

WRONGFUL CONVICTIONS: HOW THEY HAPPEN AND HOW TO FIX THEM

Presented by the
Criminal Justice Section of the
State Bar of Texas

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WORLD

DNA test clears man of rape 26 years later

Three times during his nearly 27 years in prison, Charles Chatman went before a parole board and refused to admit he was a rapist. On Thursday, a judge released him.



— Dallas District Court Judge John Creuzot, left, gives Charles Chatman a hug after leaving court on Thursday in Dallas. Tim Sharp / AP



Former Texas prisoners Charles Chatman (left) and Patrick Waller and Dallas County Public Defender Michelle Moore speak to a group of University of North Texas at Dallas criminal justice students March 28. Both men spent years in prison before new DNA testing proved their innocence.

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TAB A

Charles Chatman
Information From
National Registry of
Exonerations

THE NATIONAL REGISTRY
OF EXONERATIONS[BROWSE CASES](#)[ISSUES](#)[REPORTS](#)[RESOURCES](#)[ABOUT US](#)[MAKE A GIFT](#)**3,412 EXONERATIONS SINCE 1989**
MORE THAN 30,250 YEARS LOST

CHARLES CHATMAN

Other Conviction Integrity Unit DNA Cases



Photo by David Persoff

After serving more than 26 years in Texas prisons for a crime he didn't commit, Charles Chatman was exonerated based on DNA testing and freed in 2008.

In the early morning of January 4, 1981, a 52-year-old woman in Dallas, Texas, awoke to find a Black male in her apartment. He wore a dark cap pulled down over his head. The woman said the man tore off her clothing and raped her on her bed. Before leaving the apartment, the man tied up the woman with a scarf and forced her to lie face down on the

floor. He then stole \$15 and several other items from the home, making several trips outside with the stolen goods. After he left, the victim heard a car door slam and a car being started and driven away. She called the police, and officers responded to the scene.

The victim was examined at a Dallas hospital, where healthcare workers collected biological evidence from her body. She told her examiners that she had never had sexual intercourse before.

The victim, who was white, described the attacker as 5 feet 7 inches tall with black hair and facial hair. Although the victim usually wore glasses and was not wearing them during the attack, she testified that she was able to see the perpetrator's features. She said that at one point during the attack, she "got enough of a glance of his full face" and then didn't look directly at him again to avoid angering him.

On the day after the attack, the victim viewed a photo lineup including six images of young Black men. The lineup did not include Chatman, and the victim did not identify anyone as the perpetrator. She then viewed another photo lineup, this time including Chatman, who was on probation for burglary. She identified him as the perpetrator. Two weeks after the crime, she viewed a live in-person lineup including Chatman and again she identified him as the perpetrator. The lead investigator on the case conducted all three identification procedures.

When identifying Chatman at the second photo lineup, the victim told the administering officer that she believed she had seen Chatman in her neighborhood several times over the last few years. (Chatman lived several houses away from the victim, and he would later say he recognized the victim by sight.) She had not told officers at the time of the crime that she recognized the perpetrator. In addition, she had not mentioned anything about the assailant's mouth; Chatman, then 20 years old, was missing two front teeth due to a football injury.

Chatman was charged with aggravated rape and tried by a jury in Dallas County Criminal District Court on August 12 and 13, 1981. Chatman would later say that he saw his attorney only once before trial, and eventually called him after waiting seven months in jail without any news. He said the attorney told him at that point that the trial was set for the next day.

State:	Texas
County:	Dallas
Most Serious Crime:	Sexual Assault
Additional Convictions:	
Reported Crime Date:	1981
Convicted:	1981
Exonerated:	2008
Sentence:	Life
Race/Ethnicity:	Black
Sex:	Male
Age at the date of reported crime:	20
Contributing Factors:	Mistaken Witness ID, False or Misleading Forensic Evidence
Did DNA evidence contribute to the exoneration?:	Yes

The victim identified Chatman in the courtroom as the man who attacked her, and a serologist testified about laboratory testing conducted at the Southwest Institute of Forensic Sciences on evidence from the case.

The analyst testified that she found the presence of seminal fluid on a bed sheet collected from the victim's house and sperm cells on the vaginal smear collected from the victim. She tested the seminal fluid on the sheet and found that it came from a type O secretor (a person whose blood type antigens are found in other bodily fluids, such as seminal fluid and saliva, although not in sperm). She testified that Chatman was also a type O secretor, and that 40% of black men are type O secretors.

The testimony about the semen on the sheet was technically accurate, but it was also incomplete, and didn't cover important issues, such as what tests were run. It also contained little information about the vaginal swab, such as whether it contained blood or not and whether it was tested for any genetic markers.

Chatman testified and said he was working as a janitor at the time of the attack. His sister, who was also his employer, also testified to support that alibi, although a book recording Chatman's hours was not presented as evidence. Chatman's attorney challenged the validity of the identification and presented testimony that Chatman didn't have a driver's license and did not know how to drive.

Chatman was convicted on August 13, 1981, and sentenced to 99 years in prison.

It wasn't until 2001 that Chatman began to hope he might be released. That year, Texas passed a law allowing inmates to seek DNA testing if it had the potential to prove their innocence. Chatman began filing motions even before the bill became law. He was given a court-appointed attorney, and in 2002 Judge John Creuzot granted his petition for access to DNA testing. It took two years to locate the evidence, and then Chatman hit another roadblock when analysts said that there wasn't sufficient evidence for testing.

Chatman's attorney, Michelle Moore, asked the lab to hold the evidence until new technology could be used to conduct the testing. Meanwhile, Chatman had a chance at parole in 2004 but refused to admit any involvement in the crime and was not paroled.

In 2007, Moore learned that the lab could conduct Y-STR testing — an advanced form of DNA testing that can determine a profile from a small sample — on the sperm cells collected from the bed sheet at the victim's apartment. The risk was that this final test could have consumed the remainder of the biological evidence in the case. Chatman agreed to take the risk, however, and Judge Creuzot paid for testing from his courtroom budget. The results of the Y-STR testing identified another man as the contributor to the sample, and Chatman was released on January 3, 2008.

