

 <p style="text-align: center;">BEL AIR POLICE DEPARTMENT</p> <p style="text-align: center;">Policies and Procedures</p> <p style="text-align: center;">Charles A. Moore Chief of Police</p>	CHAPTER: 15
	TITLE: Eyewitness Identification
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15:100 - BACKGROUND:

The identification of a suspect by an eyewitness can be an important component of a criminal investigation but can be equally significant in clearing an innocent suspect. Many people who have been convicted of serious crimes, only to later be exonerated by scientific evidence, were originally convicted based in large part on mistaken identification by a witness. The Bel Air Police Department recognizes that it is as much the responsibility of the police to protect the innocent from conviction as it is to assist in the conviction of the guilty.

The identification of criminal offenders must be approached with extreme caution as the court may exclude eyewitness evidence if it determines that police methods were unnecessarily suggestive.

15:101 – Policy:

It is the policy of the Bel Air Police Department that:

1. Eyewitnesses will be given specific instructions prior to being shown a suspect;
2. Photo arrays and live line-ups will be conducted using sequential rather than simultaneous presentation; and
3. Photos arrays and live line-ups will be conducted using blind administration.
4. Officers conducting any of the following suspect identification methods will document the name, date of birth and source for each person or image displayed to a witness or victim.

15:102 - Definitions:

1. "Administrator" means the person conducting an identification procedure.
2. "Blind" means the administrator does not know the identity of the suspect.
3. "Blinded" means the administrator may know who the suspect is but does not know which lineup member is being viewed by the eyewitness.
4. "Eyewitness" means a person who observes another person at or near the scene of an offense.
5. "Filler" means a person or a photograph of a person who is not suspected of an offense and is included in an identification procedure.
6. "Folder shuffle method" means a system for conducting a photo lineup that:
 - Complies with the requirements of this section
 - Is conducted by placing photographs in folders, randomly numbering the folders, shuffling the folders, and then presenting the folders sequentially so that the

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administrator cannot see or track which photograph is being presented to the eyewitness until after the procedure is completed.

7. "Identification procedure" means a procedure in which a live lineup is conducted or an array of photographs, including a photograph of a suspect and additional photographs of other persons not suspected of the offense, is displayed to an eyewitness in hard copy form or by computer for the purpose of determining whether the eyewitness identifies the suspect as the perpetrator.
8. "Identification statement" means a documented statement that is sought by the administrator when an identification is made:
 - From the eyewitness
 - In the own words of the eyewitness, describing the eyewitness's confidence level that the person identified is the perpetrator of the crime
 - Given at the time of the viewing by the eyewitness during the identification procedure; and
 - Given before the eyewitness is given feedback.
9. "Live lineup" means a procedure in which a perpetrator is placed among a group of other persons whose general appearance resembles the perpetrator.
10. "Perpetrator" means a person who committed an offense.
11. "Suspect" means a person who is suspected of committing an offense.
12. "Show-up": The live presentation of one suspect to an eyewitness shortly after the commission of a crime.

15:103 - General Considerations

Due process requires that identifications be conducted in a fair, objective, and non-suggestive manner. Due process is violated when identification procedures conducted by the police are unnecessarily suggestive and conducive to irreparable mistaken identification.

Upon response to the scene of a crime, an officer should make an effort to prevent eyewitnesses from comparing their recollections of the offender or the incident. Officers may accomplish this by promptly separating the witnesses and interviewing each out of the earshot of the others. Witnesses should not participate in identification procedures together. For example, witnesses should not be transported together to view a suspect during a show-up.

Officers should use caution when interviewing eyewitnesses. Specifically, they should avoid whenever possible the use of leading questions.

Prior to asking an eyewitness to identify a suspect, police officers should obtain a detailed description of the offender.

If practicable, the officer should record the procedure and the witness' statement of certainty. If not, the officer should write down the witness' exact words and incorporate them into his/her report. The witness should be asked to initial and date the front of the photograph selected.

A report of every show-up, photo array, line-up, 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 and identification statement), any statement or reaction by the witness, and any comments made by the witness regarding the identification procedure.

15:104 - Show-ups (one on one identifications)

1. Show-up identifications do not follow the same protocol as “Photo Arrays” or “Live Line-ups.”
2. Show-up identification procedures should only be used soon after a crime has been committed, typically within two hours, or under exigent circumstances, such as the near death of the only available witness. Show-ups should be conducted live whenever possible and not photographically. Officers should not attempt to obtain identifications using drivers license photos on their cruiser MDT’s, unless a dire emergency exists.
3. 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, and the circumstances are such that an immediate confrontation is imperative, the emergency identification procedure shall be conducted in a non-suggestive manner.
4. Every show-up must be as fair and non-suggestive as possible. Specifically, if the suspect is handcuffed, he/she should be positioned so that the handcuffs are not visible to the witness. The suspect should not be viewed when he/she is inside a police vehicle, in a cell, or in jail clothing.
5. Detaining a person who fits the description of a suspect 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 been developed.
6. If the witness fails to make a positive identification and sufficient other evidence has not developed to provide probable cause to make an arrest, the suspect must be permitted to leave. His/her identity should be recorded and included in the officer’s report. A detention record will be completed to document the detainment.
7. If a suspect is stopped within a short time after the commission of the crime, he/she may be taken to a location where he/she can be viewed by a witness for possible identification; or, he/she may be detained at the site of the stop and the witness taken there to view him/her. Transporting the witness to the site of the stop is preferred.
8. 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.
9. Police officers must not do or say anything that might convey to the witnesses that they have evidence of the suspect’s guilt. Officers should turn down their radios so that the witness they are transporting does not pick up information about the stop of the suspect.
10. 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.
11. Once one witnesses has positively identified the subject during a show-up, further identifications should be attempted by means of a photo array or line-up.

