

TAKOMA PARK POLICE DEPARTMENT - GENERAL ORDERS



	TITLE: Eyewitness Identification	NUMBER: 640C
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	New X Amends Rescinds	General Order 640C, dated September 28, 2007
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01 Compliance with State Law: Maryland law (HR 103) requires all law enforcement agencies to adopt a written policy pertaining to eyewitness identification and to file these policies with the Maryland State Police. These policies must be available for public inspection. Further, the policies must comply with the U.S. Department of Justice (DOJ) standards on obtaining accurate eyewitness identification.

02 Policy: It is the policy of the Takoma Park Police Department to conduct fair and impartial one-on-one, “mug” book and photo lineup eyewitness identifications. The Department strives to ensure that eyewitness identifications are performed as outlined in DOJ guidelines.

03 Procedures:

A. Communications/Dispatcher Tech Responsibilities: The information obtained from a witness is critical to the safety of those involved in an incident and may be important to the investigation. The manner in which facts are elicited from a caller can influence the accuracy of the information obtained.

As the initial point of contact for the witness/victim, the call taker must obtain and disseminate, in a non-suggestive manner, complete and accurate information from the caller. This information can include the description/identity of the suspect.

During a call for service the call taker, after obtaining preliminary information and dispatching an officer, should:

1. Assure the caller the police are on the way.
2. When applicable, inquire about weapons.
3. Ask open-ended questions (e.g., “What can you tell me about the car?”); augment with closed-

ended questions (e.g., “What color was the car?”).

4. Avoid asking suggestive or leading questions (e.g., “Was the car red?”).
5. Ask if anything else should be known about the incident.
6. Transmit information to responding officer(s).
7. Update officer(s) as more information comes in.

B. Preliminary Investigating Officer: The preliminary investigation at the scene forms a sound basis for the accurate collection of information and evidence during the follow-up investigation.

Preservation and documentation of the scene, including information from witnesses and physical evidence, are necessary for thorough preliminary investigation. The methods used by the preliminary investigating officer have a direct impact on the amount and accuracy of the information obtained throughout the investigation.

After securing the scene and attending to any victims and injured persons, the preliminary investigating officer should:

1. Identify the suspect(s).
2. Determine the location of the suspect(s).
3. Detain or arrest the suspect(s) if still present at the scene.
4. Determine what crime or incident has occurred.
5. Broadcast updated description of the incident, suspect(s) and/or vehicles, as applicable.
6. Verify the identity of the witness(es).
7. Separate witnesses and instruct them to avoid discussing details of the incident with other witnesses.
8. Canvass the area for other witnesses.

C. Eyewitnesses: Information obtained from the witness(es) can corroborate other evidence (e.g., physical evidence, accounts provided by other witnesses) in the investigation. Therefore, it is important that this information be accurately documented in writing.

The manner in which the preliminary investigating officer obtains information from a witness has a direct impact on the amount and accuracy of that information.

When interviewing a witness, the preliminary investigating officer should:

1. Inquire about the witness' condition.
2. Establish a rapport with the witness.
3. Use open-ended questions (e.g., "What can you tell me about the car?"); augment with closed-ended questions (e.g., "What color was the car?"). Avoid leading questions (e.g., "Was the car red?").
4. Clarify the information received with the witness.
5. Whenever possible, have the witness provide a written statement.
6. Document the information obtained from the witness, including the witness' identity, in a written report.
7. Encourage the witness to contact investigators with any further information.

D. Preparing "Mug" Books: "Mug" books must be objectively compiled to yield investigative leads that will be admissible in court. In selecting photos to be preserved in a "mug" book, the preparer should:

1. Group photos by format (e.g., color or black and white; Polaroid, 35mm, or digital; video) to ensure that no photo unduly stands out.
2. Select photos of individuals that are uniform with regard to general physical characteristics (e.g., race, age, sex).
3. Consider grouping photos by specific crime (e.g., sexual assault, gang activity).
4. Ensure that positive identifying information exists for all individuals portrayed.
5. Ensure the photos are reasonably contemporary.

6. Ensure that only one photo of each individual is in the “mug” book.

Note: “Mug” books, collections of photographs of previously arrested persons, may be used in cases in which a suspect has not yet been determined and other reliable sources have been exhausted. This technique may provide investigative leads, but results should be evaluated with caution.