Chatman's exoneration became official when the charge against him was dismissed on February 26, 2008.

During his incarceration, Chatman was denied parole three times because he refused to admit guilt. After his release, he said: "Every time I'd go to parole, they'd want a description of the crime or my version of the crime. I don't have a version of the crime. I never committed the crime. I never will admit to doing this crime that I know I didn't do."

In 2009, Chapman received a lump sum of \$2,160,000 in state compensation and a monthly annuity of \$11,720.

– *Simon Cole*

[Report an error or add more information about this case.](#)

Posting Date: Before June 2012

ABOUT THE REGISTRY

The National Registry of Exonerations is a project of the Newkirk Center for Science & Society at University of California Irvine, the University of Michigan Law School and Michigan State University College of Law. It was founded in 2012 in conjunction with the Center on Wrongful Convictions at Northwestern University School of Law. The Registry provides detailed information about every known exoneration in the United States since 1989—cases in which a person was wrongly convicted of a crime and later cleared of all the charges based on new evidence of innocence. The Registry also maintains a more limited database of known exonerations prior to 1989.

Support Our Work

CONTACT US

We welcome new information from any source about exonerations already on our list and about cases not in the Registry that might be exonerations.

[Tell us about an exoneration that we may have missed](#)

[Correct an error or add information about an exoneration on our list](#)

[Other information about the Registry](#)

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TAB B

Dallas County DNA
Exonerations

DALLAS COUNTY DNA EXONERATIONS

Charles Chatman
Cornelius Dupree
Jerry Lee Evans
Wiley Fountain
Larry Fuller
James Curtis Giles
Donald Wayne Good
Andrew Gossett
Eugene Henton
Raymond Jackson
EK
Johnnie Lindsey
Thomas McGowan
Steven Phillips
Stephen Brodie

Johnny Pinchback
David Shawn Pope
Billy James Smith
Keith E. Turner
James Waller
Patrick Waller
Gregory Wallis
James Curtis Williams
James Lee Woodward
Billy Wayne Miller
Anthony Massingill
Michael Phillips
Ricky Wyatt
Martin Santillan
Tyrone Day

TAB C

True Perpetrators
Identified by DNA



"Injustice anywhere is a threat to justice everywhere." Martin Luther King, Jr.

354

Number of DNA
Exonerations

152

Number of Alternative
Perpetrators Identified

Help us free those who have been wrongfully convicted,
and reform our criminal justice system.

Get Involved

THE CAUSES

As the pace of DNA exonerations has grown across the country in recent years, wrongful convictions have revealed disturbing fissures and trends in our criminal justice system.

TAB D

Causes of Wrongful Convictions

The Issues

Courts wrongfully convict men and women for a number of reasons: mistaken witness identification; false accusations, including jailhouse informants who can have an incentive to give inaccurate testimony; misconduct on the part of the police or prosecutors; inaccurate or “junk” forensic science; false confessions; and inadequate defense.

Overworked and underfunded defense attorneys may also lack the resources to vigorously test the prosecution’s evidence at trial.

WRONGFUL CONVICTION CAUSES, BY THE NUMBERS

ALL COURTESY OF NATIONAL REGISTRY OF EXONERATIONS

72%

Eyewitness error is the single greatest cause of wrongful convictions, playing a role in 72% of convictions overturned through DNA testing.

61%

Perjury or false accusations, including lying jailhouse informants who can get substantial reductions in their own sentences or financial compensation in return for testimony, have been a contributing factor in 61% of exonerations.

57%

Since 1989, official misconduct has been identified as contributing to the convictions of 57% of defendants who were later exonerated.

23%

Many forensic testing methods, presented as fact at trial, such as firearm tool mark analysis and shoe print comparisons, have been applied with little or no scientific validation. This type of “junk science” as well as forensic testing that has been improperly conducted or inaccurately conveyed in trial has contributed to 23% of wrongful convictions.

12%

Those accused of crimes can feel pressured into giving a confession, even if they are innocent. False confessions have contributed in 12% of cases where the person was exonerated.

Systemic Failures Have Wrongly Imprisoned Thousands of Texans.

The Generosity of Their Fellow Citizens Can Provide Them the The Freedom They Deserve.

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INNOCENCE PROJECT
OF TEXAS

CASES

ACTIVE CASES
RELEASES & EXONERATIONS

SHOP

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First Name

TAB E

Statistics on Black
Exonerees

Discrimination based on **race**.

Black people are 13.6% of the American population, but 53% of all exonerations listed in the National Registry of Exonerations.



TAB F

Texas Actual
Innocence Standard

TEXAS ACTUAL INNOCENCE STANDARD

Free Standing Actual Innocence Claim:

**Ex Parte Elizondo, 947 S.W.2d 202
(1996)**

**Applicant must show, by clear and
convincing evidence, that newly
discovered or newly available
evidence of actual innocence
unquestionably established
innocence.**

TAB G

Expert Testimony on
Reliability of
Eyewitness
Identification
Procedures - *Tillman*
v. State, 354 S.W.3d
425 (Tex. Crim. App.
2011)

Expert Testimony on Reliability of Eyewitness Identification Procedures

***Tillman v. State*, 354 S.W.3d 425
(2011)**

The court held that expert testimony on the reliability of eyewitness identification is admissible.

TILLMAN V. STATE

“Nationwide, 190 of the first 250 DNA exonerations involved eyewitnesses who were wrong. BRANDON L. GARRETT, *Convicting the Innocent: Where Criminal Prosecutions Go Wrong* 8-9, 279 (2011). In Texas, reports indicate 80 percent of the first 40 DNA exonerations involved an eyewitness identification error. Innocence Project of Texas, *Texas Exonerations-At a Glance* (2011), <http://ipoftexas.org/index.php?action=at-a-glance>.”

Court of Criminal Appeals’ Opinion

TAB H

Art. 38.20, Tex. Code
Crim. Proc.,
Photograph and Live
Lineup Identification
Procedure

Effective: September 1, 2017

Vernon's Ann. Texas C.C.P. Art. 38.20

Art. 38.20. Photograph and Live Lineup Identification Procedures

Currentness

Sec. 1. In this article, "institute" means the Bill Blackwood Law Enforcement Management Institute of Texas located at Sam Houston State University.

