



# ACTON POLICE DEPARTMENT

DEPARTMENT MANUAL; P&P: Operations		
POLICY & PROCEDURE # 1.14	DATE OF ISSUE: 2/22/2019	EFFECTIVE DATE: 03/01/2019
SUBJECT: EYEWITNESS IDENTIFICATION	ISSUING AUTHORITY: Chief Richard Burrows	
REFERENCE(S): Massachusetts Police Accreditation Commission # 42.2.11; 42.2.12	<input type="checkbox"/> NEW <input checked="" type="checkbox"/> AMENDS <input type="checkbox"/> RESCINDS	

## I. POLICY

It is the policy of the Acton Police Department that:

- A. Eyewitnesses will be given specific instructions prior to being shown suspect.
- B. Photo arrays and line-ups will be conducted by displaying the suspect and fillers sequentially.
- C. Photo arrays, line-ups, and voice identifications will be conducted using blind administration.
- D. When an eyewitness identifies a photograph or person, the officer will immediately ask the witness how certain he/she is of the identification.
- E. The Acton Police Department will avoid multiple identification procedures featuring any one suspect with the same witness.
- F. If an eyewitness identifies a suspect, officers will attempt to gather additional evidence to confirm or dispel the identification.
- G. The Acton Police Department will provide training in eyewitness identification to all sworn personnel.
- H. Whenever practical, all identification procedures shall be audio or video recorded.

## II. DEFINITIONS

- A. **SHOW-UPUP** – The presentation of one suspect to an eyewitness shortly after the commission of a crime.
- B. **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.
- C. **PHOTO ARRAY** – The showing of photographs of several individuals to an eyewitness for the purpose of obtaining identification.
- D. **LINE-UP** – The live presentation of a number of people to an eyewitness for the purpose of obtaining identification. A line-up differs from a field view in that it is

conducted in a controlled setting (such as a police station) a known suspect is in the mix, and the participants are aware that an identification procedure is being conducted.

**E. VOICE LINE-UP** – A procedure whereby a witness is permitted to hear the voices of several people for the purpose of obtaining the identification of a suspect’s voice.

### **III. PROCEDURES**

#### **A. RIGHT TO COUNSEL DURING IDENTIFICATION**

1. It is important to understand the point at which a suspect’s right to counsel attaches. The Supreme Court has determined that this right to counsel begins when any “adversary judicial proceeding” has been initiated “whether commenced by way of formal charge, preliminary hearing, indictment, information, or arraignment”. Thus, once a suspect has been arraigned or indicted, his/her right to have counsel present at any in-person identification procedure attaches. However, no right to the presence of counsel exists simply because a complaint has been filed nor even if an arrest warrant has been issued.
2. Even though a suspect’s right to the presence of counsel at an identification may not have attached, if counsel is present or readily available, it may be advisable to have counsel present (unless doing so will seriously delay the police investigation).
  - a. The presence of the suspect’s attorney may contribute to a more fair and objective identification proceeding.
  - b. In addition, if counsel fails to object to certain aspects of the identification when it is conducted, the suspect may be held to have waived any objection later at a court proceeding.
3. There is no requirement for an attorney to be present when an identification in the field is made of a suspect who has been apprehended during the period immediately after the commission of a crime. Immediately in such cases is generally to be within two hours.
4. There is no right to counsel under circumstances where an identification takes place accidentally; i.e., in a manner that was not contrived, planned, or anticipated by the police.
5. No right to counsel attaches to non-corporal identification procedures, such as photographs, composite drawings, or hypnosis, whether conducted before or after the initiation of adversarial criminal proceedings.

