


PBP FORM 290 		PITTSBURGH BUREAU OF POLICE <i>"...honor, integrity, courage, respect, and compassion."</i>		SUBJECT: "EYEWITNESS IDENTIFICATION PROCEDURES"	ORDER NUMBER: 43-17
				PLEAC STANDARD: NONE	PAGE 1 OF 8
REVISE DATE: 11/11/2016	EFFECTIVE DATE: 8/15/14	ANNUAL REVIEW DATE: AUGUST	RESCINDS: NONE	AMENDS: ALL PREVIOUS	

1.0 PURPOSE

1.1 The purpose of this policy is designed to ensure that the highest quality evidence possible is obtained from eyewitnesses to identify and convict the guilty, and exclude the innocent.

2.0 POLICY

2.1. It is the policy of the Pittsburgh Bureau of Police (PBP) that:

2.1.1 An officer may show a single photograph of a suspect to a witness for the purpose of confirming the suspect's identity in a case where the suspect and witness know each other.

2.1.2 Eyewitnesses will be given specific instructions prior to being shown a suspect.

2.1.3 Photo arrays and line-ups will be conducted by displaying the suspect and fillers sequentially.

2.1.4 When sufficient personnel are available, photos arrays, line-ups, and voice identifications will be conducted using double blind administration. With the implementation of this policy, DOUBLE BLIND ADMINISTRATION will be the preferred method of the PBP.

2.1.5 When an eyewitness identifies a suspect, the officer will immediately ask the witness how certain he or she is of the identification.

2.1.6 The PBP will avoid multiple identification procedures featuring any one suspect with the same witness.

2.1.7 Generally, the PBP does not use composites or artist sketches for line ups, but it is permissible with the approval of a police supervisor, with the rank of Sergeant or above, who has reviewed the facts and circumstances of the case.

2.1.8 If an eyewitness identifies a suspect, officers will attempt to gather additional evidence to confirm or dispel the identification.

2.1.9 The PBP will provide training in eyewitness identification to all sworn personnel.

3.0. DEFINITIONS

3.1 **Affirmation Statement:** A clear statement from the eyewitness, at the time of identification and in the eyewitness's own words, which indicates that the eyewitness is sure that the person identified in the given lineup is a perpetrator.

3.2 **Eyewitness** A person whose identification by sight of another person may be relevant in a criminal proceeding.

3.3 **Suspect:** A person who officers believe may have committed a crime.

3.4 **Offender:** The perpetrator of the crime.

3.5 **Filler:** A person, or a photograph of a person, that is included in a line-up or photo array, but who is not a suspect.

- 3.6 **Show-up:** The live presentation of a suspect to an eyewitness shortly after the commission of a crime.
- 3.7 **Field View:** An eyewitness viewing of a group of people in a public place based on the theory that the offender 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.
- 3.8 **Photo Array:** A group of photographs shown to an eyewitness for the purpose of identifying an offender.
- 3.9 **Line-up:** The live presentation of a group of people to an eyewitness for the purpose of identifying an offender. 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 present, and the participants are aware that an identification procedure is being conducted.
- 3.10 **Administrator:** An officer who is participating in the investigation of the criminal offense and is not aware of which person in the lineup or photo array is the suspect.
- 3.11 **Voice Line-up:** A procedure whereby a witness is permitted to hear the voices of several people for the purpose of obtaining an identification of the offender's voice.
- 3.12 **Double Blind Lineup Administration:** A procedure whereby the officer who is not participating in the investigation of the criminal offense and is unaware of which person in the lineup or photo array is the suspect.
- 3.13 **Folder Shuffle Method:** A blind photo array administration in circumstances where limited personnel resources are available. A process in which random blind numbering of the folders is done by the administrator prior to the witness viewing them, with a filler numbered "1" and the rest of the photos numbered randomly.

