

Eyewitness Identification

604.1 PURPOSE AND SCOPE

This policy sets forth guidelines to be used when members of this agency employ eyewitness identification techniques (CRS § 16-1-109; CRS § 16-1-110).

604.1.1 DEFINITIONS

Definitions related to the policy include:

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

Field identification - 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.

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.

604.2 POLICY

The Colorado Department of Revenue 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.

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 (CRS § 16-1-110).

604.4 EYEWITNESS IDENTIFICATION PROCESS AND FORM

The Office of Professional Standards and Training (OPS) Unit 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.

Eyewitness Identification

- (c) The name of the person administering the identification procedure.
- (d) If applicable, the names of all of the 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 (CRS § 16-1-109).
- (g) If the identification process is a photographic or live lineup, an instruction to the witness that the perpetrator may not appear exactly as they 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 (CRS § 16-1-109).
- (i) A signature line where the witness acknowledges understanding the identification procedures and instructions.
- (j) A statement from the witness in the witness's own words describing how certain they are of the identification or non-identification. This statement should be taken at the time of the identification procedure.

The process and related forms should be reviewed at least annually and modified when necessary (CRS § 16-1-109).

See attachment: [DR 8813_e_wo.pdf](#) - Live Lineup - Witness Instructions

See attachment: [DR 8814_e_wo.pdf](#) - Live Lineup - Administrator Form - Confidence Statement

See attachment: [DR 8815_e_wo.pdf](#) - Live Lineup - Case Information Sheet

See attachment: [DR 8816_e_wo.pdf](#) - Live Lineup - Defense Counsel Sheet

See attachment: [DR 8810_e_wo.pdf](#) - Photo Array - Witness Instructions

See attachment: [DR 8811_e_wo.pdf](#) - Photo Array - Administrator Form - Confidence Statement

See attachment: [DR 8812_e_wo.pdf](#) - Photo Array - Case Information

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 (CRS § 16-1-110). Members should avoid mentioning that:

- The individual was apprehended near the crime scene.
- The evidence points to the individual as the suspect.
- Other witnesses have identified, or failed to identify, the individual as the suspect.

Eyewitness Identification

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.

Whenever feasible, the eyewitness identification procedure should be audio and/or video recorded and the recording should be retained according to current evidence procedures.

604.6 PHOTOGRAPHIC 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 (CRS § 16-1-109).

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 (CRS § 16-1-109).

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.

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.

604.7 FIELD IDENTIFICATION CONSIDERATIONS

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 identifications. A field elimination or show-up 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.

When initiating a field identification, the member should observe the following guidelines:

- (a) Obtain a complete description of the suspect from the witness.
- (b) Assess whether a witness should be included in a field identification process by considering:
 1. The length of time the witness observed the suspect.
 2. The distance between the witness and the suspect.
 3. Whether the witness could view the suspect's face.
 4. The quality of the lighting when the suspect was observed by the witness.
 5. Whether there were distracting noises or activity during the observation.

Eyewitness Identification

6. Any other circumstances affecting the witness's opportunity to observe the suspect.
 7. The length of time that has elapsed since the witness observed the suspect.
- (c) If safe and practicable, the person who is the subject of the show-up shall not be handcuffed or in a patrol vehicle (CRS § 16-1-110).
 - (d) 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.
 - (e) The person who is the subject of the show-up should not be shown to the same witness more than once.
 - (f) In cases involving multiple suspects, witnesses shall only be permitted to view the subjects of the show-up one at a time (CRS § 16-1-110).
 - (g) The person who is the subject of the show-up shall 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 (CRS § 16-1-110).
 - (h) If a witness positively identifies a subject of the show-up as the suspect, members should not conduct any further field identifications with other witnesses for that suspect. In such instances members should document the contact information for any additional witnesses for follow up, if necessary.

604.7.1 STATE FIELD IDENTIFICATION REQUIREMENTS

An investigator conducting a field identification shall (CRS § 16-1-110):

- (a) Transport each witness separately to the location of the field identification.
- (b) Conduct the show-up in a well-lit location with an unobstructed view of the subject of the show-up.
- (c) Separate eyewitnesses from one another at the location of the show-up.
- (d) Provide verbal notification as required by CRS § 16-1-110(3)(d) to each witness prior to showing them the subject.
- (e) Ask the witness about their level of confidence when an identification is made and document the response in the witness's own words.
- (f) Use a body-worn camera, or other reliable audio and visual capturing device to create a video of the entire show-up procedure.

Field identifications shall only be used (CRS § 16-1-110):

- (a) When a crime has been reported and:
 1. An investigator, acting on reasonable suspicion, has detained the suspect of the crime within minutes of the commission of the crime and near the location of the crime.
 2. A live or photo lineup is not available as a means of identification given the circumstances.