#### **B. DUE PROCESS CONSIDERATIONS**

1. Due process requirements dictate that identifications be made in a fair, objective, and suggestion-free manner, at least as far as police words and actions are concerned. Due process considerations are violated when identification procedures arranged and/or conducted by the police are so impermissibly suggestive as to give rise to the likelihood of irreparable misidentification.
2. In determining whether a specific identification procedure is unnecessarily suggestive, all of the circumstances surrounding the procedure must be considered.
3. The factors that will influence the court's determination of whether a specific identification procedure was unduly or unnecessarily suggestive include:
  - a. Whether police conduct was reasonable in light of the circumstances, e.g., suspect under arrest or only temporarily detained.
  - b. Amount of time between incident and identification.
  - c. Isolation of the suspect; whether the suspect is singled out in some manner.
  - d. Whether the police communicate the belief that the suspect committed the crime for which identification is sought to be made.
  - e. Whether the suspect is viewed jointly by two or more witnesses.
  - f. Existence of police urging witnesses to make identification.
  - g. Existence of any exigency.

## **C. SHOW – UPS [42.2.12(1)]**

### **1. Deciding to Conduct a Show-Up**

One-on-one or show-up identifications are, by their very nature, inherently suggestive. While show-ups are not per se unconstitutional, they are disfavored. However, courts will admit show-up identification evidence when there is “good reason” or exigency. Officers should assess the circumstances of the situation, and determine whether there is sufficient justification to conduct a show-up.

Compelling Reasons to conduct a show-up must be based on one of three considerations, to be assessed by the court after the fact: [42.2.12(2A)]

- a. The nature of the crime involved and corresponding concerns for public safety.
- b. The need for efficient police investigation in the immediate aftermath of a crime.
- c. The usefulness of prompt confirmation of the accuracy of investigatory information, which, if in error, will release the police quickly to follow another track.

**Exigent circumstances** also justify conducting a show-up, particularly when the witness is in grave medical danger, often in the hospital. Exigency is not required when “good reason” exists.

## 2. Logistics of a Show-Up

- a. Conduct the show-up promptly after the crime, preferably within a few hours, while the witness’s recollection is still fresh.
- b. Be aware of and, when possible given any safety considerations, minimize the impact of visual cues of custody, such as removing or covering handcuffs, removing the suspect from the cruiser, or minimizing the number of officers surrounding the suspect.
- c. Officers must have either reasonable suspicion (threshold inquiry requiring a rapid response), probable cause to arrest, or consent in order to hold the suspect while conducting the show-up. A witness description reflective of a suspect who is stopped at a proximate time and place in relation to the crime may provide sufficient reasonable suspicion to hold the suspect for a short time.
- d. Bring the witness to the suspect, except in rare circumstances such as when the witness is in an ambulance or the hospital.
- e. Two or more eyewitnesses: Officers shall separate witnesses when there are two or more witnesses to avoid contamination or suggestiveness. Officer judgment must be used in determining whether or not to separate the alleged suspects. **[42.2.12(2C)]**
- f. After a witness makes an initial identification, consider using other less suggestive identification methods for successive witnesses when appropriate.

## 3. Conducting a Show-Up

- a. Avoid saying or doing anything that may influence the witness. DO NOT tell the witness the police have stopped someone who fits the description.
- b. Manner of transportation: Officers shall transport the witness to the location of the suspect. The use of a cruiser is acceptable, however, the police radio should be turned off; the witness must not hear any related radio transmissions. **[42.2.12(2B)]**
- c. Provide the witness with the Advisements in Section 4 below and on the Show-Up Witness Advisement form.
- d. Confirm that the witness understands the procedures.
- e. After the show-up, be prepared to record both identification and non-identification results, including the witness’s own words and any spontaneous comments, as per Section 5 below.

- f. Do not provide the witness with any feedback, or comment on the results of the identification procedure in any way. If asked, explain that this is necessary to maintain the integrity of the investigation.