Sec. 2. This article applies only to a law enforcement agency of this state or of a county, municipality, or other political subdivision of this state that employs peace officers who conduct photograph or live lineup identification procedures in the routine performance of the officers' official duties.

Sec. 3. (a) Each law enforcement agency shall adopt, implement, and as necessary amend a detailed written policy regarding the administration of photograph and live lineup identification procedures in accordance with this article. A law enforcement agency may adopt:

(1) the model policy adopted under Subsection (b); or

(2) the agency's own policy that, at a minimum, conforms to the requirements of Subsection (c).

(b) The institute, in consultation with large, medium, and small law enforcement agencies and with law enforcement associations, scientific experts in eyewitness memory research, and appropriate organizations engaged in the development of law enforcement policy, shall develop, adopt, and disseminate to all law enforcement agencies in this state a model policy and associated training materials regarding the administration of photograph and live lineup identification procedures. The institute shall provide for a period of public comment before adopting the policy and materials.

(c) The model policy or any other policy adopted by a law enforcement agency under Subsection (a) must:

(1) be based on:

(A) credible field, academic, or laboratory research on eyewitness memory;

(B) relevant policies, guidelines, and best practices designed to reduce erroneous eyewitness identifications and to enhance the reliability and objectivity of eyewitness identifications; and

(C) other relevant information as appropriate; and

(2) include the following information regarding evidence-based practices :

(A) procedures for selecting photograph and live lineup filler photographs or participants to ensure that the photographs or participants:

- (i) are consistent in appearance with the description of the alleged perpetrator; and
 - (ii) do not make the suspect noticeably stand out;
- (B) instructions given to a witness before conducting a photograph or live lineup identification procedure that must include a statement that the person who committed the offense may or may not be present in the procedure;
- (C) procedures for documenting and preserving the results of a photograph or live lineup identification procedure, including the documentation of witness statements, regardless of the outcome of the procedure;
- (D) procedures for administering a photograph or live lineup identification procedure to an illiterate person or a person with limited English language proficiency;
- (E) for a live lineup identification procedure, if practicable, procedures for assigning an administrator who is unaware of which member of the live lineup is the suspect in the case or alternative procedures designed to prevent opportunities to influence the witness;
- (F) for a photograph identification procedure, procedures for assigning an administrator who is capable of administering a photograph array in a blind manner or in a manner consistent with other proven or supported best practices designed to prevent opportunities to influence the witness; and
- (G) any other procedures or best practices supported by credible research or commonly accepted as a means to reduce erroneous eyewitness identifications and to enhance the objectivity and reliability of eyewitness identifications.

(d) A witness who makes an identification based on a photograph or live lineup identification procedure shall be asked immediately after the procedure to state, in the witness's own words, how confident the witness is in making the identification. A law enforcement agency shall document in accordance with Subsection (c)(2)(C) any statement made under this subsection.

Sec. 4. (a) Not later than December 31 of each odd-numbered year, the institute shall review the model policy and training materials adopted under this article and shall modify the policy and materials as appropriate.

(b) Not later than September 1 of each even-numbered year, each law enforcement agency shall review its policy adopted under this article and shall modify that policy as appropriate.

Sec. 5. (a) Any evidence or expert testimony presented by the state or the defendant on the subject of eyewitness identification is admissible only subject to compliance with the Texas Rules of Evidence. Except as provided by Subsection (c), evidence of compliance with the model policy or any other policy adopted under this article is not a condition precedent to the admissibility of an out-of-court eyewitness identification.

(b) Notwithstanding Article 38.23 as that article relates to a violation of a state statute and except as provided by Subsection (c), a failure to conduct a photograph or live lineup identification procedure in substantial compliance with the model policy or any other policy adopted under this article does not bar the admission of eyewitness identification testimony in the courts of this state.

(c) If a witness who has previously made an out-of-court photograph or live lineup identification of the accused makes an in-court identification of the accused, the eyewitness identification is admissible into evidence against the accused only if the evidence is accompanied by the details of each prior photograph or live lineup identification made of the accused by the witness, including the manner in which the identification procedure was conducted.

Credits

Added by Acts 2011, 82nd Leg., ch. 219 (H.B. 215), § 1, eff. Sept. 1, 2011. Amended by Acts 2017, 85th Leg., ch. 686 (H.B. 34), §§ 4, 5, eff. Sept. 1, 2017.

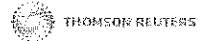
Vernon's Ann. Texas C. C. P. Art. 38.20, TX CRIM PRO Art. 38.20

Current through the end of the 2023 Regular and Second Called Sessions of the 88th Legislature.

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TAB I

Bill Blackwood Law
Enforcement
Institute, Model
Eyewitness Policy

Model Policy on Eyewitness Identification

I. Purpose

The purpose of this model policy is to outline proper protocol for eyewitness identification procedures for photographic, show-up, and live lineup identifications which maximize the reliability of identifications, protect innocent persons, and establish evidence that is reliable and conforms to established legal requirements.

II. Policy

Eyewitness identifications are a significant component of many criminal investigations. The identification process must be carefully administered to minimize the likelihood of misidentifications. Moreover, constitutional safeguards must be observed in the process. The goal of reducing erroneous convictions can be furthered in many ways. Employing the most rigorous eyewitness identification methods is one way of doing this, but there are others. The eyewitness identification process is only one step in the criminal investigative process, albeit an important one. Corroborative evidence, for example, will lessen the impact of an erroneous eyewitness identification. The more other evidence that is available, the less risk there is of conviction based solely on erroneous eyewitness identification. There is no substitute for a competent and thorough criminal investigation.

This model policy was written to provide guidance on eyewitness identification procedures based on credible research on eyewitness memory and best practices designed not only to reduce erroneous eyewitness identification but also to enhance the reliability and objectivity of eyewitness identifications.

Evidence-based and best practices surrounding the collection and preservation of eyewitness evidence are addressed as are procedures to be employed where witnesses or victims are unable to read or write, are non-English speaking, or possess limited English language proficiency.

