

**East Lansing Police Department
Policy & Procedure**

Subject: Criminal Investigation – Eyewitness Identification	ELPD Policy #: 400-2
Effective Date: 1-1-2021 Revised Date:	Distribution: All Sworn Personnel
MACP Accreditation Standard : Eyewitness Identification	MACP Standard: 4.1.2

I. PURPOSE

The purpose of this policy is to establish guidelines for eyewitness identification procedures using photographic Line-ups and live Line-ups, both in custody and not in custody.

II. POLICY

- A. It is the policy of this agency that eyewitness identifications be conducted in a manner most likely to assess witnesses' true and reliable recollections in compliance with state and federal constitutional requirements. Officers shall afford witnesses, suspects and defendants all legal rights that are afforded any citizen. The core objectives of this policy are to ensure constitutional rights by improving the ability of officers to act appropriately during eyewitness identifications.
- B. Further, this policy is intended to reduce misidentifications, improve the reliability of identifications and establish evidence that conforms to legal precedent. The double-blind procedure in which neither the officer conducting the Line-up nor the witness is aware of the suspect's identify, is the preferred method. If this method is not practicable, an alternative technique of "blinded" administration may be used in which the officer may know the suspect's identify but cannot see which photograph is being viewed by the witness at a given time (e.g., the folder shuffle method in which photographs are placed in a folder and shuffled and then handed over to the eyewitness.)
- C. Definitions
 - 1. Double-blind presentation or Line-up
 - a. The officer (and witness) does not know which photograph or person is the subject. Double-blind is the proper term to use but is often used interchangeably with the term "blind" and means the same thing.

2. Blinded administration is when the officer knows the suspect's identify but cannot tell which suspect is being viewed at a given time such as through use of the folder shuffle method.
3. Sequential presentation is a display of photographs of persons one at a time, where the officer retrieves one before presenting another.
4. Simultaneous presentation is a display of photographs or persons presented at the same time, either manually constructed or computer generated.
5. Show-up is the presentation of a live person in the field who is close in time and proximity to the incident under investigation.
6. Confidence statement is a witness's statement about his or her selection and the confidence with which it is made. It is taken immediately after the selection has been made.

(OFFICER is any sworn member of the East Lansing Police Department)

III. PROCEDURE

- A. Vine Link or OTIS (Offender Tracking Information System) should be checked to see if the suspect of an investigation is in custody. If the suspect is in custody, reasonable efforts should be made to do a live line-up. If the suspect is in custody in another facility, but too far away to reasonably do a live line-up or the suspect refuses to participate in a live line-up, a photo line-up should be used.
- B. Instructions to witnesses shall be read from the Eyewitness Identification form, which shall also include a witness's affirmation of his or her confidence statements. A video record with audio is the preferred method of documenting the presentations. Presentations, forms and video record shall be treated as evidence with documentation included in the investigative file whether or not the witnesses made identifications.
- C. Obtaining a Description of the Perpetrator
 1. Prior to any Line-up, officers should attempt to record a thorough description of the perpetrator from each eyewitness, taken separately for each eyewitness in his or her own words.
- D. Witness Instructions

1. Prior to the start of the identification procedure, the officer shall read the "Witness Instructions" for photographic Line-ups or live Line-ups from the Eyewitness Identification Form. The witness shall sign the form to indicate that he or she understands the instructions.

IV. TYPES OF LINE-UPS

A. Photograph Line-up

1. Organizing a Photographic Line-up
 - a. Include only one suspect in each identification procedure with a minimum of five fillers. Fillers shall match the witness's description of the perpetrator in significant features including any unique or unusual features.
 - b. All photographs shall be contemporary and similar in size. There should be consistency in personal features across all pictures and background colors as well if possible. The photographs shall be numbered.
 - c. When conducting a single Line-up for multiple witnesses, renumber photographs for each witness.
 - d. If the witness has previously viewed a photo Line-up in connection with the offense, use different fillers.
2. Conducting a Photographic Line-up
 - a. Whenever possible, a blind administrator, e.g., an officer who does not know the suspect's identify, should conduct the procedure. If that is not practicable, a blinded administration technique such as the folder shuffle may be used (see below for details).
 - b. Prior to the presentation, read instructions to the witness on the Eyewitness Identification form, ensuring and documenting that they understand the instructions.
 - c. If conducting a simultaneous presentation, photographs are presented at the same time.
 - d. If using sequential presentation:

- i. The officer shall display the photographs to the witness by replacing one photograph with another so that no two are presented at the same time
- ii. The officer shall present each photograph to the witness, even if the witness identifies a previous photograph as the suspect
- iii. At the request of the witness, the officer may present the photographs again; each photograph must be presented and presented sequentially.
- iv. After each photograph is presented, ask if the witness recognizes the person. Even if the witness identifies a previous photograph as the suspect, present each photograph in the series.
- v. At the request of the witness, the officer may present the photographs one more time. If an identification is made, record a statement of confidence on the instruction form which shall be signed by the witness.