E. Developing and Using Composite Images: The use of composite images can yield investigative leads in cases in which no suspect has been determined. Use of these procedures can facilitate obtaining a description from the witness that will enable the development of a reasonable likeness of the suspect. The person preparing the composite should:

1. Assess the ability of the witness to provide a description of the suspect.
2. Select the procedure to be used from those available (e.g., artist sketches, identikit-type or computer-generated images).
3. Unless part of the procedure, avoid showing the witness any photos immediately prior to development of the composite.
4. Select an environment for conducting the procedure that minimizes distractions.
5. Conduct the procedures with each witness separately.
6. Determine with the witness whether the composite is a reasonable representation of the suspect.

F. Instructing the Witness: Providing instructions to the witness can improve his/her, comfort level and can result in information that may assist the investigation.

Instructions to the witness prior to conducting either procedure can facilitate the witness’ recollection of the suspect.

The investigator/person conducting the “mug” book should:

1. Instruct each witness without other persons present.
2. Describe the “mug” book to the witness only as a “collection of photographs.”
3. Instruct the witness that the person who committed the crime may or may not be present in the “mug” book.
4. Consider suggesting to the witness to think back to the event and his/her frame of mind at the time.

5. Instruct the witness to select a photograph if he/she can and to state how he/she knows the person if he/she can.
6. Assure the witness that regardless of whether he/she makes an identification, the police will continue to investigate the case.
7. Instruct the witness that the procedure requires the investigator to ask the witness to state, in his/her own words, how certain he/she is of an identification.

The investigator/person conducting the composite should:

1. Instruct each witness without other persons present.
2. Explain the type of composite technique to be used.
3. Explain to the witness how the composite will be used in the investigation.
4. Instruct the witness to think back to the event and his/her frame of mind at the time.

G. Documenting the “Mug” Book/Composites: Documentation of the procedure and its outcome improves the strength and credibility of the results obtained from the witness and can be an important factor in the investigation and any subsequent court proceedings.

The investigator/person conducting the procedure should:

1. Document the procedure employed (e.g., identikit-type, “mug” book or computer-generated image) in writing.
2. Document the results of the procedure in writing (and audio/video recording if feasible), including the witness’ own words regarding how certain he/she is of any identification.
3. Document items used and preserve composites generated.

H. Interviewing the Witness by the Follow-up Investigator:

1. Pre-interview preparation:

Pre-interview preparation will enable the investigator to elicit a greater amount of accurate information during the interview, which may be crucial to the investigation. Prior to conducting the interview, the investigator should:

- * Review available information.
- * Plan to conduct the interview as soon as the witness is physically and emotionally capable.
- * Select an environment that minimizes distractions while maintaining the comfort level of the witness.
- * Ensure interview room is available.
- * Separate the witnesses.
- * Determine the nature of the witness' prior law enforcement contact.

2. Initial (pre-interview) contact with the witness:

Establishing a cooperative relationship with the witness likely will result in an interview that yields a greater amount of accurate information. On meeting with the witness, but prior to beginning the interview, the investigator should:

- * Develop rapport with the witness.
- * Inquire about the nature of the witness' prior law enforcement contact related to the incident.
- * Volunteer no specific information about the suspect or case.

3. Conducting the interview:

Information elicited from the witness during the interview may provide investigative leads and other essential facts. The above interview procedures will enable the witness to provide the most accurate, complete description of the event and encourage the witness to report later recollections. Witnesses commonly recall additional information after the interview that may be critical to the investigation. During the interview, the investigator should:

- * Encourage the witness to volunteer information without prompting.

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- * Encourage the witness to report all details even if they seem trivial.
- * Ask open-ended questions (e.g., "What can you tell me about the car?"); augment with closed-ended questions (e.g., "What color was the car?").
- * Avoid leading questions (e.g., "Was the car red?").
- * Caution the witness not to guess.
- * Ask the witness to mentally recreate the circumstances of the event (e.g., "Think about your feelings at the time.").
- * Encourage non-verbal communications (e.g., drawings, gestures, objects).
- * Avoid interrupting the witness.
- * Encourage the witness to contact investigators when additional information is recalled.
- * Instruct the witness to avoid discussing details of the incident with other potential witnesses.
- * Encourage the witness to avoid contact with the media or exposure to media accounts concerning the incident.
- * Thank the witness for his/her cooperation.

