

Eyewitness Identification

701.1 PURPOSE AND SCOPE

State MODIFIED

This policy sets forth guidelines to be used when members of this employ eyewitness identification techniques (Minn. Stat. § 626.8433).

701.1.1 DEFINITIONS

Best Practice MODIFIED

Definitions related to the policy include:

Eyewitness identification process -Any field identification/show-ups, lineup or photographic identification.

Photographic lineup - Presentation of photographs to a witness for the purpose of identifying or eliminating an individual as the suspect.

Show-up - A live presentation of a single individual to a witness following the commission of a criminal offense for the purpose of identifying or eliminating the person as the suspect.

Line-up- The process of presenting live individuals to an eyewitness for the purpose of identifying or eliminating suspects

Filler- A live person, or a photograph of a person, included on an identification procedure who is not considered a suspect.

701.2 POLICY

Best Practice

The Burnsville Police Department will strive to use eyewitness identification techniques, when appropriate, to enhance the investigative process and will emphasize identifying persons responsible for crime and exonerating the innocent.

701.2.1 POST MODEL POLICY

State MODIFIED

It is the policy of the Burnsville Police Department to follow the guidelines of the Eyewitness Identification Procedures model policy, established and published by the Minnesota Board of Peace Officer Standards and Training (POST) (Minn. Stat. § 626.8433).

By February 1, 2021, the chief law enforcement officers of every state and local law enforcement agency shall adopt and implement a written policy on eyewitness identification practices that is identical to or substantially similar to the model policy developed by the Minnesota Board of Peace Officer Standards and Training (POST) (Minn. Stat. § 626.8433).

701.3 INTERPRETIVE SERVICES

Best Practice MODIFIED

Eyewitness Identification

Members should make a reasonable effort to arrange for an interpreter before proceeding with eyewitness identification if communication with a witness is impeded due to language or hearing barriers.

701.4 EYEWITNESS IDENTIFICATION PROCESS AND FORM

Best Practice **MODIFIED**

The process and related forms should be reviewed at least annually by the Professional Standards Commander, and modified when necessary.

The process should include appropriate forms or reports that provide:

- (a) The date, time, and location of the eyewitness identification procedure.
- (b) The name and identifying information of the witness.
- (c) The name of the person administering the identification procedure.
- (d) If applicable, the names of all individuals present during the identification procedure.
- (e) An instruction to the witness that it is as important to exclude innocent persons as it is to identify a perpetrator.
- (f) An instruction to the witness that the perpetrator may or may not be among those presented and that the witness is not obligated to make an identification.
- (g) If the identification process is a photographic or live lineup, an instruction to the witness that the perpetrator may not appear exactly as he/she did on the date of the incident.
- (h) An instruction to the witness that the investigation will continue regardless of whether an identification is made by the witness.
- (i) A signature line where the witness acknowledges that he/she understands the identification procedures and instructions.
- (j) A statement from the witness in the witness's own words describing how certain he/she is of the identification or non-identification. This statement should be taken at the time of the identification procedure.

[See attachment: Sequential Photo Display form Instructions.pdf](#)

[See attachment: Sequential Photo Display Form.pdf](#)

701.5 EYEWITNESS IDENTIFICATION

Best Practice **MODIFIED**

Members are cautioned not to, in any way, influence a witness as to whether any subject or photo presented in a lineup is in any way connected to the case.

In order to avoid undue influence, witnesses should view suspects or a lineup individually and outside the presence of other witnesses. Witnesses should be instructed to avoid discussing details of the incident or of the identification process with other witnesses.

Eyewitness Identification

Whenever feasible, the eyewitness identification procedure should be audio and/or video recorded and the recording should be retained according to current evidence procedures. In cases where a recording isn't obtained, the member conducting the lineup should document the reason why an audio and/or video recording was not obtained.

701.5.1 PHOTOGRAPHIC LINEUP AND LIVE LINEUP CONSIDERATIONS

State **MODIFIED**

When practicable, the member presenting the photographic lineup should not be involved in the investigation of the case or know the identity of the suspect.

The photographic lineup and live lineup should consist of a minimum of six individuals or photographs. There should be a minimum of five fillers and one suspect.

Individuals in the lineup should be substantially similar to the description of the perpetrator provided by the witness and should bear similar characteristics to avoid causing any person to unreasonably stand out. In cases involving multiple suspects, a separate lineup should be conducted for each suspect. The suspects should be placed in a different order within each lineup. The same fillers should not be reused in arrays for different suspects shown to the same witness.

Avoid the use of 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.

The member presenting the lineup to a witness should do so sequentially (i.e., show the witness one person at a time) and not simultaneously. The witness should view all persons in the lineup.

When conducting a live lineup, the member presenting the live lineup should not be involved in the investigation or know the identity of the suspect (Minn. Stat. § 626.8433).

