



Florida Fish and Wildlife Conservation Commission
Division of Law Enforcement

EYEWITNESS IDENTIFICATION PROCEDURES

GENERAL ORDER	EFFECTIVE DATE	RESCINDS/AMENDS	APPLICABILITY
60	June 09, 2020	December 14, 2017	All Sworn Members

References

CFA 15.14, 18.15, 18.16

1 POLICY

- A** It is the policy of the Division to promote accurate and reliable eyewitness identification to minimize the possibility of erroneous identifications.
- B** It is the policy of the Division to provide guidance on the administration of photographic lineups, show-ups, and live lineups to sworn Division members.
- C** All sworn members of the Division shall acknowledge that they have read and understood the policies and procedures in this General Order by electronic signature in the Division's Electronic Written Directive Management System.
- D** Initial and periodic refresher training on eyewitness identification procedures shall be conducted for sworn members involved in eyewitness identification efforts. Training shall consist of reviewing this General Order, a related presentation and offering consultation with an experienced Division member or supervisor if needed.
- E Definitions**
 - (1) **Blank Photo** – a sheet of paper the same size as the photos utilized in the photo line-up that is blank, with no photo showing. (Blank photos are utilized in sequential photo line-ups)
 - (2) **Eyewitness** – a person whose identification by sight of another person may be relevant in a criminal proceeding.
 - (3) **Filler Photos** – photographs of persons other than the suspect, used to complete a photo array and bring the total number of photos to a minimum of six photos.
 - (4) **Functional Equivalent Procedures (FEP)** – procedures utilized when an independent administrator is not utilized, permitting the member to conduct a sequential photographic line-up in a manner that precludes him or her from knowing when the suspect is presented to the witness.
 - (5) **Independent Administrator** – a member or non-member who is not participating in the investigation of a criminal offense and is unaware of which person in the line-up is the suspect.
 - (6) **Line-up (Eyewitness Identification)** –A photo line-up or live line-up

- (7) **Live Line-up** – a procedure in which a group of people are displayed to an eyewitness for the purpose of determining if the eyewitness can identify the perpetrator of a crime.
- (8) **Photo Array** – the group of photographs utilized in a photographic line-up. A photo array may be presented to the witness simultaneously or sequentially. The process of conducting a photographic line-up is often called the “photo array.”
- (9) **Photographic Line-up** – a procedure in which an array of photographs is displayed to an eyewitness for the purpose of determining if the eyewitness can identify the perpetrator of a crime.
- (10) **Sequentially** – presentation of photos in a group or individuals in a line-up to a witness one-at-a-time rather than all at once.
- (11) **Show-up** – an identification procedure in which an eyewitness is presented with a single suspect within a short time following the commission of a crime for the purpose of determining whether the eyewitness identifies the individual as the perpetrator.
- (12) **Simultaneously** – presentation of photos in a photo group or individuals in a line-up to a witness all at once rather than one-at-a-time.

2 RESPONSIBILITIES

A Investigations Section

- (1) It is the responsibility of the Investigations Section to ensure that the Division’s policies and procedures on eyewitness identification as described in this General Order represent best current practices in the field.
- (2) It is the responsibility of the Investigations Section to provide assistance to members conducting line-ups and show-ups when requested to ensure the integrity of the eyewitness identification process.
- (3) It is the responsibility of the Investigations Section in coordination with the Training Section to provide training and guidance on eyewitness identification procedures when required.

B Members

- (1) Members shall adhere to the policies and procedures contained in this General Order to maximize the reliability of identifications, minimize unjust accusations against innocent persons, and to establish evidence that is reliable and conforms to established legal procedure.

3 PROCEDURES

A Line-up Procedures

- (1) Line-ups must be conducted by an independent administrator. In lieu of using an independent administrator, members may use a functional equivalent procedure listed below in subsection 9.
- (2) A photographic line-up shall consist of a minimum of six photographs. A minimum of five filler photos shall be utilized together with only one photo of the suspect. A filler photo shall be used in the lead photo position in simultaneous photo arrays.
- (3) Photographic line-ups shall consist of contemporary photographs of individuals who are reasonably similar in age, height, weight, and general appearance and are of the same sex and race, in accord with the witness’s description of the subject. Do not mix color and black and white photos. Use photos of the same size and basic composition. Do not mix mug shot photos with other photos. Do not include more than one photo of the same suspect. Cover or crop any portion of a mug shot or other photo that provides identifying information on the subject or other persons included in the photographic line-up.