4. Recording witness recollections:

Complete and accurate documentation of the witness' statement is essential to the integrity and success of the investigation and any subsequent court proceedings. During, or as soon as reasonably possible after the interview, the investigator should:

- * Document the witness statements. Whenever possible a written statement from the witness shall be obtained.
- * Review written documentation; ask the witness if there is anything, he/she wishes to change, add or emphasize.

5. Assessing the accuracy of individual elements of a witness' statement:

Point-by-point consideration of the accuracy of each element of a witness' statement can assist in focusing the investigation. This technique avoids the common misconceptions that the accuracy of an individual element of a witness' description predicts the accuracy of another element. After conducting the interview, the investigator should:

- * Consider each individual component of the witness' statement separately.
- * Review each element of the witness' statement in the context of the entire statement. Look for inconsistencies within the statement
- * Review each element of the statement in the context of evidence known to the investigator from other sources (e.g., other witness' statement, physical evidence).

6. Maintaining contact with the witness:

Re-establishing contact and rapport with the witness often leads to recovery of additional information. Maintaining an open communication channel with the witness throughout the investigation is critical. During post-interview, follow-up contact with the witness, the investigator should:

- * Re-establish rapport with the witness.
- * Ask the witness if he/she has recalled any additional information.
- * Follow interviewing and documentation procedures previously mentioned in this General Order.
- * Provide no information from other sources.

I. Field Identification Procedures (One-on-One or show-up):

The use of a show-up can provide investigative information at an early stage, but the inherent suggestiveness of a show-up requires careful use of procedural safeguards.

1. When conducting a show-up, officers should:

- * Determine and document, prior to the show-up , a description of the suspect.

* Transport the witness to the location of the detained suspect to limit the legal impact of the suspect's detention. (*NB: If "exigent circumstances" preclude transportation of the witness to the suspect's location, presentation of a single photograph of the suspect to the witness for identification/elimination purposes may be justified. Such an "exigent circumstance" may exist when an incapacitated victim/witness has been transported to a medical facility for treatment.)

* When multiple witnesses are involved:

(1) Separate the witnesses and instruct them to avoid discussing details of the incident with other witnesses.

(2) If a positive identification is obtained from one witness, consider using other identification procedures for remaining witnesses.

* Caution the witness that the person he/she is looking at may or may not be the suspect.

* Obtain and document a statement of certainty for both identification and non-identifications.

2. Recording show-up results:

Preparing a complete and accurate record of the outcome of the show-up improves the strength and credibility of the identification and non-identification results obtained from the witness and can be a critical document in the investigation and any subsequent court proceedings. When conducting a show-up, the investigator/officer should:

* Document the time and location of the show-up.

* Videotape the identification process using an in-car camera or other recording device if available.

* Record both identification and non-identification results in writing, including the witness' own words' regarding how certain he/she is about the identification.

3. Composing photo lineups:

In a photo lineup, the suspect should not unduly stand out. An identification obtained through a photo lineup using the following procedures should result in a strong evidentiary value.

* Whenever possible, the administrator of any photo lineup should not have cognizance of the suspect. This prevents the administrator of the lineup from providing inadvertent or intentional verbal or nonverbal cues to influence the eyewitness to pick out a particular suspect. This is referred to as use of a "blind administrator," or the "double blind" procedure (i.e., neither the administrator nor the eyewitness know whom the suspect is).

- * Include only one suspect in each identification procedure.
- * Select fillers who generally fit the witness' description of the suspect. When there is a limited/inadequate description of the suspect provided by the witness, or when the description of the suspect differs significantly from the appearance of the suspect, fillers should resemble the suspect in significant features.
- * If multiple photos of the suspect are reasonably available to the investigator, select a photo that resembles the suspect's description or appearance at the time of the incident.
- * Include a minimum of five fillers (non-suspects) per identification procedure.
- * Consider that complete uniformity of features is not required. Avoid using fillers who so closely resemble the suspect that a person familiar with the suspect might find it difficult to distinguish the suspect from the fillers.
- * Create a consistent appearance between the suspect and fillers with respect to any unique or unusual feature (e.g., scars, tattoos) used to describe the suspect by artificially adding or concealing that feature.
- * Consider placing suspects in different positions in each lineup, both across cases and with multiple witnesses in the same case. Position the suspect randomly in the lineup.
- * When showing a new suspect, avoid reusing fillers in lineups shown to the same witness.
- * Ensure that no writings or information concerning previous arrest(s) will be visible to the witness.
- * View the spread, once completed, to ensure that the suspect does not unduly stand out.
- * Preserve the presentation order of the photo lineup. In addition, the photos themselves should be preserved in their original condition.