III. Procedural Guidelines

A. Definitions

1. **Blind Procedure** – A procedure wherein the person administering the live lineup or photo array does not know who the suspect is.
2. **Blinded Photo Array Procedure** – A procedure wherein the person who administers the photo array knows who the suspect is, but each photo is presented so that the administrator cannot see or track which photograph is being presented to the witness.

3. **Folder Shuffle Method** – A method of administering a photo array such that the administrator cannot see or track which photograph is being presented to the witness until after the procedure is completed. This method is employed when a blind procedure is not possible.
4. **Fillers** – Non-suspect photographs or persons. Fillers are selected to both fit the description of the perpetrator provided by the witness and to ensure that no individual or photo stands out.
5. **Illiterate Person** – An individual who speaks and understands English but cannot read and write in English.
6. **Interpreter** – An interpreter is a person who is fluent in English and the language of the witness or victim and who facilitates communication between two parties in two different languages. The term includes persons who facilitate communication with persons who are deaf, hearing impaired, or speaking impaired.
7. **Live lineup** – An identification procedure in which a group of persons is displayed to the witness or victim in order to identify or exclude the suspect.
8. **Person with Limited English Proficiency** – An individual who is unable to communicate effectively in English with a level of fluency that is typical of native English speakers. Such a person may have difficulty speaking, reading, or writing in English and includes persons who can comprehend English, but are physically unable to talk or write.
9. **Photo Array** – An identification procedure in which a series of photographs is displayed to the witness or victim in order to identify or exclude the suspect.
10. **Sequential Live Lineup or Photo Array** – An identification procedure in which the persons in the live lineup or the photographs in the photo array are displayed one by one (sequentially).
11. **Show-up** – An identification procedure in which a single suspect is shown to a victim or witness soon after the commission of a crime for the purpose of identifying or eliminating the suspect as the perpetrator.
12. **Witness Certification Statement** – A written statement that is read out loud to the witness or victim describing the procedures of the identification process.

B. Selecting the Best Identification Method

1. Photo arrays are preferred over other techniques because: (a) they can be controlled better, (b) nervousness can be minimized, and (c) they are easier to manage logistically.

2. Because they involve multiple persons under relatively controlled circumstances, a properly conducted live lineup, like a properly conducted photo array, is preferable to a show-up.
3. Because they are highly suggestive, show-ups are vulnerable to challenges to their validity. Consequently, a show-up should be employed only where other indicia of guilt are present (e.g., suspect located relatively close in time and place to the crime).
4. Because witnesses may be influenced, however unintentionally, by cues from the person administering the procedure, a blind administrator should be used. This can be achieved through the use of a blind procedure or a blinded photo array procedure (e.g. the folder shuffle method).
5. Because research shows the sequential presentation of live lineups and photo arrays is less likely to result in misidentification and carry very little risk of increasing the likelihood of failure to identify the suspect, a sequential presentation should be used.

C. Selecting Fillers

All persons in the photo array or live lineup should be of the same sex and race and should be reasonably similar in age, height, weight, and general appearance. Ideally, the characteristics of the filler should be consistent with the description of the perpetrator provided by the witness(es). Where there is a limited or inadequate description of the perpetrator provided by the witness(es), where the description of the perpetrator differs significantly from the appearance of the suspect, where a witness has provided a highly detailed description, or where the witness's description of the perpetrator or the suspect has a highly distinctive feature, fillers should be chosen so that no person stands out in the live lineup or photo array.

D. Explaining that the Perpetrator May or May Not Be Present

Because witnesses may be under pressure to identify a suspect, they should be informed that the suspect may or may not be present in a live lineup or photo array and that the person presented in a show-up may or may not be the perpetrator.

E. Explaining that the Investigation will Continue

The administrator should also explain to the witness that the investigation will continue, regardless of whether an identification is made, as another way of alleviating pressure on the witness to identify a suspect.

F. Witness Contamination

Precautions must be taken to ensure that witnesses do not encounter suspects or fillers at any time before or after the identification procedure. Avoid multiple identification procedures in which the same witness views the same suspect more than once. When showing a different suspect to the same witness, do not reuse the same fillers from a previous live lineup or photo array shown to that witness. Witnesses should not be allowed to confer with each other before, during, or after the identification procedure. Ensure that no one who knows the suspect's identity is present during live lineup or photo array procedure. In some live lineups, exceptions must be made to allow for the presence of defense counsel.

G. Documenting the Procedure

In order to strengthen the evidentiary value of the identification procedure, it should be documented in full. Video documentation is the preferred method. Audio recording is the preferred alternative. If neither method is employed, then the reason for not video or audio recording should be documented.

IV. Sample Standard Operating Procedures

The procedures which follow have been designed to: (a) reduce erroneous eyewitness identifications, (b) enhance the reliability and objectivity of eyewitness identifications, (c) collect and preserve eyewitness evidence properly, (d) respect the needs and wishes of victims and witnesses, and (d) address the needs of witnesses with limited English proficiency, where applicable.

In order to choose among the various identification methods, a brief description of each method follows in order of most preferred method to least preferred. Once the appropriate method is selected, the administrator should go directly to the Sample Standard Operating Procedures for that particular method. In any given situation only set of Sample Standard Operating Procedures applies.

A. Descriptions of Eyewitness Identification Methods

1. Sequential, Blind Photo Array – photo arrays where the photographs are presented one at a time to the witness or victim by a person who does not know who the suspect is. This method requires a preparer who may be familiar with the case and an administrator who does not know the identity of the suspect.
2. Sequential, Blinded Photo Array – photo arrays where the photographs are presented one at a time to the witness or victim by a person who knows who the suspect is, but who takes steps (putting the photographs in folders and shuffling them) to avoid knowledge of which person the witness or victim is looking at. This method

typically involves an administrator who is familiar with the case and knows who the suspect is.

3. Sequential Live Lineup – live lineups where the persons in the live lineup are presented one at a time to the witness or victim. This method requires a preparer who may be familiar with the case and an administrator who does not know the identity of the suspect.
4. Show-up – procedure where the witness or victim is presented with a single suspect and asked to identify whether that suspect is the perpetrator. This procedure can be carried out by any officer.