#### 4. Show-Ups – Instructing the Witness [42.2.12(2D)]

Before showing a witness the suspect, instruct the witness as follows:

- a. You are going to be shown an individual.
- b. This may or may not be the person who committed the crime, so you should not feel compelled to make an identification.
- c. It is just as important to clear innocent people, as it is to identify possible perpetrators.
- d. Whether or not you identify someone, the Acton police will continue to investigate.
- e. After you are done, I will not be able to provide you with any feedback or comment on the results of the process. [42.2.12(2F)]
- f. Please do not discuss this identification procedure or the results with other witnesses in this case or with the media.
- g. Think back to the time of the event, the place, view, lighting, your frame of mind, etc. Take as much time as you need.
- h. People may not appear exactly as they did at the time of the event, because features such as clothing and head/facial hair are subject to change.
- i. Level of confidence: As you look at this person, if you recognize him/her tell me on a scale of 1 – 10, 1 being low and 10 being high, how sure you are of the identification and how you know that person. [42.2.12(2E)]

#### 5. Documenting the Results

It is very important that the IDENTIFICATION CHECKLIST be completed fully and accurately for every show-up, regardless of whether or not an identification is made or an arrest is imminent. This information is required for trial discovery if a perpetrator is ever apprehended.

- a. Document all procedural information on the top half of the IDENTIFICATION CHECKLIST, including the individuals involved, the individual/suspect shown to the witness, circumstances warranting the show-up, and characteristics of the show-up.
- b. Document information that identifies the individual/suspect shown to the witness, such as name, address, and date of birth, even if the witness does not identify that person.
- c. Check off the Advisements given to the witness.

- d. After the witness has finished, indicate on the form whether an identification was made.
- e. Document the witness's own words of identification or non-identification and any spontaneous comments.
- f. Document statements by any other people, made during the identification procedure and in the presence of the witness.
- g. Have the witness sign and date the bottom of the IDENTIFICATION CHECKLIST.
- h. The conducting officer must sign and date the form when it is complete.
- i. Officers shall document the results of any identification made (or any failure to make an identification), including any spontaneous exclamation or reaction by a witness, and incorporate all of this information into their departmental report. **[42.2.12(2G)]**

## 6. Field Identification

When a suspect is not being held by the police, officers may bring a witness to a public area where the suspect is likely to be found. Procedures similar to those above should be used, as follows.

- a. Complete a Show-Up Identification Checklist in full; regardless of whether an identification is made, noting that the procedure was a field identification and not a show-up, as per Section 5.
- b. Avoid doing or saying anything that may influence the witness.
- c. Record information regarding how you decide to conduct the field identification, such as the "good reasons" discussed above in Section 1.
- d. Transport the witness to a public area where the suspect is likely to be found. There must be some number of people in the area so that the suspect will not be isolated.
- e. Provide the witness with Advisements similar to those in Section 4 above and on the Show-Up Witness Advisements form, but tailored to a field situation.
- f. Record both identification and non-identification results, including the witness's own words and any spontaneous comments.
- g. Record the process used and the conditions present for the field identification, such as location, lighting, physical conditions, number of people, etc.
- h. Do not provide the witness with any feedback, or comment on the results of the identification procedure in any way. If asked, explain that this is necessary to maintain the integrity of the investigation.

## D. PHOTOGRAPHIC LINEUPS

### 1. Composing Photo Arrays **[42.2.11(1) (3A)]**

Photo arrays should be constructed by officers who are familiar with both the witness's description of the perpetrator and the identity or image of the suspect. Photo arrays should be audio and/or video recorded whenever possible and officers shall: **[42.2.11(1) (3B)]**

