, in his own words, how certain he is of any identification at the time that the identification is made.
7. Present each photograph to the witness separately, in previously determined order, as documented on the lineup worksheet, removing those previously shown.
8. Care should be taken to avoid the witness turning over the photograph and reading the identification number on the back.
9. If identification is made, avoid reporting or confirming to the witness any information regarding the individual he has selected, until the entire process (including obtaining a confidence statement and obtaining required signatures and paperwork) has been completed.
10. If the witness requests to view the photo sequence again, or specific photographs again, they may be shown a second time. However, the photographs must be shown again in the same sequence in its entirety even if the witness makes identification during the second showing.

11. Instruct the witness not to discuss the identification procedure or its results with other witnesses involved in the case and discourage contact with the media.

C. Avoid influencing the Witness

1. Avoid saying anything to the witness that may influence the witness's selection.
2. Assure that all law enforcement and/or prosecutorial personnel present and involved in the case are knowledgeable about the procedure so that they will not interfere or influence any witness during the process. Unnecessary personnel should be removed from the location where the process is being conducted.

D. Provide the following additional viewing instructions to the witness:

1. Individual photographs will be viewed one at a time.
2. Photographs are in random order.
3. Take as much time as needed in making a decision about each photograph.
4. All photographs will be shown, even if identification is made prior to viewing all photographs.
5. Confirm that the witness understands the nature of the sequential procedure.

E. Level of Confidence

1. If the eyewitness makes an identification, the deputy will seek and document a clear statement from the eyewitness, at the time of the identification and in the eyewitness's own words, as to the eyewitness's confidence level that the person identified in a given identification procedure.
2. If the eyewitness identifies a person as the perpetrator, the eyewitness will not be provided any information concerning such person before the deputy obtains the eyewitness's confidence statement about the selection. After the eyewitness's confidence statement is obtained, the deputy will not tell the eyewitness information about how accurate they are in their identification or provide additional information on the defendant.

F. Documentation

1. When conducting an identification procedure, the person administering the lineup shall preserve the outcome of the procedure by documenting any identification or non-identification results obtained from the witness. A complete and accurate record of the outcome of the identification procedure is crucial. This record can be a critical document in the investigation and any subsequent court proceedings.
2. When documenting the identification procedure, the person administering the lineup should record both identification and non-identification results, including a statement of confidence, in the eyewitness's own words. **The results should not be ranked.**
3. Document in writing the photo lineup procedures, including identification information and sources of all photographs used, names of all persons present at the lineup, and date and time of the identification procedure.
4. Ensure the results are signed and dated by the witness and the person administering the lineup.



5. Ensure that no materials indicating previous identification results are visible to the witness.
  6. Ensure that the witness does not write on or mark any materials that will be used in other identification procedures.
  7. If possible, deputies are encouraged to video record the identification/confidence statement procedure.
- G. Training – Sheriff’s personnel will be trained in, and receive annual refresher training in, lineup procedures to establish uniformity and consistency of such procedures and to establish a high level of competence in carrying out this important aspect of a criminal investigation.
- H. General Responsibilities
1. Sheriff’s Office personnel will strictly adhere to established procedures for conducting suspect lineups in order to avoid the possibility of error or of undue suggestiveness to witnesses.
  2. Sheriff’s Office personnel will report any known errors, flaws or non-conformance with establishing procedures in the conduct of a suspect lineup that they may observe or become aware of to their supervisor in order that corrective actions may be taken and safeguards established to protect the innocent.
  3. Sheriff’s Office personnel will confer with the Commonwealth Attorney’s Office in establishing lineup procedures, when time allows, in order to assure the best use of this type of evidence and to assure that procedures established are compatible with the prosecution of criminal cases. Likewise, instructions given to witnesses during a lineup procedure will be those established and approved in consultation with the Commonwealth’s Attorney.

#### **IV. Procedures- Conducting “Show-ups” as a type of Identification**

##### **I. Circumstances**

1. The Winchester City Sheriff’s Office does not conduct “in person line-ups”. By definition an in person line-up consists of similar people standing together. The witness is brought into identify the suspect. Instead a “Show-up” procedure is used for an identification in which an eyewitness is presented with a single suspect for the purpose of determining whether the eyewitness identifies with this individual or perpetrator.
2. Show-ups should only be performed using a live suspect and only in exigent circumstances that require the immediate display of a suspect to an eyewitness.

##### **J. Limitations to reduce Suggestiveness**

1. Show-ups should only be conducted within two hours of the offense.

2. Prior to employing a show-up, law enforcement should record as complete a description as possible of the perpetrator provided by the eyewitness and in the eyewitness's own words. This statement should also include information regarding conditions under which the eyewitness observed the perpetrator including location, time, distance, obstructions, lighting, weather conditions and other impairments, including but not limited to alcohol, drugs, stress, the presence of a weapon and any other relevant conditions. The eyewitness should also be asked if he needs glasses or contact lenses and whether he was wearing them at the time of the offense.

#### K. Instructions

1. If possible, the eyewitness should be transported to a neutral, non-law enforcement location where the suspect is being detained for the purpose of the show-up. The eyewitness should be provided with the following instructions:
2. The perpetrator may or may not be the person that is presented to the eyewitness.
3. The eyewitness should not feel compelled to make identification.
4. The investigation will continue regardless of whether identification is made.
5. The procedure requires the investigator to ask the eyewitness to state, in his own words, how certain he is of the identification he made.
6. The eyewitness should not discuss the identification procedure with other eyewitnesses involved in the case and should not speak to the media.

#### L. Avoid Influencing the Witness

1. Assure that all law enforcement personnel present and involved in the case are knowledgeable about the procedure so that they will not interfere or influence any witness during the process. Unnecessary personnel should be removed from the location where the process is being conducted.
2. Avoid saying anything to the witness that may influence the witness's identification or non-identification.

#### M. Confidence

1. If there are multiple eyewitnesses, only one eyewitness at a time should participate in the show-up procedure, independent of the others.
2. If a positive identification is made, and an arrest is justified, additional eyewitnesses should be shown photo lineups.

#### N. Documentation

1. If identification is made, the deputy should seek and document a clear statement from the eyewitness, at the time of the identification and in the eyewitness's own words, as to the eyewitness's confidence level that the person identified is the perpetrator.
2. Deputies should photograph a suspect at the time and place of the show-up to preserve a record of his appearance at the time of the show-up.
3. Deputies are encouraged, if possible, to video record the show-up procedure.



## O. General Responsibilities

1. Sheriff's Office personnel will strictly adhere to established procedures for conducting suspect lineups in order to avoid the possibility of error or of undue suggestiveness to witnesses.
2. Sheriff's Office personnel will report any known errors, flaws or non-conformance with establishing procedures in the conduct of a suspect "show-up" that they may observe or become aware of to their supervisor in order that corrective actions may be taken and safeguards established to protect the innocent.
3. Sheriff's Office personnel will confer with the Commonwealth Attorney's Office in establishing lineup procedures, when time allows, in order to assure the best use of this type of evidence and to assure that procedures established are compatible with the prosecution of criminal cases. Likewise, instructions given to witnesses during a lineup procedure will be those established and approved in consultation with the Commonwealth's Attorney.