4.0 PROCEDURES:

- 4.1 When questioning an eyewitness, officers should avoid the use of leading questions and should refrain from providing the witness with information that could affect the witness's memory.
- 4.2 Prior to conducting an identification procedure, officers should obtain and document a full description of the offender from the witness. Officers should not take an offender's description from one eyewitness in the presence of another witness.
- 4.3 Whenever practicable, the officer should videotape or audiotape a photo array or line-up. If not, the officer should write down the witness's exact words and incorporate them into his report. The witness should be asked to initial and date the front of any photograph selected.
- 4.4 A report of every identification procedure, whether an identification is made or not, shall be submitted. The report shall include a summary of the procedure, the persons who were present for it, instructions given to the witness by the officer (this should be accomplished by submitting the appropriate witness instruction form), any statement or reaction by the witness, and any comments made by the witness regarding the identification procedure. When submitting reports about photo arrays, officers should include a copy of the array.
- 4.5 A suspect should be viewed by one witness at a time and out of the presence or hearing of other witnesses. Witnesses who have viewed the suspect should not be permitted to communicate with those who have not until the identification procedure is completed.
- 4.6 All photo arrays and Photo Array Instruction Forms (PBPB Form 400.50) will be preserved regardless of whether an identification was made.

5.0 RIGHT TO COUNCIL DURING IDENTIFICATION PROCEDURES

- 5.1 Once a suspect has been arraigned or indicted, his right to have counsel present at an in-person identification procedure attaches. Suspects have no right to the presence of counsel simply because a complaint has been filed, even if an arrest warrant has been issued.

- 5.2 No right to counsel attaches for identification procedures that do not require the presence of the suspect, such as those involving photographs, whether conducted before or after the initiation of adversarial criminal proceedings.
- 5.3 Under Pennsylvania Law, the Sixth Amendment’s right to counsel attaches at the time a suspect is arrested, and that right continues to exist for any identification confrontations occurring after the arrest, except for, prompt, on-the-scene confrontations (show ups). Commonwealth v. Richman, 320 A.2d 351 (Pa. 1974), and Commonwealth v. Harrell 65 A.3d 420 (Pa 2013).
 - 5.3.1 Once an arrest has been made in a case, a photo array containing the defendant’s photo cannot be shown for the same offense to a victim/witness unless the defendant’s attorney is present. The only exception to this rule is if you are showing the photo as part of any identification process, including show up identifications, for the defendant pertaining to a separate incident for which he/she has not been arrested.

6.0 Witness Instructions

- 6.1 Whenever practicable, the officer conducting an identification procedure shall read the witness a set of instructions from a PBP form (show-up card (*PBP form 400.80*), or photo array form (*PBP form #400.50*) or line-up instruction form (*PBP form # 400.60*). Those instructions include the following:
 - 6.1.1 The person who committed the crime may or may not be (the person, or in the set of photographs) you are about to view.
 - 6.1.2 It is just as important to clear innocent persons from suspicion as to identify the guilty.
 - 6.1.3 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. (Not for use during show-ups or voice identifications.)
 - 6.1.4 Regardless of whether or not you select someone, the PBP will continue to investigate the incident.
 - 6.1.5 The procedure requires that I, Officer (Name), ask you to state, in your own words and without using a numerical scale, how certain you are of any identification.
 - 6.1.6 If you do select someone, please do not ask me questions about the person you have selected, as no information can be shared with you at this stage of the investigation.
 - 6.1.7 Regardless of whether you select a person, please do not discuss the procedure with any other witnesses in the case or the media.

7.0 Show-ups

- 7.1 Detaining a suspect who fits the description of an offender in order to arrange a show-up is lawful where the officer has reasonable suspicion that the suspect has committed a crime, even if probable cause to arrest has not yet developed.
- 7.2 A show-up should occur within a reasonable time from the witness’s observation of the offender. The close proximity of time and location offers the advantages that the witness’s memory is fresh and the suspect’s appearance is ordinarily unchanged. Officers should not attempt to obtain identifications using DMV photos on the computers in their vehicles, unless a dire emergency exists.
- 7.3 Every show-up must be as fair and non-suggestive as possible. Specifically, if the suspect is handcuffed and/or shackled, he/she should be positioned so that the handcuffs/shackles are not visible to the witness. Show-ups should not be conducted if the suspect is seated in the rear of a police vehicle, in a cell, or in any other enclosure associated with custody.
- 7.4 When a 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 show-up is imperative, the emergency identification procedure shall be conducted with every effort made to comply with section 7.3 of this policy.