- a. Create a photo array, with a minimum of at least six (6) photographs, for each witness based on his/her individual description of the perpetrator. If two witnesses provide descriptions that are very similar, the same group of photos may be utilized, but the suspect must be placed in a different position within each array. **[42.2.11(1) (3C)]**
- b. Include only one suspect in each array, even when there are multiple perpetrators.
- c. When available, select a photo of the suspect that most resembles his/her appearance at the time of the incident.
- d. Select photos of fillers (non-suspects) who generally fit the witness's description of the perpetrator. When the witness's description is limited, inadequate, or varies noticeably from the suspect, fillers should resemble the suspect in significant features. Any feature mentioned by the witness is significant.
- e. Include a minimum of five (5) fillers with the photo of the suspect, and up to eight (8) if reasonable. Volume is not the objective; similarity to the significant features of the description and/or the suspect is, though complete uniformity is not appropriate.
- f. Create a consistent appearance between the suspect and the fillers for unique features, such as scars or tattoos, by either adding or concealing that feature.
- g. Create as consistent and uniform an appearance as is reasonable regarding photo size, pose, lighting, color/black & white, photo background, etc.
- h. Ensure no writing or information is visible on the photos or in the array, particularly relative to previous arrests or identifications.
- i. If a "Sequential" presentation is to be conducted (as recommended), photos must be individual, and not grouped on a page.
- j. If a "Simultaneous" presentation is to be conducted, photos may be on one page.
- k. When composing additional arrays for the same witness, do not re-use the same fillers.
- l. Once completed, view the array to ensure the suspect does not unduly stand out.
- m. Record identifying information for each photo selected to be in the array, such as a computer identification number, on the COMPOSITION CHECKLIST. Then, mark a unique identifying letter on the back of each photo, such as A-H, making sure it is not visible from the front of the photo, and record that letter

on the CHECKLIST beside the corresponding identification information. If applicable, attach a copy of the computer-generated “Investigator’s Copy” of the array.

- n. Whenever possible, an officer not affiliated with the case should present the photo array to the witness, also known as a “Blind Presenter”. If conducting a “Blind” presentation (see Section B below), do not show the composition checklist form to the officer presenting the array.
- o. If conducting a “Blind, Sequential” presentation, to ensure the suspect is not in the first position of the array, select a filler photo for the first position, and inform the presenting officer accordingly. This also applies for “Blind, Simultaneous” presentations with more than one piece of paper.
- p. All efforts should be made to avoid re-using the same physical photo in different arrays because the need to re-use dictates that any witness selection may not be marked directly on the photo and must be preserved in another way. If you must preserve and re-use a photo, we suggest placing the photo(s) in a clear sleeve that the witness can write on, and making a full, complete copy of the array before any pictures are removed, in order to preserve a record of the array as evidence.

## **2. Who Should Present the Photos to the Witness?**

Officers presenting an array to a witness can potentially and unintentionally influence the outcome of an identification based on comments made or body language used prior to, during, or after an identification event. To avoid any potential influence, all aspects of the identification procedure must promote accurate, reliable, fair, and objective witness identification. The Middlesex District Attorney’s Office suggests that a ”Blind” presentation be conducted whenever possible.

**“Blind” Presentation:** An officer other than the primary individuals working on the case should conduct the presentation of the photo array with the witness. The individual conducting the presentation must not know the identity of the suspect or which photo in the array is that of the suspect.

When a department does not have an alternate individual available, for staffing reasons or because all officers are aware of who the suspect is, the following procedure may be used, applying the same principles to avoid any unintentional influence.

**Traditional Presentation:** When a department is unable to employ the “Blind” technique above, the officer presenting the array should use extra caution to avoid unintentionally influencing the witness’s decision, by strictly adhering to the instructions below. Caution is warranted before, during, and after the viewing.

## **3. Conducting the Identification Procedure: “Sequential” vs. “Simultaneous”**

Photo arrays have traditionally been presented simultaneously (all at once). However, recent research suggests that sequential presentations (one-by-one) can enhance the accuracy of identifications. The Middlesex District Attorney recommends that police departments utilize the sequential method of presentation. The following procedures are applicable regardless of whether or not the officer presenting the array is “Blind” to the identity of the suspect.