B. Sample Standard Operating Procedures for Sequential, Blind Photo Array Administrations

1. Preparation

a. Designating a Preparer

Preparing the photo array should be undertaken by someone other than the person who will administer the photo array. Ideally, the investigating officer will prepare the photo array as this ensures that others who might be involved in the case are not used as fillers. Moreover, because the investigating officer knows who the suspect is, he or she should not be conducting the actual administration of the photo array.

b. Selecting Suspect Photograph

If multiple photos of the suspect are available, choose the photo that most resembles the suspect's appearance at the time of the crime. Do not include more than one photograph of the same suspect. If you do not know what the suspect looked like at the time of the crime, choose the photo that most resembles the victim's or witness's description of the perpetrator. If there are multiple suspects, include only one suspect's photo in the array.

c. Selecting Fillers

All persons in the photo array should be of the same sex and race and should be reasonably similar in age, height, weight, and general appearance. Ideally, the characteristics of the filler should be consistent with the description of the perpetrator provided by the witness(es). Where there is a limited or inadequate description of the perpetrator provided by the witness(es), where the description of the perpetrator differs significantly from the appearance of the suspect, fillers should be chosen so that no person stands out in the photo array. Do not mix color and black and white photos. Use photos of the same size and basic composition. Never mix mug shots with other types of photographs.

d. Choosing Number of Fillers

Wherever possible, include a minimum of five fillers. Because increasing the number of fillers tends to increase the reliability of the procedure, one may have more than the minimum number of fillers.

e. Ensuring Similarity

Assess the array to ensure that no person stands out from the rest. Cover any portions of the photographs that provide identifying information on the suspect and similarly cover other photographs used in the array.

f. Placing Subject Photographs in Order

- 1) Place a filler in the lead position.
- 2) Place the remaining photographs which will comprise the photo array in random order.
- 3) Place two blank photographs at the end (blanks on the same type of photographic paper as the actual photographs but which will not be shown to the witness; this is intended to cause the witness to think there may still be photographs to view in order to reduce pressure to choose what the witness may presume to be the last photograph).

g. Presenting the Photo Array to the Independent Administrator

Present the ordered photo array to the independent administrator. Do not tell the independent administrator which position the suspect is in.

2. Administration

The administrator of the photo array presentation should be an independent administrator who does not know the identity of the suspect and the witness should be informed of this. In a blind procedure, no one should be present who knows the suspect's identity.

a. Blinded Administration

If the blind procedure described above is not followed, then the photo array administrator should document the reason why and the administrator should be blinded. That is, he or she should conduct the photo array in a manner such that he or she does not know which person in the array the witness is looking at. There is a separate sample standard operating procedure for blinded photo array administration in this model policy immediately following this sample standard operating procedure.

b. Instruct Witness

Each witness should be instructed outside the presence of the other witnesses. The independent administrator should give the witness a written copy of the following Witness Certification Statement and should read the instruction statement aloud at the beginning of each identification procedure:

In a moment, I am going to show you a series of photos. The person who committed the crime may or may not be included. I do not know whether the person being investigated is included.

Even if you identify someone during this procedure, I will continue to show you all photos in the series.

The investigation will continue whether or not you make an identification.

Keep in mind that things like hair styles, beards, and mustaches can be easily changed and that complexion colors may look slightly different in photographs.

You should not feel you have to make an identification. It is as important to exclude innocent persons as it is to identify the perpetrator.

The photos will be shown to you one at a time. Take as much time as you need to look at each one. After each photo, I will ask you "Is this the person you saw [insert description of act here]?" Take your time answering the question. If you answer "Yes," I will then ask you, "In your own words, can you describe how certain you are?"

Because you are involved in an ongoing investigation, in order to prevent damaging the investigation, you should avoid discussing this identification procedure or its results.

Do you understand the way the photo array procedure will be conducted and the other instructions I have given you?

c. Document Consent to Participate

Witnesses should then be asked to read the following additional paragraph and sign and date below.

I have read these instructions, or they have been read to me, and I understand the instructions. I am prepared to review the photographs, and I will follow the instructions provided on this form.

- a) Some witnesses may decline to sign. When a witness declines to sign, it is sufficient for the investigating officer to document that the witness was appropriately instructed.

d. Presentation of Photographs

Present each photo to the witness separately (one at a time), in order. When the witness is finished viewing the photo, have the witness hand the photo back.

e. Question Witness

After the witness has looked at a photo and handed it back to you, ask: “**Is this the person you saw [insert description of act here]?**” If the witness answers “Yes,” ask the witness, “**In your own words, can you describe how certain you are?**”

f. Document Witness’s Responses

Document the witness’s response using the witness’s own words. Have the witness complete the appropriate section of the Witness Certification Statement to reflect the outcome of the procedure.

g. Show All Photographs

Even if the witness makes an identification, show the witness the next photo until you have gone through all the photographs. If a witness asks why he or she must view the rest of the photos, despite already making an identification, simply tell the witness that to assure objectivity and reliability, the witness is required to view all of the photographs.

h. Avoid Feedback During the Procedure

Do not give the witness any feedback regarding the individual selected or comment on the outcome of the identification procedure in any way. Be aware that witnesses may perceive such things as unintentional voice inflection or prolonged eye contact, in addition to off-hand words or phrases, as messages regarding their selection. Avoid casual conversation comments such as “very good.” Be polite but purposeful when you speak.

i. Additional Viewings

Only upon request of the witness, the witness may view the photo array again after the first photo array procedure has been completed. If the witness requests an additional viewing, the photo array administrator should present the entire photo array in the same order as the original presentation, a second time. If this occurs, it must be documented. The photo array administrator should never suggest an additional viewing to the witness. It is recommended that the witness not be allowed to view the photo array more than two times.

j. Subsequent Use of Materials

Ensure that if the witness writes on, marks, or in any way alters identification materials, those materials are not used in subsequent procedures.

k. Multiple Identification Procedures With Same Witness

Avoid multiple identification procedures in which the same witness views the same suspect more than once.

l. Multiple Identification Procedures With Different Witness

If you need to show the same suspect to a new witness, have the preparer remix the photo array and renumber them accordingly.

m. Multiple Suspects

When there are multiple suspects, a separate photo array should be conducted for each suspect. There should not be more than one suspect per photo array.

n. Reuse of Fillers

When showing a different suspect to the same witness, do not reuse the same fillers from a previous array shown to that witness.

o. Contact Among Witnesses

To the extent possible, prevent witnesses from conferring with each other before, during, and after the photo array procedure.

p. Identification of Special Features

Only after an identification is made, a follow-up interview should assess any relevant factors that support the identification, such as: special facial features, hair, marks, etc.