B. Blinded Administration (Folder Shuffle Method)

1. The Folder Shuffle Method

- a. Devised to address concerns surrounding limited resources while removing any possibility of suggestiveness in the procedure. Should the investigating officer of a particular case be the only officer available to conduct a photo Line-up, the following instructions are recommended:
 - i. Use one suspect photograph that resembles the description of the perpetrator provided by the witness, five filler photographs that match the description and four dummy folders (four of the folders will not contain any photos and will serve as "dummy folders"), for a total of ten folders.
 - ii. Affix one filler photo to Folder #1 and number the folder
 - iii. The officer shall place the suspect photograph and the other four filler photographs into Folder #2-6 and shuffle the photographs so that he is unaware of which folder the suspect is in and then number the

remaining folders, including folders #7-10 which will remain empty (this is done so that the witness does not know when he sees the last photo).

- b. Prior to the presentation, read instructions to the witness ensuring and documenting that they understand the instructions.
- c. Without looking at the photo in the folder, the officer is to hand each folder to the witness individually. Each time the witness has viewed a folder, the witness should indicate whether or not this is the person the witness saw and the degree of confidence in this identification and return the photo to the officer. The order of the photos should be preserved in a facedown position in order to document.
- d. The officer should then document and record the results of the procedure, including the order of the folders used.
- e. If an identification is made, record a statement of confidence on the instruction form which shall be signed by the witness.

B. Live Line-ups (Both in Custody and Not In Custody)

1. Conducting and organizing live Line-ups:

- a. If an in-custody Line-up is to be conducted at ICSO, contact the current inmate worker coordinator Deputy at ICSO to help facilitate the Line-up.
- b. If a non-in-custody Line-up is to be conducted, please contact the current inmate worker coordinator Deputy at ICSO to help facilitate the Line-up. Please refer to the instructions put forth by the ICPO.
- c. In the rare instance that a live in-custody Line-up is to be conducted at any other (non ICSO) law enforcement agency or correctional facility, contact that agency for assistance in facilitating the Line-up and consult with the ICPO.
- d. Prior to conducting the Line-up, have the Line-up administrator read the instructions to the witness from the Live Line-up form.
- e. When possible, have the Line-up conducted by a blind administrator. It may be necessary for the East Lansing

Police Department to bring an additional officer to the outside facility to administer the blind Line-up.

- f. If identification is made, record a statement of confidence on the Live Line-up form.

C. Show-ups

1. Show-ups shall be conducted only when the suspect is detained within a reasonably short timeframe following the offense.
2. The witness shall be transported to the suspect's location whenever possible. Presentations shall be recorded when possible.
3. Officers shall avoid suggestive words or conduct, such as presenting the suspect in handcuffs, from the back seat of a patrol car or being physically restrained by police.
4. Separate witnesses to avoid communication among them and obtain a thorough description of the suspect from each witness separately prior to the Show-up. A suspect shall only be viewed by one witness at a time, out of the presence and earshot of other witnesses.
5. If an identification is made, record a statement of confidence in the police report.

D. Witness Confidence Statement

1. Regardless of the type of identification procedure employed, if an identification is made, the officer shall ask the witness immediately for a statement of confidence in his or her selection in his or her own words. The statement shall be documented by the officer and signed by the eyewitness, unless done in conjunction with a Show-up. If a Show-up is conducted, document in the official police report; consider using MVR or BWC as a method to record confidence statement of witness.

E. Documenting the Identification Procedure

1. The identification procedure shall be carefully documented. The preferred method of documenting the identification procedure is a video record with audio. Documentation, which shall be treated as evidence, shall include the following:
 - a. Name of the administrator and eyewitness

- b. Date and time of the identification procedure
- c. Names and sources of fillers used in photo and live Line-ups
- d. In a photo or live Line-up, any eyewitness identification of a filler
- e. All identification and non-identification results obtained during the procedure, including witness confidence statements signed by the witness
- f. If a photo Line-up is developed electronically, the Line-up shall be printed for documentation.