- 4. Conducting a “Sequential” Photo Array Presentation (one-by-one)**
  - a. Avoid saying or doing anything that may influence the witness’s selection.
  - b. Photos must be individual, and not grouped on one piece of paper. Each photo should already have an identifying letter on the back, such as A-H, previously assigned by the individual who composed the array.
  - c. The officer who composed the array previously selected a photo to use in the first position. Excluding that photo, shuffle the remaining photos to create a random presentation order.
  - d. Record the presentation order on the PHOTO ARRAY IDENTIFICATION CHECKLIST.
  - e. Provide the witness with the Advisements in Section 5 below.
  - f. Confirm that the witness understands the viewing procedures.
  - g. When the witness is seated and comfortable, hand the witness one photo at a time, retrieving the last before offering the next photo.
  - h. As the witness views a photo in the array, make sure no other photos are visible to the witness, including those yet to come and those already viewed.
  - i. If the witness makes an identification, if necessary, remind him/her to place his/her initials and the date below the photo of the suspect, clearly marking the selection. Record on the PHOTO ARRAY IDENTIFICATION CHECKLIST whether there was an identification, the witness’ identification statement(s), and which photo in the sequence was selected, as per Section 6 below.
  - j. Continue showing the witness the remaining photos, even if he/she makes an identification.
  - k. While not to be offered, the officer may show the array to the witness again if the witness asks, regardless of whether the witness has already made an identification or not. The officer should repeat the same procedures, showing all of the photos again, and thoroughly document the request, the additional steps taken, and the results.
  - l. Do not provide the witness with any feedback, or comment on the results of the identification procedure in any way. If asked, explain that this is necessary to maintain the integrity of the investigation.
- 5. Sequential Advisements – Instructing the Witness [42.2.11(3D)]**

Before showing the array to the witness, instruct him/her as follows:

- a. I am going to show you a group of photos that are in random order.
- b. The person who committed the crime may or may not be included, so you should not feel compelled to make an identification.
- c. It is just as important to clear innocent people as it is to identify possible perpetrators.
- d. Whether or not you identify someone, the police will continue to investigate.
- e. After you are done, I will not be able to provide you with any feedback or comment on the results of the process. **[42.2.11(3F)]**
- f. Please do not discuss this identification procedure or the results with other witnesses in this case or with the media.
- g. Think back to the time of the event, the place, view, lighting, your frame of mind, etc. Take as much time as you need.
- h. People may not appear exactly as they did at the time of the event, because features such as clothing and head/facial hair are subject to change.
- i. I will hand you photos one at a time, and cannot tell you how many photos there are in total. I will show you all of the photos, even if you identify someone in an earlier one. As you finish with each photo, hand it back to me and I will give you another.
- j. Level of confidence: As you look at each photo, if you recognize an individual tell me on a scale of 1 – 10, 1 being low and 10 being high, how sure you are of the identification and how you know that person. **[42.2.11(3E)]**
- k. If you identify someone, place your initials and the date below the photo, clearly marking your selection.

## 6. Documenting the Results

It is very important that the PHOTO ARRAY IDENTIFICATION CHECKLIST be completed fully and accurately, regardless of whether or not an identification is made or an arrest is imminent, as this information is required for trial discovery if a perpetrator is ever apprehended.

- a. Record all procedural information on the top half of the PHOTO ARRAY IDENTIFICATION CHECKLIST, including the individuals involved, the procedures used, and the order in which the photos were presented.
- b. Check-off the Advisements given to the witness.
- c. After the witness has finished, indicate on the form whether an identification was made, and which letter/order # photo was selected. Also ensure that the witness has signed and dated the selected photo, clearly marking his/her selection.