A live lineup should only be used before criminal proceedings have been initiated against the suspect. If there is any question as to whether any criminal proceedings have begun, the investigating officer should contact the appropriate prosecuting attorney before proceeding.

701.5.2 SHOW-UP CONSIDERATIONS

Best Practice **MODIFIED**

Show-ups or one-on-one identifications, may be helpful in certain cases, where exigent circumstances make it impracticable to conduct a photo lineup identification.

When initiating a show-up, the member should observe the following guidelines:

- (a) Obtain and document a complete description of the suspect from the witness.
- (b) Assess whether a witness should be included in a show up process based on the reasonableness they could identify the suspect.
- (c) When feasible, members should bring the witness to the location of the subject of the show-up, rather than bring the subject of the show-up to the witness.

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- (d) The person who is the subject of the show-up should not be shown to the same witness more than once.
- (e) In cases involving multiple suspects, witnesses should only be permitted to view the subjects of the show-up one at a time.
- (f) The person who is the subject of the show-up should not be required to put on clothing worn by the suspect, to speak words uttered by the suspect or to perform other actions mimicking those of the suspect.

701.6 DOCUMENTATION

Best Practice **MODIFIED**

A thorough description of the eyewitness process and the results of any eyewitness identification should be documented in the case report.

Immediately after an identification is made, the eyewitness shall provide a statement in their own words that articulates the level of the eyewitness' confidence in the identification.

Attachments

Sequential Photo Display form Instructions.pdf

BURNSVILLE POLICE DEPARTMENT SEQUENTIAL PHOTO DISPLAY FORM INSTRUCTIONS

INSTRUCTIONS TO ADMINISTRATOR (READ BEFORE SHOWING PHOTO DISPLAY)

A sequential photo lineup must either be presented by an *independent administrator* [IA](a person who does *not* know the identity of the suspect) or, if unavailable, a *functional equivalent* [FE] method must be used. Functional equivalent means (1) that the administrator cannot see and does not know the order of the photos, and (2) that the witness knows the administrator does not know the order. Before beginning the photo display, determine which of these two methods is used (IA or FE), then select the appropriate box to check.

Fill out the case information on the top of the form. Read instructions to witness and have witness initial at end. Show photos one at a time, with only one photo at a time may be visible. Even if identification is made, continue showing remaining photos. After all photos have been displayed, repeat display *ONLY* if witness requests it. In any repeat, *ALL* photos must be displayed in the same sequence, even if the witness only requests to see a particular photo or photos again.

After completion of the photo display, the administrator will complete the bottom portion. This includes asking the certainty question, administrator observations, and number of times display was shown. If a photograph is selected during the lineup ask, "*How certain are you of your identification?*"

Ask the witness to sign the bottom of the form. If any selection is made, have the witness sign and date the photo(s) selected. The photo display used must be preserved and submitted in the case reports. (Attach copy to this form.) **BE CAREFUL NOT TO PROVIDE ANY FEEDBACK TO WITNESS ON EITHER IDENTIFICATION OR NON-IDENTIFICATION.**

At the conclusion, have the witness has signed the completed form. Departmental policy may also require a standard supplementary report.

Sequential Photo Display Form.pdf

BURNSVILLE POLICE DEPARTMENT
SEQUENTIAL PHOTO DISPLAY FORM

LOCATION ADMINISTERED:		
OFFENSE:	DATE/TIME:	CASE FILE #:
WITNESS:		DOB:
INVESTIGATING OFFICER:	ADMINISTRATOR:	LINE-UP ID # (If applicable):
READ TO WITNESS BEFORE PHOTO DISPLAY		
☐ I am going to show you a set of photos. The person who _____ may or may not be included. Even if you identify someone during this procedure, I will continue to show you all the photos.		
Select one : ☐ Independent Administrator Method: I do not know which photo, if any, is the person involved in this incident; or ☐ Functional Equivalent Method: I do not know the order of the photos.		
☐ Keep in mind that a photo may be an old one. Some things like hair styles can be changed, and skin colors may look slightly different in photographs.		
☐ You do not have to pick a photo. Whether or not you pick a photo, the investigation will continue. It is as important to exclude innocent people as it is to identify people involved.		
☐ I will show you one photo at a time. It does not matter which photo is first and which photo is last. Take as much time as you need to look at each one. You should avoid discussing this procedure or the results with any other potential witnesses in the case.		
☐ Please initial here if you understand these instructions.		WITNESS INITIALS:
TO BE COMPLETED BY ADMINISTRATOR		
The sequential photo line-up shown to the witness consisted of _____ photos. ☐ The witness did not select any photo as being the person(s) who _____. ☐ The witness selected photo(s) # _____ as the person(s) who _____. If a selection was made, how certain is the witness of their identification? _____ _____ _____.		
WITNESS SIGNATURE:		DATE:
Sequential line-up was shown: ☐ One time ☐ Two times ☐ Three times		
☐ Have witness sign and date selected photo(s) and attach to this report.		