Eyewitness Identification

3. A witness reasonably believes a subject can identified.
 - (b) To verify the identity of a person involved in an intimate relationship as defined in CRS § 18-6-800.3.
 - (c) To confirm the identity of a family member known to the witness.

If an eyewitness makes an identification at a show-up and the subject is arrested, additional attempts at identifying the subject shall be through a photographic or live lineup (CRS § 16-1-110).

604.8 DOCUMENTATION

A thorough description of the eyewitness process and the results of any eyewitness identification should be documented in the case report (CRS § 16-1-109).

If a photographic lineup is utilized, a copy of the photographic lineup presented to the witness should 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.

604.8.1 REPORTING TO COLORADO DIVISION OF CRIMINAL JUSTICE

The following statistical data regarding field identifications shall be reported to the Colorado Division of Criminal Justice as required by CRS § 24-31-903 (see the Records Section Procedures Policy) (CRS § 16-1-109):

- (a) Date, time, and location
- (b) Gender, age, and race of the subject and any eyewitness
- (c) Alleged crime
- (d) Outcome of the show-up

604.9 PUBLIC ACCESS TO POLICY

This policy shall be made available to the public, without cost, upon request (CRS § 16-1-109).

Attachments

DR 8813_e_wo.pdf

LIVE LINEUP - WITNESS INSTRUCTIONS

- As part of the ongoing investigation into a crime that occurred on _____ at _____ you are about view a lineup. (date)
(location)
- You will look through a one-way mirror and see six people in the lineup. They will not be able to see you. There will be a number associated with each person in the lineup.
- Take as much time as you need to view the lineup.
- The person(s) involved in the crime that you were a victim of or witness to may or may not be present in the lineup.
- Do not assume that I know who the suspect is.
- I want you to focus on the lineup and not look to me or anyone else in the room for guidance about making an identification during the procedure.
- Individuals presented in the lineup may not appear exactly as they did on the date of the incident because features such as hairstyles and facial hair, are easily changed.
- You may ask me to have members of the lineup speak, move or change clothing. If one member is asked to speak, move or change clothing, then all the lineup members will be asked to do the same.
- After you have had an opportunity to view the live lineup, I will ask you if you recognize anyone. If you do, I will ask you the number of the person you recognize and from where you recognize the person. I will also ask you about your level of certainty in your identification.
- The investigation will continue regardless of whether or not you make an identification.
- DO NOT discuss with other witnesses what you see, say or do during this procedure.**

The above instructions have been read to me.

Witness Signature	Date	Time
-------------------	------	------

DR 8814_e_wo.pdf

LIVE LINEUP ADMINISTRATOR FORM – CONFIDENCE STATEMENT

Witness	Administrator
---------	---------------

Instructions to the administrator conducting the live lineup:

- Remain neutral. Do not comment on the identification before, during or after the identification procedure.
- After instructing the eyewitness, stand out of the eyewitness' line of sight, where practical, but still observe and hear the eyewitness.
- Where practicable and appropriate, video record the entire procedure. When video recording is not practicable, the procedure must be audio recorded.
- A photo should be taken of the live lineup when a video recording of the procedure is not made.
- Introduce by name all individuals present in the viewing room to the eyewitness.
- If there is a need to have a lineup member speak, move, change clothing or some other activity, then all lineup members must do the same activity.
- Complete the Case Information Sheet (DR 8815) that accompanies this form.

After the eyewitness has viewed the live lineup, ask the following questions:

Did you recognize anyone in the lineup?

- If the answer to the preceding question is negative, STOP and go to the signature line.
- If the answer is positive, proceed to the next question:

If so, what is the number of the person you recognized?

From where do you recognize that person?

Confidence Statement:

Please choose which of the following statements best describes your level of certainty in your identification:

- I am confident that is the person I saw.
- I am somewhat confident that is the person I saw.
- I am confident the person I saw was not in the lineup.

Witness Signature	Date	Time
-------------------	------	------

DR 8815_e_wo.pdf

LIVE LINEUP CASE INFORMATION SHEET [DO NOT SHOW THIS FORM TO WITNESS]

Complaint or Case Report #		Crime Date	
Crime Location			
Crime Committed			
Witness' Name			Was Witness Transported? <input type="checkbox"/> Yes <input type="checkbox"/> No
Transporting Officer			
Division			
Lineup Administrator			
Division			
Investigating Officer			
Division			
Security Officer			
Rank		Command	ID #
Deputy District Attorney Present? <input type="checkbox"/> Yes <input type="checkbox"/> No	Name		
Interpreter Present? <input type="checkbox"/> Yes <input type="checkbox"/> No	Name		Language
Select the appropriate box. <input type="checkbox"/> Video Only <input type="checkbox"/> Audio & Video <input type="checkbox"/> Audio Only			
Lineup photograph taken? <input type="checkbox"/> Yes <input type="checkbox"/> No			
Position	Name		
1			
2			
3			
4			
5			
6			
Suspect's Name		Date of Birth	Position

Record the words and gestures of the witness during the identification procedure and confidence statement.