- d. Record the witness's own words and any spontaneous comments.
- e. Record statements by any other people, made during the identification procedure and in the presence of the witness.
- f. Have the witness sign and date the bottom of the PHOTO ARRAY IDENTIFICATION CHECKLIST.
- g. The conducting officer must sign and date the form when it is complete.
- h. When finished, **PRESERVE** the PHOTO ARRAY IDENTIFICATION CHECKLIST along with the actual photo array seen (and possibly marked) by the witness, and any other material used to conduct the array. All original forms shall be kept in the original report/court folder.
- i. Officers shall document the results of any identification made (or any failure to make an identification), including any spontaneous exclamation or reaction by a witness, and incorporate all of this information into their departmental report. **[42.2.11(3G)]**

## 7. Conducting a Simultaneous Photo Array Presentation (all at once)

Should department or case-specific circumstances prevent the sequential presentation of an array, a simultaneous presentation should be conducted as follows. These procedures are applicable regardless of whether or not the officer presenting the array is "Blind" to the identity of the suspect.

- a. Avoid saying or doing anything that may influence the witness's selection.
- b. Regardless of whether the array photos are separate or are on one page, the random physical arrangement of the photos, as they are to be presented to the witness, must be determined in advance and recorded on the PHOTO ARRAY IDENTIFICATION CHECKLIST. Each photo should already have an identifying letter on the back, such as A-H, previously assigned by the individual who composed the array.
- c. The officer who composed the array previously selected a photo/page to use in the first position. (This is only relevant when more than one piece of paper is being used for the "Simultaneous" presentation.)
- d. Provide the witness with the Advisements in Section 7 below.
- e. Confirm that the witness understands the viewing procedures.
- f. When the witness is seated and comfortable, place the array on the table in front of the witness. (If the array consists of multiple pages or separate photos, position the arrangement as was previously determined and recorded above.)
- g. When the witness is finished, confirm whether or not there has been an identification, and if so, that the witness has placed his/her initials and today's date below the photo, clearly marking the selection.
- h. Retrieve the array from the witness.

- i. Be prepared to record both identification and non-identification results as described in Section 6 above, including the witness's own words and any spontaneous comments.
- j. While not to be offered, the officer may show the array to the witness again if the witness asks, regardless of whether the witness has already made an identification or not. The officer should repeat the same procedures, showing the whole array again, and thoroughly document the request, the additional steps taken, and the results.
- k. Do not provide the witness with any feedback, or comment on the results of the identification procedure in any way. If asked, explain that this is necessary to maintain the integrity of the prosecution.

## **8. “Simultaneous” Advisements – Instructing the Witness**

Before showing the array to the witness, instruct him/her as follows:

- a. I am going to show you a group of photos that are in random order.
- b. The person who committed the crime may or may not be included, so you should not feel compelled to make an identification.
- c. It is just as important to clear innocent people as it is to identify possible perpetrators.
- d. Whether or not you identify someone, the Acton police will continue to investigate.
- e. After you are done, I will not be able to provide you with any feedback or comment on the results of the process.
- f. Please do not discuss this identification procedure or the results with other witnesses in this case or with the media.
- g. Think back to the time of the event, the place, view, lighting, your frame of mind, etc. Take as much time as you need.
- h. People may not appear exactly as they did at the time of the event, because features such as clothing and head/facial hair are subject to change.
- i. As you look at the photos, if you see someone that you recognize, please tell me how you know the person, and in your own words, how sure you are of the identification.
- j. If you identify someone, place your initials and the date below the photo, clearly marking your selection.

## **E. PHYSICAL LINE-UP IDENTIFICATION [42.2.11(2)]**

1. All police lineups for possible eyewitness identification shall be conducted under the direction of the appropriate supervisor and, when feasible, after consultation with the Middlesex District Attorney's office.