- 7.5 If the witness (es) fails to make a positive identification, and sufficient other evidence has not been developed to provide probable cause to make an arrest, the suspect must be permitted to leave. His identity should be recorded and included in the officer's report.
- 7.6 A suspect stopped within a short time after the commission of the crime may be taken to a location where he can be viewed by a witness for possible identification, or be detained at the site of the stop and the witness taken there to view him. Transporting the witness to the site of the stop is preferred if circumstances permit.
- 7.7 Suspects should not be brought into 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 suspect. A suspect should not be brought back to the home of a victim or witness unless that was the scene of the crime.
- 7.8 Police officers must not do or say anything that may convey to the witnesses that they have evidence of the suspect's guilt. Officers should turn down their radios to reduce the likelihood that the witness they are transporting may overhear information about the stop of the suspect.
- 7.9 The suspect should be viewed by one witness at a time and out of the presence or hearing of other witnesses. Witnesses who have viewed the suspect should not be permitted to communicate with those who have not until the identification procedure is completed.
- 7.10 To avoid detaining a suspect longer than is absolutely necessary, once a witness has positively identified the suspect at a show-up, officers should not request that additional witnesses attempt to identify the same suspect. Additional witnesses should be reserved for additional identification procedures (line-ups, photo arrays, etc.) at a later date.
- 7.11 Officers may transport victims or witnesses in police vehicles to cruise the area where a crime has just occurred in order for them to attempt to point out the offender. While checking the area, officers must be careful not to make any statements or comments to the witnesses which could be considered suggestive.
- 7.12 Officers should make written notes of any identification and any statements made by witnesses at the time of confrontation with the suspect. Once a witness has indicated his/her opinion that the suspect is the offender, the officer should ask the witness how certain he is of the identification. Officers should ask the witness not to use a numerical scale, but rather to indicate certainty in his/her own words. All statements by the witnesses should be incorporated into the officers' report.
- 7.13 When an Officer conducts a Show-Up in the field, he/she will document the actions in their PBP Form 3.0 Investigative Report. The documentation of the Show-Up will include, at a minimum, the following information:
 - 7.13.1 The name of the Officer conducting the Show-Up;
 - 7.13.2 The date and time of the Show-Up;
 - 7.13.3 The procedure used, including the location of the Show-Up and whether the witness was transported to the suspect's location or the suspect was transported to the witness's location;
 - 7.13.4 The appearance of the suspect;
 - 7.13.5 Any specific instructions or information provided to the witness;
 - 7.13.6 Any specific words, conduct or gestures required of the suspect at the time of the Show-Up;
 - 7.13.7 The names of all persons present during the Show-Up.
- 7.14 Unless it is prevented by circumstances in the field, a Show-Up should be recorded by one or more Mobile Video/Audio Recording Device from one or more PBP vehicle on scene.

8.0 Preparing a Photo Array

- 8.1 When assembling a photo array, officers should endeavor to use a current and accurate photograph of the suspect. They should select filler photographs based on their similarity to the witness's description of the offender. Nothing about the suspect or his/her photo should make him/her stand out.
- 8.2 Except in extraordinary circumstances, an array should contain seven fillers and only one suspect photograph. All photographs should be of the same general size and basic composition. Officers must not repeat fillers with the same witness from one array to next and should mark the back of each photo with numbers one through eight. None of the photos may bear markings indicating previous arrests.

8.3 If the suspect has a unique or unusual feature, such as facial scars or tattoos, severe injuries, etc., the officer preparing the array should ensure a consistent appearance between the suspect and fillers by selecting fillers who display similar features (tattoos, scars, injuries, etc.) or by covering the affected area on every photograph. In extraordinary circumstances where it is impossible to find a suitable number of fillers who display similar features, contact a Deputy District Attorney from the DA's Specialty Unit assigned to the crime being investigated for specific guidance.

8.4 Once the array has been assembled, the officer should examine it to ensure that nothing about the suspect's photo makes him/her unduly stand out.

9.0 Showing a Photo Array

9.1 The showing of a photo array must be conducted in a manner that promotes reliability, fairness and objectivity.

9.2 Whenever practicable, officers should videotape or audiotape the showing of a photo array.

9.3 Each witness must view the photographs independently and out of the presence and hearing of the other witnesses.

9.4 Officers must avoid suggestive statements that may influence the judgment or perception of the witness.

9.5 A second officer who is unaware of which photograph depicts the suspect and who is not involved in the investigation, should actually show the photographs to the witness. This technique, called double-blind administration, is intended to ensure that the witness does not interpret a gesture or facial expression by the officer as an indication as to the identity of the suspect. It also allows the prosecution to demonstrate to the judge or jury that it was impossible for the officer showing the photographs to indicate to the witness, intentionally or unintentionally, which photograph he should select.

