



KANSAS CITY MISSOURI POLICE DEPARTMENT <b>PROCEDURAL INSTRUCTION</b>		DATE OF ISSUE 8/11/2021	EFFECTIVE DATE 8/11/2021	NO. 21-08
SUBJECT Eyewitness Identification Procedures			AMENDS	
REFERENCE P.I. - Internally Recorded Digital Media Records		RESCINDS I.B.M. 00-02		

## I. INTRODUCTION

- A. The Department recognizes that victim/witness identification procedures need to be directed toward protecting the innocent from misidentification in every way possible, while also serving as a tool for the identification of subjects of interest in criminal investigations.
- B. The purpose of this written directive is to establish guidelines for eyewitness identification procedures involving photo arrays and field show-ups.

## II. TERMINOLOGY

- A. **Blind Administration** - A procedure whereby the member showing the photo array does not know and cannot tell the identification of the subject of interest when the victim/witness is viewing the array.
- B. **Field Show-up** - The live presentation of a subject of interest to an eyewitness shortly after the commission of a crime.
- C. **Filler** - A person, or a photograph of a person, that is included in a line-up or photo array, but who is not a subject of interest.
- D. **Photo Array** - A group of photographs shown to an eyewitness for the purpose of attempting to identify a subject of interest.
- E. **Subject of Interest** - A person who members believe may have committed or have taken some part in a criminal act.

### III. POLICY

- A. Eyewitness identification procedures will be conducted in a fair, objective, and nonsuggestive manner.
- B. Members will strictly adhere to the procedures for conducting eyewitness identifications set forth herein, in order to maximize the reliability of identifications, minimize erroneous identifications, and gather evidence that conforms to contemporary eyewitness identification protocols.
- C. All eyewitness identification procedures, whether it is a photo array or field show-up, will be audio or video recorded whenever possible. Members will adhere to the recording requirements as outlined in the current written directive entitled, "Internally Recorded Digital Media Records."
- D. Members will record the eyewitness identification in its entirety. If the recording equipment:
  - 1. Is turned off during the interview, members will narrate to the camera why it is being turned off, document the reasons, and notify a supervisor.
  - 2. Fails to operate, members will document the circumstances and notify their supervisor immediately.
- E. Detectives will recover the original copy of the recording as evidence in accordance with the current written directive, "Recovered Property Procedures." A duplicate of the recording will be created and kept in the case file for review or for submission to the prosecution.
- F. Multiple victims/witnesses will not view a photo array or field show-up together. Efforts must be made to eliminate any communications between victims/witnesses during the identification process.
- G. The Department will avoid multiple identification procedures featuring any one subject of interest with the same victim/witness.
- H. The Department does not use facial composites, and the use of artist sketches requires approval by the controlling investigative division commander.
- I. Non-Investigative members may utilize a single identification photo or a field show-up identification if the subject of interest is known to the victim/witness. Photo arrays will only be presented by members assigned to an investigative element.

#### IV. TABLE OF ANNEXES

This directive has been arranged in annexes for easy reference.

**Annex A** Photo Arrays  
**Annex B** Field Show-Ups



Richard C. Smith  
Chief of Police

Adopted by the Board of Police Commissioners this 27<sup>th</sup> day of July, 2021.



Mark C. Tolbert  
Board President

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**PHOTO ARRAYS**

- A. The Department will utilize the sequential presentation approach as the method when conducting eyewitness identification.
- B. A minimum of five fillers should be used in any photo array. The photos will be taken from any government approved data base including Department of Motor Vehicle (DMV).
- C. Fillers should be similar in appearance to the subject of interest. Similarities may include gender, race, age, and extraordinary physical features. Other factors to consider include clothing, facial hair, or other distinctive characteristics.
- D. A filler should not be used if the administrator is aware that the filler is known to the victims/witnesses.
- E. Only one subject of interest will be included in each photo array.
- F. If there is more than one subject of interest, then different fillers should be used in separate photo arrays for each subject of interest.
- G. Photos will be printed one picture per page and should be as similar in layout and general appearance as possible. They must be free of any identifying information or other marks. Any identifying information contained on any photo must be covered and those areas of the other photos used should be similarly covered.
- H. A member may show a single photograph of a subject of interest to a victim/witness for the purpose of confirming the subject of interest's identity in a case where the subject of interest and victim/witness have known each other for a significant amount of time.
- I. The photo array will be presented to the victim/witness by a member who is unaware of the identity of the subject of interest.
- J. A blind administration will be used by placing the photo array into a folder before presenting it to the victim/witness.

K. The administrator will read the below instructions to the victim/witness, prior to viewing the photo array. The victim/witness must acknowledge understanding the instructions prior to viewing the photo array. The victim/witness will be asked to sign the Photo Array Instructions, Form 27 P.D., as acknowledgement. The instructions will be:

1. As part of the ongoing investigation into a crime that occurred on (date) at (location) you are about to view a photo array.
2. You will see six photos of people in the photo array, one photo at a time. There will be a number assigned to each person.
3. Take whatever time you want to view the photo array.
4. The subject of interest may or may not be present.
5. I want you to focus on the photos you are shown and not look to me or anyone else for guidance about making an identification during the procedure.
6. Individuals presented in the photo array may not appear exactly as they did on the date of the incident because features, such as head and facial hair, are subject to change.
7. If you do make an identification, I will ask you to describe your level of certainty about that identification using your own words.

