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**MODEL POLICY AND PROCEDURE FOR
EYEWITNESS IDENTIFICATION**

INTRODUCTION

In order to implement the most reliable method for the collection of eyewitness evidence, this model policy and procedure recommends that law enforcement officials conduct double-blind, sequential photo arrays and lineups with non-suspect fillers chosen to minimize suggestiveness, non-biased instructions to eyewitnesses, and assessments of confidence immediately after identifications.

This policy is designed to ensure that the highest quality evidence possible is obtained from eyewitnesses. For some of the policy objectives, there is no one right method for implementing the principles. Some methods will require more resources and effort than others. Recognizing that not all law enforcement agencies have the same resources or face the same local challenges, these guidelines, where appropriate, provide alternative procedures designed to allow individual agencies to adapt procedures that best meet local circumstances.

This model and its associated recommendations were written to provide information regarding legal requirements and best practices surrounding collection and preservation of eyewitness evidence. No one document can address all the circumstances and/or exigencies that are encountered in the field. This model and guidelines are not intended to be a comprehensive treatment of all of the factors involved in criminal investigation. Rather, it is a general policy and procedural guide outlining methods for collecting and preserving evidence. Readers should keep in mind that the information and procedures presented here are intended to be used as guidelines when encountering circumstances and factors not specifically covered. These recommendations are not intended to create, do not create, and may not be relied on to create, any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal.

EYEWITNESS IDENTIFICATION POLICY

Eyewitness¹ identification has always been a powerful tool for investigating and prosecuting criminal cases. Eyewitness evidence can be the most important and convincing evidence in a case. Research and nationwide experience have demonstrated that eyewitness evidence can be a particularly fragile type of evidence, and that eyewitnesses can be mistaken. Eyewitnesses can make significant identification errors, but those errors can be difficult to detect, because the witnesses are sincere and have no motive to lie. When wrong, they usually are not being deceitful, but just simply mistaken.

Recent studies of eyewitnesses and human memory have suggested that eyewitness evidence is much like trace evidence left at a crime scene.² Like trace evidence, eyewitness memory is an imprint left in the mind of the witness. But also like trace evidence, it is susceptible to contamination if not handled properly. The result can be failure to identify the true perpetrator or erroneous identification of an innocent person.

Recently, scientific research has uncovered psychological factors that can cause well-meaning eyewitnesses to make mistakes, and has shown that new methods of conducting eyewitness procedures can address these factors and reduce error.³ These new methods represent the best techniques for accurately capturing and preserving eyewitness memories, thereby enhancing the reliability of criminal investigations and prosecutions.

Eyewitness errors have been linked to two psychological factors: 1) unintentional suggestion to witnesses,⁴ and 2) the 'relative judgment process',⁵ which refers to the tendency when viewing a simultaneous presentation (viewing an entire photo array or lineup at once) for eyewitnesses to identify the person who looks the most like the real perpetrator relative to the other people. When the real perpetrator is not in the array, the relative judgment process can lead to misidentification.

¹ In this document, the term 'eyewitness' is often synonymous with 'victim.'

² Wells, G.L., et. al. "Eyewitness Identification Procedures: Recommendations for Lineups and Photospreads." *Law and Human Behavior*, Vol. 22, No. 6, p. 14, 1998.

³ Wells, G.L. and Olson, E.A. "Eyewitness Testimony." *Annual Review of Psychology*, Vol. 54, p. 286-289, 2003.

⁴ See footnote 4 at 289.

⁵ See footnote 4 at 286.

The following model procedures address these causes of eyewitness error in a number of ways, but most prominently by recommending the following:

- 1) Utilize non-suspect fillers chosen to minimize any suggestiveness that might point toward the suspect;
- 2) Utilize a 'double blind' procedure, in which the administrator is not in a position to unintentionally influence the witness's selection;
- 3) Give eyewitnesses an instruction that the real perpetrator may or may not be present and that the administrator does not know which person is the suspect;
- 4) Present the suspect and the fillers sequentially (one at a time) rather than simultaneously (all at once). This discourages relative judgment and encourages absolute judgments of each person presented, because eyewitnesses are unable to see the subjects all at once and are unable to know when they have seen the last subject;
- 5) Assess eyewitness confidence immediately after identification.
- 6) Avoid multiple identification procedures in which the same witness views the same suspect more than once.

Scientific Rationale for Major Recommendations

1) Photo arrays and lineups should be constructed with non-suspect fillers chosen to minimize any suggestiveness that might point toward the suspect.

Unintentional suggestion can lead an eyewitness to identify a particular individual in a photo array or lineup. This can occur if one individual stands out from the others due to the composition of the array or lineup.⁶ For instance, if one of the individuals in the array or lineup has unique facial hair or is photographed with a different background, that person may stand out from the others and may be identified or excluded due to that distinguishing characteristic.

Additionally, suggestion can occur if the suspect is the only person in the array or lineup who resembles the witness's description of the perpetrator.⁷ Therefore, non-suspect fillers should generally be chosen to match the witness's description of the perpetrator. If a person who has never seen the perpetrator would be able to guess which person in the array or lineup is the suspect based on knowing only the eyewitness's description of the perpetrator, then the non-suspect fillers may not sufficiently match the description of the perpetrator.⁸

⁶ See Footnote 3 at 23-27.

⁷ See Footnote 3 at 24-27.

⁸ See Footnote 3 at 24-27.

2) Photo arrays and lineups should use a 'double blind' procedure, in which the administrator is not in a position to unintentionally influence the witness's selection. Individual agencies are free to devise methods for meeting this recommendation consistent with their own staffing and resource constraints.