9.6 If it is not practicable to use double-blind administration, a blinded technique such as the folder shuffle should be used. In all cases, officers shall employ techniques that ensure that no officer present for the showing of an array can tell when the witness is viewing a photograph of the suspect.

9.7 The investigating officer or the second officer (the administrator) should carefully instruct the witness by reading from a departmental Photo Array Instruction Form (*PBP Form #400.50*), and the witness should be asked to sign the form indicating that he understands the instructions. The investigating officer and the administrator should also sign and date the form.

9.8 When the double-blind technique is used, the officers should explain to the witness that the officer showing the array does not know the identity of the people in the photographs. The investigating officer shall leave the room while the administrator conducts the photo array.

9.9 The officer shall show the photographs to the witness sequentially and ask the witness whether or not he/she recognizes the offender from any of the photographs.

9.10 If the witness identifies a photograph, the officer should ask the witness how certain he/she is of the identification. Officers should ask the witness not to use a numerical scale, but rather his/her own words.

9.11 Witnesses who ask to see a photo or line-up participant a second time should be shown the entire array or lineup. Array or lineups shall not be shown more than two times. The order of the photographs should be shuffled before the array is shown for the second time.

9.12 The photo array should be preserved as evidence in the same order as when the identification was made.

9.13 If more than one witness is to view an array and a witness has already marked one of the photos, a separate unmarked array shall be used for each subsequent witness.

9.14 When an officer is showing a photographic array or lineup to a subsequent witness in the same investigation, officers should shuffle the order to demonstrate that there could be no collusion between the two witnesses.

9.15 All photo arrays and Photo Array Instruction Forms (PBPB Form 400.50) will be preserved regardless of whether an identification was made.

10.0 Line-ups

- 10.1 Line-ups shall be conducted under the direction of a police supervisor. Except in emergency situations, line-ups should only be conducted after consultation with the Deputy District Attorney from the DA's Specialty Unit assigned to the crime that is being investigated.
- 10.2 A suspect cannot be detained and compelled to participate in a line-up without probable cause to arrest. If a suspect refuses to participate in a line-up, the District Attorney's Office may be asked to apply for a court order to compel the suspect to cooperate.
- 10.3 Before any suspect who has been arraigned or indicted is shown to eyewitnesses in a line-up, or other live identification procedure, he/she must be informed of his right to have an attorney present at the line-up and of his/her right to be provided with an attorney without cost if he/she is unable to afford 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. (*PBP Form #400.61*),
- 10.4 Officers must select a group of at least five fillers who fit the description of the offender as provided by the witness(es). Because the line-up will be administered by an officer who does not know the identity of the suspect, the fillers selected should not be known to the officer administering the line-up. In selecting line-up fillers, abide by the guidelines for photo array fillers as described above.
- 10.5 The suspect should be viewed by one witness at a time and out of the presence or hearing of other witnesses. Witnesses who have viewed the suspect should not be permitted to communicate with those who have not until the identification procedure is completed.
- 10.6 All persons in the line-up should carry cards that identify them only by number and should be referred to only by their number. As with photo arrays, each witness must view the line-up independently, out of the presence and hearing of the other witnesses.
- 10.7 The investigating officer should explain to the witness that a second officer (the line-up administrator) will be conducting the line-up, and that the administrator does not know the identity of the people participating.
- 10.8 The investigating officer must carefully instruct the witness by reading from a PBP Line-up Instruction Form (*PBP Form #400.60*), and the witness should be asked to sign the form indicating that he/she understands the instructions. The investigating officer should also sign and date the form.
- 10.9 The investigating officer must leave the room while the line-up administrator conducts the line-up.
- 10.10 The procedure for showing the participants to the witness and for obtaining a statement of certainty, including requests for additional viewings, is the same as for photo arrays. Whenever practicable, the police should videotape or audiotape a line-up.
- 10.11 When an attorney for the suspect is present, the attorney should be permitted to make reasonable suggestions regarding the composition of the line-up and the manner in which it is to be conducted. Any suggestions made by the suspect's attorney, and any actions taken by the officer on those suggestions, should be included as part of the line-up report.
- 10.12 Counsel representing the suspect should be afforded sufficient time to confer with his/her client prior to the line-up. Once the line-up has commenced, attorneys should function primarily as observers, and should not be permitted to converse with the line-up participants, or with the witnesses, while the line-up is underway. The concept of blind administration requires that no one be present who knows the identity of the suspect. For this reason, any attorney who knows the suspect should leave the room before the line-up begins. An attorney who does not know the suspect may attend the line-up on behalf of defense counsel or the assistant district attorney.
- 10.13 The suspect's attorney is not legally entitled to the names or addresses of the witnesses attending a line-up if the suspect has not yet been arraigned or indicted. If the suspect's attorney insists on having information about line-up witnesses, they should be advised to contact the District Attorney's Office.