2. A suspect cannot be detained without probable cause to arrest and be compelled to participate in a lineup.
3. Before any suspect who has been arraigned or indicted is shown to eyewitnesses in a lineup for possible identification, the suspect must be specifically informed of his/her right to have an attorney present at the lineup and of his/her right to be provided with an attorney without cost if [s]he is unable to afford such legal counsel. Unless a valid waiver is voluntarily and knowingly made, in writing, if possible, no such identification may proceed without the presence of the suspect's attorney.
  - a. A suspect has no right to have counsel present at a lineup if [s]he has not been arraigned or formally charged.
  - b. If the suspect has a right to have an attorney present, permit him/her to call for his/her own attorney or take him/her to court so that an attorney may be appointed.
  - c. If an attorney has been retained by the suspect or appointed by the court, such attorney shall be notified of the time and place of the identification procedure and the circumstances relating to the offense charged.
  - d. If the suspect knowingly and voluntarily waives his/her right to have an attorney present (preferably in writing), the lineup may then be held with every effort to ensure that the suspect is protected from any prejudicial procedures.
4. Composition: To conduct the physical line-up, select a group of at least five or six other persons of the same race, sex, and approximate height, weight, age, hair color, length and style, facial hair, clothing and other characteristics, such as glasses, as the suspect. **[42.2.11(3A)]**
  - a. Do not display a suspect in any lineup that is not suitable and properly composed.
  - b. Advise the accused that [s]he may take any position in the lineup which [s]he prefers and may change positions prior to summoning each new witness.
  - c. All persons in the lineup must be numbered consecutively and be referred to only by number.
  - d. A complete written record of the lineup proceedings shall be made and retained, including the name, address, and telephone number of each lineup participant.
  - e. The entire lineup procedure shall be audio and/or video recorded for possible future court presentation. **[42.2.11(3B)]**
  - f. Ensure that witnesses are not permitted to see the accused or shown any photographs of the accused immediately prior to the lineup.

- g. Ensure that only one witness views the lineup at a time and that witnesses are not permitted to speak with one another during the proceedings.  
**[42.2.11(3C)]**
- h. Scrupulously avoid using statements, clues, casual comments, or providing unnecessary or irrelevant information that in any manner may influence the witness' decision-making process or perception.
- i. Officers shall document any identification made (or any failure to make an identification), including any spontaneous exclamation or reaction by a witness, and incorporate all of this information into their departmental report.  
**[42.2.11(3G)]**

5. If there are two or more suspects of a particular crime, present each suspect to witnesses in separate lineups. Different people should be used to compose each lineup, to the extent possible.
6. When an attorney for the suspect is present, the attorney should be permitted to make reasonable suggestions regarding the composition of the lineup and the manner in which it is to be conducted. Any suggestions made by the suspect's attorney should be included as part of the lineup report.
  - a. Allow counsel representing the accused sufficient time to confer with his/her client prior to the lineup.
  - b. Once the line-up is commenced, the suspect's attorney should function primarily as an observer and [s]he should not be permitted to converse with the lineup participants, or with the witnesses, while the lineup is underway.
  - c. The suspect's attorney at a lineup is not entitled to hear any discussions between a witness and the police.
  - d. The suspect's attorney is not legally entitled to the names and addresses of the witnesses attending a lineup. If an attorney insists on having information about lineup witnesses, advise him/her to direct his/her request to the Middlesex District Attorney's office.
7. During a lineup, each participant may be directed to wear certain clothing, to put on or take off certain clothing, to take certain positions or to walk or move in a certain way. All lineup participants shall be asked to perform these same actions. Each lineup participant may also be directed to speak for voice identification purposes.
8. After a person has been arrested, [s]he may be required to participate in a lineup in regard to the crime for which [s]he was arrested. After arrest, a suspect may lawfully refuse to participate in a lineup only if [s]he has a right to have counsel present (post arraignment/indictment) and the counsel is absent through no fault of the suspect or his/her attorney. Otherwise, if the suspect refuses to participate, [s]he should be informed that [s]he has no legal right to do so and that his/her refusal can be used as evidence against him/her in court.

- a. If the suspect wrongfully refuses to participate in the lineup, arrangements should be made for an alternative identification procedure.
- b. In serious criminal cases, the District Attorney's office should be asked to apply for a court order to compel the suspect to participate in a lineup or else face a citation for contempt of that court order.