**EAST LANSING POLICE DEPARTMENT
EYEWITNESS IDENTIFICATION FORM: PHOTO LINE-UP**

Case Number: _____

Law Enforcement Official Name: _____

Date/Time of Presentation: _____

Witness Name: _____

Attorney Name and TX, if present: _____

Instructions:

In a moment, I'm going to show you some photographs. A photograph of the person who is involved in the crime may or may not be among them. You will be shown all of the photographs and you may take your time looking at them. You should not feel compelled to make an identification. The police department will continue to investigate the incident whether or not you select someone.

If you pick a photograph, I'm going to ask you to explain why you picked that photograph and to describe how confident you are in your selection.

Please do not ask questions about the person you have selected because we cannot share that information with you at this time. Since this is an ongoing investigation, you should not discuss the identification procedures or results with other people.

Do you understand these instructions?

WITNESS SIGNATURE

I, _____, affirm that I read or was read the instructions above, that I understand the instructions and that the statement written by the law enforcement official accurately reflects what I said.

Finally, I understand that I should not talk to other people about the photos or tell them which photo I picked, if any.

Signature of Witness: _____

**WITNESS STATEMENT OF CONFIDENCE
(FILLED OUT BY LAW ENFORCEMENT)**

Witness picked photograph number: _____

Witness confidence statement:

**EAST LANSING POLICE DEPARTMENT
EYEWITNESS IDENTIFICATION FORM: LIVE LINE-UP**

Case Number: _____

Law Enforcement Official Name: _____

Date/Time of Presentation: _____

Witness Name: _____

Attorney Name and TX, if present: _____

INSTRUCTIONS

In a moment, I'm going to show you some individuals. The person who is involved in the crime may or may not be among them. You will be shown all of the individuals and you may take your time looking at them. You should not feel compelled to make an identification. The police department will continue to investigate the incident whether or not you select someone.

If you pick an individual, I'm going to ask you to explain why you picked that person and to describe how confident you are in your selection.

Please do not ask questions about the person you have selected because we cannot share that information with you at this time. Since this is an ongoing investigation, you should not discuss the identification procedures or results with other people.

Do you understand these instructions?

WITNESS SIGNATURE

I, _____, affirm that I read or was read the instructions above, that I understand the instructions and that the statement written by the law enforcement official accurately reflects what I said.

Finally, I understand that I should not talk to other people about the Line-up or tell them which individual I picked, if any.

Signature of Witness: _____

**WITNESS STATEMENT OF CONFIDENCE
(FILLED OUT BY LAW ENFORCEMENT)**

Witness picked person number: _____

Witness confidence statement:

**EAST LANSING POLICE DEPARTMENT
EYEWITNESS IDENTIFICATION FORM: FOLDER METHOD**

Case Number: _____

Law Enforcement Official Name: _____

Date/Time of Presentation: _____

Witness Name: _____

Attorney Name and TX, if present: _____

Instructions: (Read by law enforcement official to witness)

In a moment, I'm going to show you some folders that contain photographs. A photograph of the person who is involved in the crime may or may not be among them. You will be shown all of the photographs and you may take your time looking at them. You should not feel compelled to make an identification. The police department will continue to investigate the incident whether or not you select someone.

If you pick a photograph, I'm going to ask you to explain why you picked that photograph and to describe how confident you are in your selection.

Please do not ask questions about the person you have selected because we cannot share that information with you at this time. Since this is an ongoing investigation, you should not discuss the identification procedures or results with other people.

Do you understand these instructions?

WITNESS SIGNATURE

I, _____, affirm that I read or was read the instructions above, that I understand the instructions and that the statement written by the law enforcement official accurately reflects what I said.

Finally, I understand that I should not talk to other people about the photos or tell them which photo I picked, if any.

Signature of Witness: _____

**WITNESS STATEMENT OF CONFIDENCE
(FILLED OUT BY LAW ENFORCEMENT)**

Witness picked folder number: _____

Witness confidence statement:

**EAST LANSING POLICE DEPARTMENT
LINE-UP IDENTIFICATION CHECKLIST**

- Ensure line-up is conducted with a blind administrator/"blinded" administrator using the folder shuffle method.