3. Special Procedures are Required for Illiterate Persons or Persons Who Possess Limited English Proficiency

a. Be Alert to People Who do not Speak English or Possess Limited English Proficiency

Given the diversity of communities, police officers may encounter persons who do not speak English or who possess limited English proficiency in the course of a criminal investigation. When presented with this situation, officers should carefully consider the ethical and legal ramifications of how to handle the case when there is a language barrier.

b. Using an Interpreter

Unless the administrator speaks the victim's or witness's language fluently, an interpreter should be used for persons who do not speak English. The interpreter shall sign the Witness Instruction Statement on obtaining consent of a non-English speaking person to assist in the eyewitness identification process. Law enforcement personnel should consider arranging for an interpreter if a person interviewed:

- 1) Is unable to communicate in English
- 2) Has a limited understanding of English
- 3) Is deaf, hearing impaired, or speaking impaired
- 4) Is otherwise physically challenged to communicate in English

c. Review and Explain Forms

If the person is unable to read, the administrator, in the presence of the witness, will give the explanation, read any forms, and obtain consent and acknowledge the consent on the Witness Certification Statement, stating why the person was unable to sign the form.

4. Documentation

In order to strengthen the evidentiary value of the administration it should be documented in full. Video documentation (with audio) is the preferred method. Audio recording is the preferred alternative. If neither method is employed, then the reason for not video or audio recording should be documented. Preserve the photo array, together with all information about the identification process.

C. Sample Standard Operating Procedures for Sequential, Blinded Photo Array Administrations

1. Preparation

a. Select Suspect Photograph

If multiple photos of the suspect are available, choose the photo that most resembles the suspect's appearance at the time of the crime. Do not include more than one photograph of the same suspect. If you do not know what the suspect looked like at the time of the crime, choose the photo that most resembles the victim's or witness's description of the perpetrator. If there are multiple suspects, include only one suspect's photo in the array.

b. Selecting Fillers

All persons in the photo array should be of the same sex and race and should be reasonably similar in age, height, weight, and general appearance. Ideally, the characteristics of the filler should be consistent with the description of the perpetrator provided by the witness(es). Where there is a limited or inadequate description of the perpetrator provided by the witness(es), where the description of the perpetrator differs significantly from the appearance of the suspect, fillers should be chosen so that no person stands out in the photo array. Do not mix color and black and white photos. Use photos of the same size and basic composition. Never mix mug shots with other types of photographs.

c. Choosing Number of Fillers

Whenever possible, include a minimum of five fillers. Because increasing the number of fillers tends to increase the reliability of the procedure, one may have more than the minimum number of fillers.

d. Ensuring Similarity

Assess the array to ensure that no person stands out from the rest. Cover any portions of the photographs that provide identifying information on the suspect and similarly cover other photographs used in the array.

e. Placing Subject Photographs in Order

1) Place a filler in a folder and set it aside for placement in the lead position.

- 2) Place the remaining photographs which will comprise the photo array in separate folders and place them in random order (mix them up) so you do not know which photograph is in which folder.
- 3) Take the folder you set aside in step 1), above and place it in the lead position.
- 4) Place two empty folders at the end.
- 5) Number the folders.

2. Administration

a. Blinded Administration

The purpose of a blinded administration is to conduct the photo array in a manner such that the administrator does not know which person in the array the witness is looking at.

b. Instruct Witness

Each witness should be instructed outside the presence of the other witnesses. The blinded administrator should give the witness a written copy of the following Witness Instruction Statement and should read the instruction statement aloud at the beginning of each identification procedure:

The folders in front of you contain photos. In a moment, I am going to ask you to look at the photos. The person who committed the crime may or may not be included in the photos. I do not know whether the person being investigated is included.

Although I placed the photos into the folders, I have shuffled the folders so that right now I do not know which folder contains a particular photo.

Even if you identify someone during this procedure, I will continue to show you all photos in the series.

The investigation will continue whether or not you make an identification.

Keep in mind that things like hair styles, beards, and mustaches can be easily changed and that complexion colors may look slightly different in photographs.

You should not feel you have to make an identification. It is as important to exclude innocent persons as it is to identify the perpetrator.

You will look at the photos one at a time. When you open a folder, please open it in a manner that does not allow me to see the photo inside the folder. Take as much time as you need to look at each one.

When you have finished looking at a photo, close the folder and hand it to me. I will then ask you, "Is this the person you saw [insert description of act here]?" Take your time answering the question. If you answer "Yes," I will then ask you, "In your own words, can you describe how certain you are?"

Because you are involved in an ongoing investigation, in order to prevent compromising the investigation, you should avoid discussing this identification procedure or its results.

Do you understand the way the photo array procedure will be conducted and the other instructions I have given you?

c. Document Consent to Participate

Witnesses should then be asked to read the following additional paragraph and sign and date below.

I have read these instructions, or they have been read to me, and I understand the instructions. I am prepared to review the photographs, and I will follow the instructions provided on this form.