- (4) All photographs used in a simultaneous line-up shall be numbered prior to being presented to the witness.
- (5) To ensure the position of the suspect photo remains unknown to the sworn member, photographs used in a sequential line-up shall not be numbered until after the folders have been shuffled and the witness has been presented the array. The witness shall receive instruction, prior to viewing the array, that he or she shall notate any identification by writing "identified" on the applicable folder. Additionally, the witness shall be instructed to write his or her initials on each folder in the array.
- (6) Live line-ups should utilize a minimum of six persons, including the suspect, who are reasonably similar in age, height, weight and general appearance and are of the same sex and race, in accord with the witness's descriptions of the subject.
- (7) The choice to use either a sequential or simultaneous photographic or live line-up shall be at the discretion of the sworn member. The member should also consider individual preferences of the applicable prosecuting authority when deciding which method to use.
- (8) When a sequential photographic line-up is used, the Functional Equivalent Procedure shall be utilized.
- (9) To follow the Functional Equivalent Procedure, the member shall use one of the following methods:
 - (a) An automated computer program which can automatically administer the photographic line-up directly to an eyewitness and prevent the line-up administrator from seeing which photograph the eyewitness is viewing until after the procedure is completed.
 - (b) Place the suspect, filler, and two blank photos in separate folders for a minimum of eight folders;
 1. Shuffle the folders before giving them to the witness;
 2. Position himself or herself away from the witness ensuring that he or she cannot see inside the folders as they are viewed by the witness.
 - (c) Any other procedure specified and approved by the Criminal Justice Standards and Training Commission which achieves neutral administration and prevents the line-up administrator from knowing which photograph is being presented to the eyewitness during the identification procedure.
- (10) A photographic or live line-up shall be prepared so there is a consistent appearance between the suspect and fillers with respect to any unique or unusual feature used to describe the perpetrator. Adding or removing certain features in the filler photos may be necessary to achieve this consistency. Examples of unique features include scars, tattoos, facial hair, etc.
- (11) The suspect position shall be changed randomly in each photographic or live line-up both in cases involving multiple witnesses as well as in other unrelated cases. The practice of commonly assigning a suspect to a specific position is prohibited.

B Conducting the Photographic or Live Line-up

- (1) Prior to administering each photographic or live line-up, the member shall read to the witness standard line-up instructions directly from the applicable line-up form (FWCDLE-297A – D) and obtain a written acknowledgement from the witness that he/she received a copy of the line-up instructions.
- (2) In circumstances involving the need for multiple witnesses to view a photographic or live line-up, the member shall ensure:
 - (a) The line-up is presented to only one witness at a time;
 - (b) Witnesses being presented a line-up at generally the same time and place are kept separated from one another to prevent them from discussing the line-up procedure; and

- (c) Each witness presented a line-up is directed not to discuss the identification procedures or results with any other witnesses.
- (3) Members administering the line-up shall avoid any conduct that might directly or indirectly influence a witness's decision.
 - (4) After reading the standard line-up instructions, the member shall step away from the witness's immediate vicinity and if possible, position himself or herself out of the witness's direct line of sight.
 - (5) The member shall not provide any verbal or non-verbal feedback to the witness concerning the witness's identification process. This includes, but is not limited to, comments such as, "Good job" or "You picked our suspect" or non-verbal actions that confirm or deny whether the witness selected the suspect.
 - (6) In a sequential line-up, after all photos or persons have been displayed and only if the witness requests it, the entire display may be repeated only once and in the same sequence as originally presented. The entire sequence shall be presented even if the witness only requests to see one photo or person again.
 - (7) The member shall document, preferably verbatim, any verbal or non-verbal communication made by the witness during the identification process using the Incident Summary Report Narrative.
 - (8) Immediately following identification, the member shall ask the witness to state, in his or her own words, how certain he or she is of the identification. The member shall take care in precisely documenting the witness's response in the Incident Summary Report Narrative.
 - (9) To assist in the validity of the identification, members are encouraged to either video or audio record the identification process when conducting photographic or live line-ups.
 - (10) Documentation of a live line-up shall include at a minimum, a photograph of the simultaneous line-up or a photo of each person used in a sequential line-up. The photo(s) shall be retained in the case file.
 - (11) If identification is made, the member shall document the precise photograph or person selected.
 - (12) The photographs used in a photographic line-up shall be retained in the case file.
 - (13) All live line-ups shall conform to specific legal requirements. If the right to counsel has been attached, the counsel representing the accused is entitled to have sufficient time to confer with his or her client prior to the line-up, and to observe the line-up itself.
 - (14) Members are prohibited from conducting any live line-up without prior consultation with the Division's legal advisor or the applicable prosecuting authority.
 - (15) When conducting a line-up, the only persons present who may be aware of the suspect's identity, shall be the administering member and the suspect's counsel in the case of a live line-up where the right to counsel has been attached.