"Blind" means the administrator does not know the identity of the suspect in the line-up.

"Blinded" means the administrator may know who the suspect is, but by virtue of the use of procedures and/or technology to accomplish this purpose, does not know which line-up member is being viewed by the eyewitness.

- Provide the following line-up instructions to the witness.
The perpetrator may or may not be among the persons in the identification procedure.

The administrator does not know who the suspect is.

You should not feel compelled to make an identification.

The investigation will continue whether or not identification is made.

The procedure requires the administrator to ask you to state, in your own words, how certain you are of any identification.

You should not discuss the identification procedure or its results with other eyewitnesses involved in the case and you should not speak with the media.

- Ensure all fillers/non-suspect photos match the description of the perpetrator provided by the witness.

Record the description that the witness gave of the perpetrator. The line-up will be composed of fillers that generally resemble the description of the perpetrator in significant features (i.e., face, weight, build, skin tone, etc.) including any unique or unusual features (i.e., scar, tattoo, etc.)

- Record the witness' confidence statement.

If the witness makes identification, the administrator should document below in the witness' own words, how confident he/she is that the individual identified is the perpetrator.

FOLDER SHUFFLE METHOD: A “Blinded” Administration Technique

To enhance the accuracy of an eyewitness identification procedure, the officer administering a line-up should know which line-up member is the police suspect. Eyewitness identification procedures should therefore be conducted by a non-investigating or “blind” administrator.

Understandably, small police departments with limited officer manpower or larger departments with officers conducting identifications in the field may believe that the requirement of “blind administration” or eyewitness procedures is unfeasible. Yet, this need not be the case. Workable solutions have emerged to address this concern. Law enforcement agencies that have implemented this reform report that they are able to “blind” the administrator without expending additional manpower resources. This is done through the time-tested “folder system” or by means of emerging laptop technology.

THE FOLDER SHUFFLE METHOD

The “folder Shuffle Method” was devised to address concerns surrounding limited resources while allowing for blind administration. Should the investigating officer of a particular case be the only law enforcement personnel available to conduct a photo line-up, the following instructions are recommended:

Use one suspect photograph that resembles the description of the perpetrator provided by the witness, five filler photographs that match the description but do not cause the suspect photograph to unduly stand out and ten folders (four of the folders will not contain any photos and will service as ‘dummy folders’.)

Affix one filler photo to Folder #1 and number the folder

The individual administering the line-up should place the suspect photograph and the other four filler photographs into Folders #2-6 and shuffle the photographs so that he is unaware of which folder the suspect is in, and then number the remaining folders including Folders #7-10, which will remain empty. (This is done so that the witness does not know when he has seen the last photo.)

The administrator should provide instructions to the witness. The witness should be informed that the perpetrator may or may not be contained in the photos he is about to see and that the administrator does not know which folder contains the suspect.

Without looking at the photo in the folder, the administrator is to hand each folder to the witness individually. Each time the witness has viewed a folder, the witness should indicate whether or not this is the person the witness saw and the degree of confidence in this identification and return the photo to the administrator. The order of the photos should be preserved, in a facedown position, in order to document in Step 6.

The administrator should then document and record the results of the procedure. This should include: the date, time and location of the line-up procedure; the name of the administrator; the names of all of the individuals present during the line-up; the number of photos shown; copies of the photographs themselves; the order in which the folders were presented; the sources of all of the photos that were used; a statement of confidence *in the witness' own words* as to the certainty of his identification, taken immediately upon reaction to viewing; and any additional information the administrator deems pertinent to the procedure.

*The information described above was informed by "Eyewitness Identification Procedure Recommendations" put forth by a Wisconsin Task Force as well as existing research on the folder shuffle.

Links to Eyewitness Identification Instructional Videos and Training Materials

Police Line-up Instructions Video: <http://www.youtube.com/watch?v=HY8NzTCT97Q>

Folder Shuffle Instructional Video: <https://www.youtube.com/watch?v=i5a75NShfAc>

Photo Array Instructional Video:
<https://www.youtube.com/watch?v=PxQ8bYQNAyg&feature=youtu.be>

Additional Training Materials:
<http://norwoodpolice.com/chieftainingmaterials.html>

V. CANCELLATIONS

Authorized By:



Kim Johnson, Chief of Police