#### **1. Physical Line-Ups – Instructing the Witness [42.2.11(2)(3D)]**

- a. You are being asked to view a group of people.
  - 1) You will be viewing them one at a time.
  - 2) Please look at all of them.
  - 3) They are in random order.
  - 4) Please take as much time as needed in making a decision about each person before moving on to the next one.
- b. You should remember that it is just as important to clear innocent persons from suspicion as to identify guilty parties.
- c. The individuals you view 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.
- d. The person who committed the crime may or may not be one of the people you are about to view.
- e. Regardless of whether or not you select a person, the Acton Police Department will continue to investigate the incident.
- f. Level of confidence: The procedure requires an individual to tell me on a scale of 1-10, 1 being low 10 being high how sure they are of the identification, and how you know that person. [42.2.11(3E)]
- g. If you do select someone, please do not ask the officer questions about the person you have selected, as no feedback can be shared with you at this stage of the investigation. [42.2.11(3F)]
- h. Regardless of whether you select a person, please do not discuss the procedure with any other witnesses in the case.
- i. Do you have any questions before we begin?

#### **F. VOICE IDENTIFICATION**

1. Although considerably less common than visual identifications of the suspect's person, voice identifications may be helpful to criminal investigations where the victim or other witnesses were blind, the crime took place in the dark, where their eyes were covered by the perpetrator or they were never in the same room with the perpetrator but did hear his/her voice.

2. As with any in-person identification or confrontation, if the suspect has been arraigned or indicted, [s]he has a right to the presence of counsel at the voice identification procedure.
3. Where a voice identification is attempted, the following procedures should be employed to the extent possible:
  - a. As in a lineup, there should be at least six persons whose voices will be listened to by the witness; one-on-one confrontations should be avoided;
  - b. The suspect and other participants shall not be visible to the voice witness; this can be done by blindfolding the witness, using a partition, having the witness turn his/her back, or similar means;
  - c. All participants, including the suspect, shall be instructed to speak the same words in the same order;
  - d. If the victim or witness recalls hearing the perpetrator use specific words, those words should not be ones the suspect and other participants are instructed to speak; the lineup participants should speak neutral words in a normal tone of voice;
  - e. When both a visual and voice lineup are done, the lineup participants shall be called in a different order and by different numbers.
4. As with any identification procedure, police should avoid any words or actions that suggest to the voice witness that a positive identification is expected or who they expect the witness to identify.
5. Any voice identification shall be detailed in the officer's report in accordance with departmental requirements.

## **G. COMPOSITE DRAWINGS & IDENTI-KIT**

1. An artist's sketch, computerized drawing, or other depiction should be considered in a major crime investigation when a witness displays a good recollection of the physical appearance and features of the criminal offender but has not been able to identify a suspect from available photographs.
2. A composite drawing, computer-generated drawing, or Identikit sketch is admissible in court as evidence, provided a witness can testify that the sketch is a fair and accurate representation of the person seen by the witness.

## **H. POLICE FACILITY & COURT ROOM IDENTIFICATION**

1. Prior to conducting any courthouse identification procedure, police shall consult the Middlesex District Attorney's office.
2. The same right to an attorney and the same Due Process suggestiveness considerations that apply to all other identification procedures also apply to station house and courtroom identifications.

3. If the suspect has been arraigned or indicted, [s]he has a right to have counsel present at any in-person identification/confrontation.
4. One-on-one confrontations and informal viewings of the suspect by a witness must be done in such a manner as to minimize any undue suggestiveness.
5. In no way should the police state or suggest that the suspect has been arrested or booked or that [s]he has made any confession or incriminating statement or that any incriminating evidence has been uncovered. The witness' identification, particularly if it takes place in a police station or court room, must be a result of his/her recollection of the appearance of the perpetrator and must not be unduly influenced by information or suggestions originating from the police.

## **EYEWITNESS IDENTIFICATION INFORMATION**

---

**History: Manual I, Section III.**