- 1) Some witnesses may decline to sign. When a witness declines to sign, it is sufficient for the investigating officer to document that the witness was appropriately instructed.

d. Present Folders

Present each folder to the witness separately (one at a time), in order. The blinded administrator should not be in a position to view the photographs while the witness is viewing the photographs. The eyewitness should be the only person viewing the photographs. When the witness is finished viewing the photo, have the witness hand the folder back.

e. Question Witness

After the witness has looked at a photo and handed it back to you, ask: **"Is this the person you saw [insert description of act here]?"** If the witness answers

"Yes," ask the witness, **“In your own words, can you describe how certain you are?”**

f. Document Witness’s Responses

Document the witness’s response using the witness’s own words. Have the witness complete the appropriate section of the Witness Certification Statement to reflect the outcome of the procedure.

g. Show All Folders with Photos

Show all folders containing photos to the witness. Even if the witness makes an identification, show the witness the next photo until you have gone through all the photographs. If a witness asks why he or she must view the rest of the photos, despite already making an identification, simply tell the witness that to assure objectivity and reliability, the witness is required to view all of the photographs.

h. Avoid Feedback During the Procedure

Do not give the witness any feedback regarding the individual selected or comment on the outcome of the identification procedure. Be aware that witnesses may perceive such things as unintentional voice inflection or prolonged eye contact, in addition to off-hand words or phrases, as messages regarding their selection. Avoid casual conversation comments such as “very good.” Be polite but purposeful when you speak.

i. Additional Viewings

Only upon request of the witness, the witness may view the photo array again after the first photo array procedure has been completed. If the witness requests an additional viewing, the photo array administrator should present the entire photo array in the same order as the original presentation, a second time. If this occurs, it must be documented. The photo array administrator should never suggest an additional viewing to the witness. It is recommended that the witness not be allowed to view the photo array more than two times.

j. Subsequent Use of Materials

Ensure that if the witness writes on, marks, or in any way alters identification materials, those materials are not used in subsequent procedures.

k. Multiple Identification Procedures with Same Witness

Avoid multiple identification procedures in which the same witness views the same suspect more than once.

l. Multiple Identification Procedures with Different Witness

If you need to show the same suspect to a new witness, remix the photo array as before and renumber them accordingly.

m. Multiple Suspects

When there are multiple suspects, a separate photo array should be conducted for each suspect. There should not be more than one suspect per photo array.

n. Reuse of Fillers

When showing a different suspect to the same witness, do not reuse the same fillers from a previous array shown to that witness.

o. Contact Among Witnesses

To the extent possible, prevent witnesses from conferring with each other before, during, and after the photo array procedure.

p. Identification of Special Features

Only after an identification is made, a follow-up interview should assess any relevant factors that support the identification, such as: special facial features, hair, marks, etc.

3. Special Procedures are Required for Illiterate Persons or Persons Who Possess Limited English Proficiency

a. Be Alert to People Who do not Speak English or Possess Limited English Proficiency

Given the diversity of communities, police officers may encounter persons who do not speak English or who possess limited English proficiency in the course of a criminal investigation. Where presented with this situation, officers should carefully consider the ethical and legal ramifications of how to handle the case when there is a language barrier.

b. Using an Interpreter

Unless the administrator speaks the victim's or witness's language fluently, an interpreter should be used for persons who do not speak English. The interpreter shall sign the Witness Certification Statement on obtaining consent of a non-

English speaking person to assist in the eyewitness identification process. Law enforcement personnel should consider arranging for an interpreter if a person interviewed:

- 1) Is unable to communicate in English
- 2) Has a limited understanding of English
- 3) Is deaf, hearing impaired, or speaking impaired
- 4) Is otherwise physically challenged to communicate in English

c. Review and Explain Forms

If the person is unable to read, the administrator, in the presence of the witness, will give the explanation, read any forms, and obtain consent and acknowledge the consent on the Witness Instruction Statement, stating why the person was unable to sign the form.

4. Documentation

In order to strengthen the evidentiary value of the administration it should be documented in full. Video documentation (with audio) is the preferred method. Audio recording is the preferred alternative. If neither method is employed, then the reason for not video or audio recording should be documented. Preserve the photo array, together with all information about the identification process.

D. Sample Standard Operating Procedures for Sequential, Blind Live lineups

1. Preparation

a. Designating a Preparer

Preparing the live lineup should be undertaken by someone other than the person who will administer the live lineup. Ideally, the investigating officer will prepare the live lineup as this ensures that others who might be involved in the case are not used as fillers. Moreover, because the investigating officer knows who the suspect is, he or she should not conduct the actual administration of the live lineup

b. Selecting Fillers

All persons in the live lineup should be of the same sex and race and should be reasonably similar in age, height, weight, and general appearance. Ideally, the characteristics of the filler should be consistent with the description of the perpetrator provided by the witness(es). Where there is a limited or inadequate description of the perpetrator provided by the witness(es), where the description of the perpetrator differs significantly from the appearance of the suspect, fillers should be chosen so that no person stands out in the live lineup.

c. Choosing Number of Fillers

Whenever possible, include a minimum of five fillers. Because increasing the number of fillers tends to increase the reliability of the procedure, one may have more than the minimum number of fillers.

d. Ensuring Similarity

Assess the lineup to ensure that no person stands out from the rest.

e. Placing the Subjects in Order

Place a filler in the lead position and place the remaining persons who will comprise the live lineup in random order.

f. Presenting the Live lineup to Administrator

Present the ordered live lineup to the administrator. Do not tell the administrator which position the suspect is in.

2. Administration

The administrator of the live lineup should be an independent administrator who does not know the identity of the suspect and the witness should be informed of this. In a blind procedure, no one should be present who knows the suspect's identity. In some live lineups, exceptions must be made to allow for the presence of defense counsel. Once the live lineup commences, defense counsel's role is limited to that of observer.

a. Instruct Witness

Each witness should be instructed outside the presence of the other witnesses. The live lineup administrator should give the witness a written copy of the following Witness Certification Statement and should read the instruction statement aloud at the beginning of each identification procedure:

In a moment, I am going to show you a series of individuals. The person who committed the crime may or may not be included. I do not know whether the person being investigated is included.

The investigation will continue whether or not you make an identification.

Even if you identify someone during this procedure, I will continue to show you all individuals in the series.

Keep in mind that things like hair styles, beards, and mustaches can be easily changed.

You should not feel you have to make an identification. It is as important to exclude innocent persons as it is to identify the perpetrator.

The individuals will be shown to you one at a time. Take as much time as you need to look at each one. After each individual, I will ask you "Is this the person you saw [Insert description of act]?" Take your time answering the question. If you answer "Yes," I will then ask you, "In your own words, can you describe how certain you are?"

