

# Eyewitness Identification

## 604.1 PURPOSE AND SCOPE

This policy sets forth guidelines to be used when members of this office employ eyewitness identification techniques (Md. Code PS § 3-506).

### 604.1.1 DEFINITIONS

Definitions related to this policy include (Md. Code PS § 3-506.1):

**Eyewitness identification process** - Any field identification, live lineup or photographic identification.

**Field identification/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, also known as a show-up.

**Live lineup** - A live presentation of individuals to a witness for the purpose of identifying or eliminating an individual as the suspect.

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

**Confirmatory Identification Presentation** - A confirmatory identification is an identification procedure in which a witness or victim who already has prior familiarity with a suspect - through personal knowledge, repeated prior interactions, or sufficient recognition of appearance - is shown a single photograph of the suspect solely for the purpose of confirming the individual's identity. The degree of prior familiarity is a critical factor in determining whether this procedure is appropriate. Because the witness already knows the suspect, confirmatory identification is not considered an investigative lineup, photo array, or show-up, and is generally not subject to the same due process concerns regarding suggestiveness.

## 604.2 POLICY

The St. Mary's County Sheriff's Office 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. It is the policy of the St. Mary's County Sheriff's Office that a criminal investigation will not be concluded or otherwise cease based solely on eyewitness identification. Investigations will continue until all physical evidence has been collected and examined, all witnesses identified, and all reasonable leads explored.

Eyewitness identification is one of the many tools used by law enforcement in the investigation of crime. This investigative tool is vigorously challenged by defense attorneys. Therefore, it is critical that eyewitness identification be conducted in a professional, structured manner, and supported by written documentation and physical evidence. Members of the office will conduct fair and impartial eyewitness identification processes as outlined in the Department of Justice guidelines.

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### **604.3 INTERPRETIVE SERVICES**

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.

Before the interpreter is permitted to discuss any matter with the witness, the investigating member should explain the identification process to the interpreter. Once it is determined that the interpreter comprehends the process and can explain it to the witness, the eyewitness identification may proceed as provided for within this policy.

### **604.4 EYEWITNESS IDENTIFICATION PROCESS AND FORM**

The Criminal Investigations supervisor shall be responsible for the development and maintenance of an eyewitness identification process for use by members when they are conducting eyewitness identifications.

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 shall be given to inform them that the perpetrator may or may not be among those presented and that the witness is not obligated to make an identification (Md. Code PS § 3-506.1).
- (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, instructions and identification statement.
- (j) A signed statement from the witness should be obtained describing in the witness's own words how certain he/she is of the identification or non-identification. This statement should be taken at the time of the identification procedure (Md. Code PS § 3-506.1).
- (k) If the identification procedure is captured through audio or video recording, including the witness's statements and remarks about the identification, a written record is not required. (Md. Code PS § 3-506.1).

The process and related forms should be reviewed at least annually and modified when necessary.

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For procedures relating to Eyewitness Identification Process, see the St. Mary's County Sheriff's Office LE Procedures Manual: [Witness Participation](#) and [Instructing the Witness](#)

### **604.5 EYEWITNESS IDENTIFICATION**

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. Members should avoid:

- Mentioning that the individual was apprehended near the crime scene.
- Mentioning that the evidence points to the individual as the suspect.
- Mentioning whether other witnesses have identified or failed to identify the individual as the suspect.
- Having writing or information concerning previous arrests visible to the witness.
- Allowing the witness to write on or mark up any materials that will be used in other identification procedures.

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.

Members should refrain from giving any feedback to the witness regarding an 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.