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12. 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 perpetrator. While checking the area, officers must be careful not to make any statements or comments to the witnesses which could be considered suggestive.
13. Officers should make written notes of any identifications and any statements made by witnesses at the time of the show-up with the suspect. Once a witness has indicated his/her opinion regarding the identity of the subject, 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 to indicate certainty in his/her own words. All statements by the witnesses should be incorporated into the officers' report.

15:105 – Blind or Blinded Administrator to Conduct Procedures

1. Procedures below will be followed for “Photo Arrays” or “Live-Lineups.”
2. Eyewitness identification procedures shall be conducted by a blind or blinded administrator.
3. An administrator may be blinded through the use of:
 - An automated computer program that prevents the administrator from seeing which photos the eyewitness is viewing until after the identification procedure is completed;
 - or
 - The folder shuffle method.
4. Before an identification procedure is conducted, an eyewitness shall be instructed, without other eyewitnesses present, that the perpetrator may or may not be among the persons in the identification procedure.
5. When an identification is made in a live lineup or photo array, the administrator shall document in writing all identification statements made by the eyewitness.

15:106 – Use of Fillers – In an Identification Procedure

1. Each filler shall resemble the description of the perpetrator given by the eyewitness in significant physical features, including any unique or unusual features;
2. At least five fillers, in addition to the suspect, shall be included when an array of photographs is displayed to an eyewitness; and
3. At least four fillers, in addition to the suspect, shall be included in a live lineup.
4. 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.

15:107 - Witness Instructions

An officer (blinded administrator) conducting an identification procedure must read the witness a set of instructions from a departmental form (show-up card, or photo array or line-up instruction form). Those instructions should include the following:

1. You are being asked to view (some people or a set of photographs).

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- You will be viewing the photographs one at a time in random order.
 - Please look at all of them. I am required to show you the entire series.
 - Please make a decision about each photograph before moving on to the next one.
2. The person who you saw may or may not be (one of the people or in the set of photographs) you are about to view.
 3. You should remember that it is just as important to clear innocent persons from suspicion as to identify the guilty.
 4. The officer (showing the photographs or administering the line-up) does not know whether any of the people in the array are the person you saw. (Not for use with show-ups.)
 5. The individuals (in the photographs) 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 with show-ups.)
 6. Regardless of whether or not you identify someone, the police department will continue to investigate the incident.
 7. If you select someone, the procedure requires us to ask you to state, in your own words, how certain you are.
 8. If you do select someone, please do not ask us questions about the person you have selected, as no information can be shared with you at this stage of the investigation.
 9. Regardless of whether you select someone, please do not discuss the procedure with any other witnesses in the case.
 10. Do you have any questions about the procedure before we begin?

15:108 – Multiple Eyewitnesses

1. The identification procedure shall be conducted separately for each eyewitness;
2. The suspect shall be placed in a different position for each identification procedure conducted for each eyewitness; and
3. The eyewitnesses may not be allowed to communicate with each other until all identification procedures have been completed.

15:109 - Preparing a Photo Array

1. Photo arrays should be shown to witnesses as soon as possible after the commission of a crime.
2. Include one suspect and a minimum of five fillers (non-suspects) in each array. Use a separate array for each suspect. Utilize the “Folder Shuffle Method” described above.
3. Use photographs of the same size and basic composition. Do not include more than one photograph of the same person.

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4. Use a photo of the suspect that closely depicts his/her appearance at the time of the incident.
5. Select fillers who fit the witness' description of the offender given by the witness including significant physical features. This includes any unique or unusual features such facial scars or severe injuries, this can be accomplished by covering the feature. This must be done without altering the photos.
6. Ensure that photos bear no markings indicating previous arrests.
7. Once the array has been assembled, examine it to ensure that nothing about the suspect's photo makes him/her stand out.
8. In cases with multiple witnesses, changing the order of photos from one witness to the next.
9. When showing a witness an array containing a new suspect, avoid using fillers from a previous array.