Signature of Administrator

Date

Time

DR 8816_e_wo.pdf

LIVE LINEUP – DEFENSE COUNSEL SHEET

Suspect's Attorney Present? Yes No

Defense Attorney: _____ Telephone: _____

The Defense Attorney was instructed not to speak while in the viewing room with the witness?

Yes No

If Defense Attorney makes requests about the live lineup, record the request and whether the request was agreed to or refused:

1. Request _____

Agreed Refused

2. Request _____

Agreed Refused

3. Request _____

Agreed Refused

4. Request _____

Agreed Refused

DR 8810_e_wo.pdf

PHOTO ARRAY - WITNESS INSTRUCTIONS

- As part of the ongoing investigation into a crime that occurred on _____ at _____ you will view a photo array. (date)
(location)
- It consists of six photographs of individuals. Each photograph has a number underneath the photograph.
- Take as much time as you need to view the photo array.
- The photographs may or may not include the person(s) involved in the crime that you were a victim of or witness to.
- Do not assume that I know who the suspect is.
- I want you to focus on the photo array and not look to me or anyone else in the room for guidance about making an identification during the procedure.
- Individuals presented in the photo array may not appear exactly as they did on the date of the incident because features such as hairstyles and facial hair, are easily changed.
- Photographs may not always depict the true complexion of a person; it may be lighter or darker than shown in the photo.
- Pay no attention to any markings that may appear on the photos or any other difference in the type or style of the photographs.
- After you have had an opportunity to view the photo array, I will ask you if you recognize anyone. If you do, I will ask you the number of the person you recognize and from where you recognize the person. I will also ask you about your level of certainty in your identification.
- If you believe one of the photographs is the person involved in this crime, I will ask you to please sign and initial the appropriate photo and mark the appropriate number in the space provided on the Photo Array Form.
- The investigation will continue regardless of whether or not you make an identification.
- DO NOT discuss with other witnesses what you see, say or do during this procedure.**

The above instructions have been read to me.

Witness Signature	Date	Time
-------------------	------	------

DR 8811_e_wo.pdf

PHOTO ARRAY ADMINISTRATOR FORM – CONFIDENCE STATEMENT

Witness	Administrator
---------	---------------

Instructions to the administrator showing the photo array:

- Remain neutral. Do not comment on the identification before, during or after the identification procedure.
- Provide the photo array in a closed envelope or folder when handing it to the eyewitness.
- Stand out of the eyewitness' line of sight, where practical, but still observe and listen to the eyewitness as he/she views the photo array.
- Where practicable and appropriate, video record the entire procedure. When video recording is not practicable, the procedure must be audio recorded.
- Complete the Case Information Sheet (DR 8812) that accompanies this form.

After the eyewitness has viewed the photo array, ask the following questions:

Did you recognize anyone in the photo array?

- If the answer to the preceding question is negative, STOP and go to the signature line.
- If the answer is positive, proceed to the next question:

If so, what is the number of the person you recognized?

From where do you recognize that person?

Confidence Statement:

Please choose which of the following statements best describes your level of certainty in your identification:

- I am confident that is the person I saw.
- I am somewhat confident that is the person I saw.
- I am confident the person I saw was not in the lineup.

Witness Signature	Date	Time
-------------------	------	------

DR 8812_e_wo.pdf

PHOTO ARRAY CASE INFORMATION SHEET

[DO NOT SHOW THIS FORM TO WITNESS]

Complaint or Case Report #		Crime Date	
Crime Location			
Photo Array Date	Photo Array Time	Photo Array Location	
Crime Committed			
Witness' Name			Was Witness Transported? <input type="checkbox"/> Yes <input type="checkbox"/> No
Transporting Officer			
Division			
Photo Array Administrator			
Division			
Investigating Officer			
Division			
Interpreter Present? <input type="checkbox"/> Yes <input type="checkbox"/> No	Name		Language
Select the appropriate box. <input type="checkbox"/> Video Only <input type="checkbox"/> Audio & Video <input type="checkbox"/> Audio Only			
<p>The original photo array MUST BE preserved.</p> <p>Attach a copy of the photo array to this form and provide the information below.</p> <p>Choose one: <input type="checkbox"/> Simultaneous <input type="checkbox"/> Sequential</p>			
Position	Name		
1			
2			
3			
4			
5			
6			
Suspect's Name		Date of Birth	Position
Was any photo altered? <input type="checkbox"/> Yes <input type="checkbox"/> No	If yes, which?		
Describe the alteration.			

Record the words and gestures of the witness during the identification procedure and confidence statement.

Signature of Administrator

Date

Time