For procedures related to Eyewitness Identification, see the St. Mary's County Sheriff's Office LE Procedures Manual: ["Mug" Books](#), [Developing and Using Composite Images](#) and [Conducting the Identification Procedure](#)

### **604.6 PHOTOGRAPHIC LINEUP AND LIVE LINEUP CONSIDERATIONS**

When practicable, the member presenting the lineup should not be involved in the investigation of the case or know the identity of the suspect. In no case should the member presenting a lineup to a witness know which photograph or person in the lineup is being viewed by the witness. Techniques to achieve this include randomly numbering photographs, shuffling folders or using a computer program to order the persons in the lineup (Md. Code PS § 3-506.1).

Individuals in the lineup should reasonably match 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 member presenting the lineup may do so either sequentially (i.e., show the witness one person at a time) or simultaneously. The witness should view all persons in the lineup.

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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 member should contact the appropriate prosecuting attorney before proceeding.

Absent unusual circumstances, the St. Mary's County Sheriff's Office will not conduct live lineups. In the event a live lineup is being considered, the member must receive approval from the Sheriff or designee.

### **604.6.1 MULTIPLE EYEWITNESSES**

When there are multiple eyewitnesses (Md. Code PS § 3-506.1):

- (a) The identification procedure shall be conducted separately for each eyewitness. Instructions shall be provided to each eyewitness outside the presence of other eyewitnesses.
- (b) The suspect shall be placed in a different position for each identification procedure conducted for each eyewitness.
- (c) The eyewitnesses may not be allowed to communicate with each other until all identification procedures have been completed.

### **604.6.2 MULTIPLE SUSPECTS**

If an eyewitness has previously participated in an identification procedure in connection with the identification of another person suspected of involvement in the offense, the fillers in the identification procedure shall be different from the fillers used in any prior identification procedure (Md. Code PS § 3-506.1).

### **604.6.3 NUMBER OF LINEUP MEMBERS**

Lineups shall consist of the following number of members, not including the suspect (Md. Code PS § 3-506.1).

- (a) For a live lineup, at least four persons.
- (b) For a photo lineup, at least five photographs.

### **604.7 FIELD IDENTIFICATION CONSIDERATIONS/SHOW-UP**

Field identifications, also known as field elimination show-ups or one-on-one identifications, may be helpful in certain cases, where exigent circumstances make it impracticable to conduct a photo or live lineup identification. A field elimination show-up or one-on-one identification should not be used when independent probable cause exists to arrest a suspect. In such cases, a live or photo lineup is the preferred course of action if eyewitness identification is contemplated.

For procedures relating to Field Identification/Show-up process, see the St. Mary's County Sheriff's Office LE Procedures Manual: [605.10 Field Identification/Show-Ups](#)

### **604.8 CONSIDERATIONS FOR CONFIRMATORY IDENTIFICATION PRESENTATIONS**

- (a) A confirmatory identification may be appropriate when:

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1. The witness has direct, personal knowledge of the suspect (e.g., coworker, neighbor, relative, or acquaintance).
  2. The witness has had repeated interactions with the suspect prior to the offense.
  3. The witness can describe the suspect by physical appearance or context (e.g., "the person who lives in Apartment 3B" or "the man who works at the corner store") but does not know the suspect's name.
  4. The witness expresses certainty of recognition but requires confirmation of identity through an official photograph or record.
  5. A known photograph should be presented to the witness or victim. Preferably, an MVA photograph or, in certain circumstances, a booking photograph, if it is more recent or better depicts the subject as they appear currently.
- (b) A confirmatory identification should not be used when:
1. The witness's familiarity is minimal or incidental (e.g., having only seen the suspect once or in passing).
  2. The witness cannot articulate specific details about how they know or recognize the suspect.

### **604.9 DOCUMENTATION**

A thorough description of the eyewitness process and the result of any eyewitness identification shall be documented in the case report (Md. Code PS § 3-506.1).

If a photographic lineup is utilized, a copy of the photographic lineup presented to the witness shall be included in the case report. In addition, the order in which the photographs were presented to the witness should be documented in the case report.

A written record is not required if a video or audio record of the identification procedure is made that captures all of the information specified in Md. Code PS § 3-506.1.