15:110 - Showing a Photo Array

1. The procedure must be conducted in a manner that promotes reliability, fairness and objectivity.
2. If practicable, the officer should record the procedure (Body Worn Camera). Video or audio recording of the identification procedure can replace identification documentation procedures.
3. Allow each witness to view the photographs independently (Folder Shuffle Method), out of the presence and hearing of the other witnesses.
4. Never make suggestive statements that may influence the judgment or perception of the witness.
5. A blinded administrator who is unaware of which photograph depicts the suspect will actually show the photographs. 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. The technique 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/she should select.
6. The investigating officer or a second officer (the blind administrator) should carefully instruct the witness by reading from a departmental Photo Array Instruction Form, and the witness should be asked to sign the form indicating that he/she understands the instructions. The investigating officer and the administrator should also sign and date the form.
7. For the reasons above, 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 should leave the room while the array is being shown by the blind administrator.
8. The officer should show the photographs to a witness one at a time – utilizing the "Folder Shuffle Method." When the witness signals for the next photograph, the officer should move the previous photograph so that it is out of sight.

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9. The procedure should be repeated until the witness has viewed each photograph. If the witness identifies a subject before all the photographs have been viewed, the officer should remind the witness that he/she is required to show the rest of the photographs.
10. If the witness fails to make an identification, but asks to view the array a second time, the officer administering the identification should ask the witness if he/she was able to make an identification from the original viewing. If the witness is unable to make an identification, but feels that it would be helpful to repeat the procedure, then it is permissible to show the entire array a second time. An array may not be shown more than twice.
11. An identification statement will be completed by the blinded administrator. Does the witness identify or fail to identify a suspect? If the witness identifies the suspect, 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.
12. The witnesses will sign the identification statement which will be preserved as evidence.
13. Document misidentifications (was a filler identified).
14. If more than one witness is to view an array, a separate unmarked array shall be used for each witness.
15. The names of all persons present at the identification procedures, date/time, identities of all photographs used, will be documented

15:111 – Live Line-ups

1. Line-ups shall be conducted under the direction of the Detective Sergeant or his designee, and, after consultation with the Harford County State's Attorney's Office.
2. The blind administrator may record the procedure (Body Worn Camera).
3. 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 State's Attorney's Office may be asked to apply for a court order to compel the suspect to cooperate.
4. 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/her right to have an attorney present at the line-up. Unless a valid waiver is voluntarily and knowingly made, in writing, no such identification may proceed without the presence of the suspect's attorney.
5. Select a group of at least four fillers who fit the description of the subject as provided by the witness(es). Because line-ups 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.
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.
7. The investigator will explain to the witness that a second officer (the blind administrator) will be conducting the line-up, and that he/she does not know the identity of the people

participating.

8. The investigating officer or blind administrator should carefully instruct the witness by reading from a departmental Line-up Instruction Form, 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.
9. The investigating officer should leave the room while the administrator conducts the line-up.
10. The line-up should be conducted so that the suspect and fillers do not actually line up, but rather so that they are displayed to the witness one at a time. This can be accomplished by having them enter the room individually and leave before the next one enters.
11. The procedure for showing the participants to the witness and for obtaining a statement of certainty is the same as for photo arrays. Video or audio recording of the identification procedure can replace identification documentation procedures.
12. 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 should be included as part of the line-up report.
13. Allow counsel representing the accused sufficient time to confer with his/her client prior to the line-up. Once the line-up is commenced, attorneys should function primarily as observers and he/she 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, the attorney should leave the room before the line-up begins. An attorney who does not know which person is the defendant may attend the line-up in place of the suspect's attorney.
14. 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.ⁱ If an attorney in such a situation insists on having information about line-up witnesses, advise him/her to direct his/her request to the State's Attorney's Office.
15. 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 are to 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.
16. Line-up participants must not speak during the line-up.
17. 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 the counsel is absent through no fault of the suspect or his/her attorney.

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15:112 - Courtroom Identification

Prior to conducting any courtroom identification procedure, officers should consult the State's Attorney's Office. The same right to an attorney and the same due process considerations that apply to all other identification procedures also apply to station house and courtroom identifications.

1. If the suspect has been arraigned or indicted, he/she has a right to have counsel present at any in-person identification/confrontation.
2. Live confrontations and informal viewings of the suspect by witnesses must be conducted in such a manner as to minimize any undue suggestiveness.
3. Officers shall not state or suggest that the suspect has been arrested or booked or that he/she 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 courtroom, 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.

15:113 - Drawings and Identi-Kit Composites

An artist's sketch, composite sketch or a computerized drawing can sometimes aid an investigation if the witness has a good recollection of the offender's facial features. However, research has shown that a person selected based on resemblance to composite is more likely to be mistakenly identified. Additionally, building a composite has been shown to lower a witness' accuracy for identifying the offender's face. For these reasons, officers should proceed with extreme caution.

Prior to attempting a sketch or composite, officers should take from the witness and document a full description of the offender.

1. A sketch prepared by a trained artist is preferred over a composite.
2. Sketches and composites should not be attempted prior to the showing of a photo array or line-up.
3. Once the sketch or composite has been completed, the witness should be asked to state in his/her own words how accurately the composite reflects how the suspect appeared during the crime and an identification statement (signed by the witness) will be prepared regarding the sketch or composite procedure.

Reference: Maryland Annotated Code – Public Safety Article §3-506.1

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Approved: _____

Charles A. Moore, Chief of Police

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