C Conducting a Show-up

- (1) Any sworn member may arrange a show-up between a witness and a suspect whenever a potential suspect is located and detained within a reasonable length of time, in proximity to the location of the alleged crime, and fits the description of the suspect given by the witness. Show-ups should be conducted while the witness' memory is fresh and the suspect is located and still available.
- (2) Show-ups are not intended, nor shall they be used, as a replacement for photographic or live line-ups.
- (3) If a member has reasonable suspicion to detain a suspect, the member may use such force as is reasonably necessary to stop the suspect from leaving, or to cause the suspect to remain in

their presence. The suspect should be detained in the least restrictive manner possible. If probable cause to arrest develops during the detention, an arrest should be made.

- (4) Sworn members shall not move the detained subject from the original place of detainment for show-up purposes.
- (5) A suspect cannot be detained for longer than a reasonable period of time to confirm or refute positive identification.
- (6) Sworn members in contact with the witness shall obtain a detailed description of the suspect prior to the suspect being shown to the witness. The witness must advise the member that they are able to recognize the suspect of the alleged crime prior to the show-up.
- (7) Prior to the show-up, the sworn member shall provide instructions to ensure the witness understands that the purpose of the identification process is to exonerate the innocent as well as to identify the actual suspect. The witness should be informed that the person detained may or may not be the suspect, and the witness should not be compelled to make identification.
- (8) The sworn member shall avoid any conduct that may directly or indirectly influence the witness' decision.
- (9) The witness should be transported to the suspect's location and care should be used to shield the witness from being seen by the suspect. If possible, the sworn member should not show the suspect handcuffed, or measures should be taken to conceal this fact from the witness.
- (10) The sworn member should ensure that witnesses possess sufficient visual acuity to view the suspect. If the witness wears glasses, the sworn member should ensure the witness is wearing them prior to viewing the suspect. The sworn member should note the approximate distance between the witness and the suspect. During the show-up, officer presence immediately surrounding the suspect should be kept to a minimum.
- (11) Suspects may not be required to put on clothing worn by the offender. However, they may be asked, but not required, to speak words uttered by the suspect, or perform other actions of the suspect.
- (12) If the witness makes identification, do not confirm or corroborate the identification. Feedback may not be given to the witness as to the identification.
- (13) Immediately following identification, the sworn member shall ask the witness to state, in his or her own words, how certain he or she is of the identification. The sworn member shall take care in precisely documenting the witness's response in the Incident Summary Report Narrative.
- (14) Show-ups should not be conducted with more than one witness present at a time. If there is more than one witness, the show-up must be conducted separately for each witness, and witnesses should not be permitted to communicate before or after any show-up regarding identification of the suspect. The same suspect should not be presented to the same witness more than once.
- (15) If a positive identification is made, the show-up shall not be presented to any other additional witnesses. If necessary, a photographic or live line-up should be utilized for any additional identification needs.
- (16) To assist in the validity of the identification, sworn members are encouraged to either video or audio record the identification process when conducting a show-up.
- (17) Following all show-ups, and whether or not a positive identification is made, the member administering the show-up shall complete an Incident Summary Report Narrative, which includes:
 - (a) The date, time and location of the show-up;
 - (b) Whether an identification was made and the approximate length of time the witness needed to identify the suspect; and

- (c) The words used by the witness in any identification, including level of certainty regarding the identification.

4 FORMS

FORM NUMBER	FORM TITLE
	Incident Summary Report Narrative
FWC/DLE-297A	Show-Up Form
FWC/DLE-297B	Sequential Photo Line-Up Form
FWC/DLE-297C	Simultaneous Photo Line-Up Form
FWC/DLE-297D	Simultaneous and Sequential Live Line-Up Form