L. After the victim/witness has had an opportunity to view the photo array, the following questions will be asked and information provided to the victim/witness. If the victim/witness makes a response to any of these points prior to being asked, the details of that response will be noted.

1. The investigation into this offense will continue regardless of whether or not you make an identification.
2. Do you recognize anyone?
3. What is the number of the person you recognize?
4. From where do you recognize the person?
5. In your own words, how certain are you?
6. It is important to the integrity of the investigation that you do not discuss with other witnesses what you have seen, said or done during this procedure.

- M. No comment should be made by the administrator as to the victim's/witness's selection or the outcome of the identification procedure.
- N. The administrator will ask the victim/witness to provide a confidence statement in which the victim/witness describes their certainty about any identification made. The victim/witness should use their own words and not a numerical scale. The response should be recorded verbatim.
- O. These identifications will be recorded in accordance with the procedures outlined in the written directive entitled, "Internally Recorded Digital Media Records."
- P. The administrator will complete the Form 27 P.D. documenting where the procedure took place, who was present, if any identification was or was not made by the victim/witness, and the date and time it was administered.
- Q. Any and all original photo arrays created and viewed, whether identified or not identified, will be handled as evidence and will need to be protected and recovered as evidence.

**FIELD SHOW-UPS**

- A. Field show-up identifications are suggestive by nature. When deciding if a field show-up identification should take place, members should consider the following factors and document them in the appropriate reports:
  - 1. The length of time the victim/witness had to view the subject of interest,
  - 2. The amount of detail in the description of the subject of interest,
  - 3. Key identifiers such as specific logo on clothing or physical characteristic,
  - 4. The demeanor of the subject,
  - 5. Any verbal responses by the subject, and
  - 6. Proximity to the location of the crime.
  
- B. A field show-up identification should not be conducted if there is sufficient probable cause for an arrest, absent identification by a victim/witness. The member will contact the appropriate investigative element to determine if the field show-up identification is necessary.
  
- C. Detaining a subject of interest, who fits the description of an offender in order to arrange a field show-up, is lawful where the member has reasonable suspicion that the subject of interest has committed a crime, even if probable cause to arrest has not yet developed.
  
- D. A field show-up should not be conducted more than one hour after the victim's/witness's observation of the offender. Field show-ups should be conducted live whenever possible and not photographically. Members should not attempt to obtain identifications using DMV photos on the computers in their Department vehicles, unless a dire emergency exists.
  
- E. When a field 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, for example, and the circumstances are such that an immediate confrontation is imperative, the emergency identification procedure will be conducted in a nonsuggestive manner.

- F. Every field show-up must be as fair and non-suggestive as possible. Specifically, if the subject of interest is handcuffed, he should be positioned so that the handcuffs are not visible to the victim/witness. Field show-ups should not be conducted if the subject of interest is seated in the rear of a police vehicle, in a cell, or in any other enclosure associated with custody.
- G. If the victim/witness fails to make a positive identification, and other sufficient evidence has not developed to provide probable cause to make an arrest, the subject of interest must be permitted to leave. The identity of the subject of interest should be recorded and included in the member's report.
- H. A subject of interest stopped within a short time after the commission of the crime may be detained at the site of the stop and the victim/witness taken there to view them.
- I. Subject of interests will not be brought into, or returned to a crime scene as contamination may result. For the same reason, clothing articles found at the crime scene should not be placed on or in contact with a subject of interest. A subject of interest will not be brought back to the home of a victim or witness.
- J. Members must not do or say anything that may convey to the victim/witness that they have evidence of the subject of interest's guilt. Members should turn down their radios to reduce the likelihood that the victim/witness they are transporting may overhear information about the stop of the subject of interest.
- K. The subject of interest should be viewed by one victim/witness at a time and out of the presence or hearing of other victims/witnesses. Victims/witnesses who have viewed the subject of interest should not be permitted to communicate with those who have not until the identification procedure is completed.
- L. Once a victim/witness has positively identified the subject of interest at a field show-up, members should not conduct additional field show-ups with the same subject of interest. Subsequent identifications may be attempted by means of a photo array.
- M. Members may transport victims or witnesses in police vehicles to conduct an area canvass where a crime has just occurred in order for them to attempt to point out the offender. While checking the area, members must be careful not to make any statements or comments to the victims/witnesses which could be considered suggestive. Members will ensure the in-car/body-worn camera is recording during the area canvas.
- N. Members should record on the in-car/body-worn camera or make written notes of any identifications and any statements made by victims/witnesses at the time of viewing the subject of interest.

- O. Once a victim/witness has indicated their opinion that the subject of interest is the offender, the member should ask the victim/witness how certain he/she is of the identification. Members should ask the victim/witness not to use a numerical scale, but rather to indicate certainty in their own words. All statements by the victims/witnesses should be incorporated into the member's report. This interaction may be recorded on the in-car/body-worn camera.