- 10.14 During a line-up, 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. If officers ask the participants to wear an article of clothing, they must guard against circumstances where the article only fits the suspect. All line-up participants shall be asked to perform the same actions.
- 10.15 Line-up participants must not speak during the line-up. If identification of the suspect's voice is desired, a separate procedure must be conducted. (See section on Voice Identification below.)
- 10.16 After a person has been arrested, he/she may be required to participate in a line-up regarding the crime for which he/she was arrested. After arrest, a suspect may lawfully refuse to participate in a line-up only if he/she has a right to have counsel present (post arraignment/indictment) and counsel is absent through no fault of the suspect or his attorney.
- 10.17 When an Officer conducts a Line-Up in relation to a specific crime, he/she will document the actions in their PBP Form 3.0 Investigative Report or on a PBP 5.0 Supplemental Report. The documentation of the Line-Up will include, at a minimum, the following information:
 - 10.17.1 The name of the Officer(s) conducting the Line-Up;
 - 10.17.2 The date, time and location of the Line-Up;
 - 10.17.3 The procedure used;
 - 10.17.4 The appearance of the suspect and the number of fillers employed;
 - 10.17.5 Any specific instructions or information provided to the witness;
 - 10.17.6 Any specific words, conduct or gestures required of the suspect at the time of the Line-Up;
 - 10.17.7 The names of all persons present during the Line-Up.

11.0 Voice Identification

- 11.1 Although considerably less common than visual identifications, voice identifications may be helpful to criminal investigations where the victim or witness was blind, the crime took place in the dark, the subject was masked, the witness's eyes were covered by the perpetrator, or they were never in the same room with the perpetrator but heard his/her voice. If officers wish to conduct a voice identification procedure with a witness who also saw the subject, it should only be conducted after consultation with a police supervisor or the Deputy District Attorney from the DA's Specialty Unit assigned to the crime that is being investigated.
- 11.2 As with any in-person identification or confrontation, if the suspect has been arraigned or indicted, he/she has a right to the presence of counsel at the voice identification procedure.
- 11.3 Where a voice identification is attempted, the following procedures should be employed to the extent possible:
 - 11.3.1 As in a line-up, there should be at least six persons whose voices will be listened to by the witness; one-on-one confrontations should be avoided. Because line-ups will be administered by an officer who does not know the identity of the suspect, the fillers should not be known to the officer administering the procedure;
 - 11.3.2 The suspect and other participants shall not be visible to the witness; this can be done by using a partition, or by similar means;
 - 11.3.3 All participants, including the suspect, shall be instructed to speak the same words in the same order;
 - 11.3.4 The words recited by the participants shall not be the ones spoken by the offender during the crime; the line-up participants should speak neutral words in a normal tone of voice;
 - 11.3.5 When both a visual and voice line-up are conducted, the witness should be informed that the line-up participants will be called in a different order and by different numbers;
 - 11.3.6 If there are two or more suspects of a particular crime, officers must present each suspect to witnesses in separate line-ups. Different fillers should be used to compose each line-up.
- 11.4 As with any identification procedure, police officers 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.

- 11.5 The investigating officer should carefully instruct the witness by reading from a departmental Voice Identification Line-up Instruction Form (*PBP Form #400.70*), and the witness should be asked to sign the form indicating that he/she understands the instructions. The officer should also sign and date the form. Whenever practicable, officers should videotape or audiotape the procedure.
- 11.6 Officers must adhere to the principles of blind administration as described above. As is the case with photo arrays and line-ups, the investigating officer must leave the room while the administrator conducts the procedure.
- 11.7 When an Officer conducts a Voice Identification Line-Up, he/she will document the administration of the Voice Identification Line-Up in the same manner described above in section 10.18.

12.0 DEVIATIONS

- 12.1 Deviations of this policy may be authorized at the discretion of the Chief of Police for certain, sensitive investigations.

Approved By:



Scott Schubert
A/Chief of Police