Research has demonstrated that human beings, when conducting experiments in any context in which they know the desired or correct outcome, often unwittingly cue the subject of the experiment or misinterpret the results of the experiment based on their knowledge of the desired or correct outcome—even despite their best efforts not to do so.⁹ For this reason, it is a fixture of scientific and medical research that the person conducting the experiment must be 'blind' to the desired or correct outcome. For example, in a study of a given drug's effectiveness, no researcher administering the drug to a subject is allowed to know whether the subject is being given the real drug or a placebo, because administrators' expectations can affect both how the subject responds to the substance he/she is given and how the administrator interprets the subject's response. Researchers have learned that the same principle applies to photo array and lineup procedures.¹⁰ Simply stated, if the administrator of a photo array or lineup does not know the identity of the suspect, he/she cannot provide any cues to the eyewitness. This recommendation does not presume any deliberate impropriety by law enforcement officers. It merely recognizes the potential for unintentional suggestion.

3) Witnesses viewing photo arrays and lineups should be instructed that the real perpetrator may or may not be present and that the administrator does not know which person is the suspect.

At first glance, it might seem that informing an eyewitness that the perpetrator may or may not be present in an array or lineup would be stating the obvious. However, eyewitnesses may feel pressure to identify someone from a lineup or array because they believe the police would not be presenting the individuals if all were innocent. When the true perpetrator is not present, this tendency may influence eyewitnesses to identify an innocent filler or an innocent suspect. Studies show that telling the witness that the perpetrator may or may not be present counteracts the tendency to identify the person who looks the most like the perpetrator and reduces mistaken identification rates by as much as 41.6%.¹¹ Telling witnesses that the administrator does not know who the suspect is will also help prevent witnesses from mistakenly looking to the administrator for cues about which person is the perpetrator.

⁹ See Footnote 3 at 21-22.

¹⁰ See footnote 4 at 289 and footnote 3 at 21-22.

¹¹ See footnote 4 at 286-7.

4) *Witnesses viewing photo arrays and lineups should view the suspect and fillers one at a time (sequentially) rather than all at once (simultaneously).*

When witnesses are given a simultaneous presentation of multiple photographs or lineup subjects, they tend to make relative judgments, comparing one person to the next and identifying the person who looks the most like the actual perpetrator.¹² Obviously, this tendency does not pose a problem if the perpetrator is present in the array—because if the perpetrator is present, selecting the person who looks the most like the perpetrator will lead to selecting the correct person. However, when the perpetrator is absent from the array, witnesses still tend to make identifications of the person in the array who looks the most like the suspect. If the perpetrator is absent from the array, that person will be a filler or an innocent suspect. To overcome this tendency, researchers have learned that presenting subjects one at a time—sequentially—helps witnesses to make absolute judgments rather than comparative ones. Studies show that witnesses given a simultaneous presentation make approximately twice as many identifications of innocent people as witnesses shown a sequential presentation.¹³ There is some indication that the number of accurate identifications of actual perpetrators diminishes slightly with a sequential presentation, but much of this is largely the effect of pure guessing inherent in the relative judgment process. Therefore, research suggests that the value of identifications made under sequential presentations is significantly greater than those made under simultaneous presentations.

5) *Eyewitnesses' confidence should be assessed immediately after identification.*

An eyewitness's statement of confidence in identification can be very important evidence at trial. However, confidence is particularly susceptible to influence by information provided to the witness after the identification process. Research shows that information provided to a witness after an identification suggesting that the witness selected the right person can dramatically, yet artificially, increase the witness's confidence in the identification.¹⁴ Even worse, this effect is greater for eyewitnesses who receive positive feedback after misidentifications than for eyewitnesses who receive positive feedback after accurate identifications.¹⁵ To protect against artificially inflated confidence levels, it is imperative that the witness's confidence in identification be recorded immediately after an identification procedure to prevent influence from information learned after the procedure.

¹² See footnote 4 at 288.

¹³ See footnote 4 at 288.

¹⁴ Wells, G.L. and Bradfield, A.L. "Good, You Identified the Suspect': Feedback to Eyewitnesses Distorts their Reports of the Witnessing Experience." *Journal of Applied Psychology*, Vol. 83, p. 360-76, 1998.

¹⁵ Bradfield, A.L., Wells, G.L., Olson, E.A.. "The Damaging Effect of Confirming Feedback on the Relation between Eyewitness Certainty and Identification Accuracy." *Journal of Applied Psychology*, Vol. 87, p. 112-20, 2002.

6) *Avoid multiple identification procedures in which the same witness views the same suspect more than once.*

The practice of conducting multiple identification procedures with the same witness and the same suspect should ordinarily be avoided because of the potential for suggestiveness and the potential to contaminate a witness's memory.¹⁶ An eyewitness viewing a second procedure with the same suspect may believe that the suspect's presence in both procedures suggests that authorities believe the suspect is the perpetrator. Or, an eyewitness may become confused and identify the suspect based on recognizing him/her from the prior procedure rather than from remembering the suspect's presence at the crime. In either case, the suggestiveness of the second procedure may irreparably taint the eyewitness. Therefore, eyewitness identification procedures should be approached with the understanding that officers have one opportunity to conduct an eyewitness procedure. Except in unusual cases, conduct only one identification procedure—the most reliable procedure available under the circumstances—in which the same suspect views the same witness once.

¹⁶ See Hinz, T. & Pezdek, K. "The Effect of Exposure to Multiple Lineups on Face Identification Accuracy." *Law and Human Behavior*, Vol. 25, p. 185-198, 2001; Gorenstein, G.W. & Ellsworth, P.C. "Effect of Choosing an Incorrect Photograph on a Later Identification by an Eyewitness." *Journal of Applied Psychology*. Vol. 65, No. 5, p. 616, 1980.