Note: The Takoma Park Police Department does not unilaterally conduct live lineups. In the event a live lineup might prove necessary to a case, it would be conducted under the direction of the Montgomery County State's Attorney's Office.

4. Instructing the witness prior to viewing a photo lineup:

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Instructions provided to the witness prior to presentation of a lineup will likely improve the accuracy and reliability of any identification obtained from the witness and can facilitate the elimination of innocent parties from the investigation. Prior to presenting a photo lineup, the investigator should:

- * Instruct the witness that he/she will be asked to view a set of photographs.
- * Instruct the witness that it is just as important to clear innocent persons from suspicion as to identify the guilty party(ies).
- * Instruct the witness that individuals depicted in lineup photos 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.
- * Instruct the witness that the person who committed the crime may or may not be in the set of photographs being presented.
- * Assure the witness that regardless of whether an identification is made, the police will continue to investigate the incident.
- * Instruct the witness that the procedure requires the investigator to ask the witness to state, in his/her own words, how certain he/she is of any identification.

5. Conducting the identification procedure:

The manner in which an identification procedure is conducted can affect the reliability, fairness and objectivity of the above procedures and can minimize the effect of external influences on a witness' memory.

When conducting simultaneous photo lineups, the investigator should:

- * Provide viewing instructions to the witness as outlined in: "Instructing the witness prior to viewing a lineup" of this policy.
- * Confirm that the witness understands the nature of the lineup procedure.
- * Avoid saying anything to the witness that may influence the witness' selection.
- * If an identification is made, avoid reporting to the witness any information regarding the individual he/she has selected prior to obtaining the witness' statement of certainty.

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* Record any identification results and witness' statement of certainty as outlined in the "Recording identification results" of this policy.

* Document in writing the photo lineup procedure, including:

- (1) Identification information and source of all photos used.
- (2) Names of all persons present at the photo lineup.
- (3) Date and time of the identification procedure.

* Instruct the witness not to discuss the identification procedure or its results with other witnesses involved in the case and discourage contact with the media.

When presenting a sequential photo lineup, the investigator should:

* Provide viewing instructions to the witness as outlined in: "Instructing the witness prior to viewing a lineup" of this policy.

* Provide the following additional viewing instruction to the witness:

- (1) Individual photographs will be viewed one at a time.
- (2) The photos are in random order.
- (3) Take as much time as needed in making a decision about each photo before moving to the next one.
- (4) All photos are shown, even if an identification is made.

* Confirm that the witness understands the nature of the sequential procedure.

* Present each photo to the witness separately, in a previously determined order, and removing those previously shown.

* Avoid saying anything to the witness that may influence the witness' selection. (If the witness asks to see a previously displayed photo, the investigator may comply without comment.)

* If an identification is made, avoid reporting to the witness any information regarding the individual he/she has selected prior to obtaining the witness' statement of certainty.

* Record any identification results and witness' statement of certainty as outlined in the "Recording identification results" of this policy.

* Document in writing the photo lineup procedure, including:

- (1) Identification information and source of all photos used.
- (2) Names of all persons present at the photo lineup.
- (3) Date and time of the identification procedure.

* Instruct the witness not to discuss the identification procedure or its results with other witnesses involved in the case and discourage contact with the media.

6. Recording identification results:

Preparing a complete and accurate record of the outcome of the identification procedure improves the strength and credibility of the identification or non-identification results obtained from the witness. This record can be critical documentation in the investigation and any subsequent court proceedings. When conducting an identification procedure, the investigator should:

- * Whenever possible, ensure the identification procedure is audio/video recorded.
- * Record both identification and non-identification results in writing, including the witness' own words regarding how sure he/she is.
- * Ensure results are signed and dated by the witness.
- * Ensure that no materials indicating previous identification results are visible to the witness.
- * Ensure that the witness does not write on or mark any materials that will be used in other identification procedures.