Because you are involved in an ongoing investigation, in order to prevent damaging the investigation, you should avoid discussing this identification procedure or its results.

Do you understand the way the lineup procedure will be conducted and the other instructions I have given you?

b. Document Consent to Participate

Witnesses should then be asked to read the following additional paragraph and sign and date below.

I have read these instructions, or they have been read to me, and I understand the instructions. I am prepared to view the individuals who will be presented to me, and I will follow the instructions provided on this form.

- 1) Some witnesses may decline to sign. When a witness declines to sign, it is sufficient for the investigating officer to document that the witness was appropriately instructed.

c. Presentation of Subjects

Begin with all live lineup participants out of the view of the witness. Present each subject one at a time in the order presented to the administrator by the preparer. Present each individual to the witness separately, removing those previously shown from the field of view.

d. Question Witness

After each individual is shown, ask the witness: **"Is this the person you saw [insert description of act]?"** If the witness answers "Yes," ask the witness, **"In your own words, can you describe how certain you are?"** Document the witness's response using the witness's own words.

e. Document Witness's Responses

Document the witness's response using the witness's own words. Have the witness complete the appropriate section of the Witness Certification Statement to reflect the outcome of the procedure.

f. Show Every Subject

Even if the witness makes an identification, show the witness the next subject until all subjects have been shown. If a witness asks why he or she must view the rest of the subjects despite already making an identification, simply tell the witness that to assure objectivity and reliability, the witness is required to view all of the subjects.

g. Consistency of Actions

Ensure that any identification actions (e.g., speaking, moving) are performed by all members of the live lineup.

h. Avoid Feedback During the Procedure

Do not give the witness any feedback regarding the individual selected or comment on the outcome of the identification procedure in any way. Be aware that witnesses may perceive such things as unintentional voice inflection or prolonged eye contact, in addition to off-hand words or phrases, as messages regarding their selection. Avoid casual comments such as “very good.” Be polite but purposeful when you speak.

i. Additional Viewings

Only upon request of the witness, the witness may view the lineup again after the first live lineup has been completed. If the witness requests an additional viewing, the independent administrator should present the entire live lineup a second time. If this occurs, it must be documented. The live lineup administrator should never suggest additional viewing. It is recommended that the witness not be allowed to view the live lineup more than two times.

j. Multiple Identification Procedures With Same Witness

Avoid multiple identification procedures in which the same witness views the same suspect more than once.

k. Multiple Identification Procedures With Different Witness

If you need to show the same suspect to a new witness, have the preparer change the order of the subjects in the lineup.

l. Multiple Suspects

When there are multiple suspects, a separate live lineup should be conducted for each suspect. There should not be more than one suspect per lineup.

m. Reuse of Fillers

When showing a different suspect to the same witness, do not reuse the same fillers from a previous lineup shown to that witness.

n. Contact Among Witnesses

To the extent possible, prevent witnesses from conferring with each other before, during, and after the live lineup procedure.

o. Contact between Witnesses, Suspects, and Fillers

Take precautions to ensure that witnesses do not encounter suspects or fillers at any time before or after the identification procedure.

p. Identification of Special Features

Only after an identification is made, a follow-up interview should assess any relevant factors that support the identification, such as: special facial features, hair, marks, etc.

3. Special Procedures are Required for Illiterate Persons or Persons Who Possess Limited English Proficiency

a. Be Alert to People Who do not Speak English or Possess Limited English Proficiency

Given the diversity of communities, police officers may encounter persons who do not speak English or who possess limited English proficiency in the course of a criminal investigation. Where presented with this situation, officers should carefully consider the ethical and legal ramifications of how to handle the case when there is a language barrier.

b. Using an Interpreter

Unless the administrator speaks the victim's or witness's language fluently, an interpreter should be used for persons who do not speak English. The interpreter shall sign the Witness Certification Statement on obtaining consent of a non-English speaking person to assist in the eyewitness identification process. Law enforcement personnel should consider arranging for an interpreter if a person interviewed:

- 1) Is unable to communicate in English
- 2) Has a limited understanding of English
- 3) Is deaf, hearing impaired or speaking impaired
- 4) Is otherwise physically challenged to communicate in English

c. Review and Explain Forms

If the person is unable to read or write, the administrator, in the presence of the witness, will give the explanation, read any forms, and obtain consent and acknowledge the consent on the Witness Certification Statement, stating why the person was unable to sign the form.

4. Documentation

In order to strengthen the evidentiary value of the administration, it should be documented in full. Video documentation (with audio) is the preferred method. Audio recording is the preferred alternative. If neither method is employed, then the reason for not video or audio recording should be documented. A still photograph of each individual in the live lineup should be taken and details of all persons present during the live lineup should be documented.

E. Sample Standard Operating Procedures for Show-ups

Show-ups should be avoided whenever possible because of their suggestiveness. Photo arrays and live lineups are preferred. However, where circumstances require the prompt display of a suspect to a witness, the following procedures should be followed to minimize potential suggestiveness.

1. Preparation

a. Contact Among Witnesses

Separate witnesses and do not allow communication between them before or after conducting a show-up.

b. Document Witness's Description of Perpetrator

Document the witness's description of the perpetrator prior to conducting the show-up.

c. Temporal and Spatial Proximity to the Offense

Use show-ups only where the suspect is detained within a reasonably short time frame following the offense and is found in relatively close proximity to it. Although this is dependent on the individual circumstances of each case, courts have generally held that a two-hour time lapse is acceptable.

d. Transport Witness to Suspect

Transport the witness to the location of the suspect whenever practical, rather than bringing the suspect to the witness. The suspect may be taken to a location where the witness can view the suspect for possible identification.

e. Do not Return Suspect to Crime Scene

Suspects should not be taken to the scene of the crime.

f. Disclosure of Location of Witness's Home

Consider carefully whether to take the suspect to the witness's or victim's home.

g. Avoid Appearance of Guilt

Do not conduct show-ups when the suspect is in a patrol car, handcuffed, or physically restrained by police officers unless such protective measures are necessary to ensure safety.

h. Minimize Reliance on Show-ups

If one witness identifies the suspect, you are strongly urged to use a photo array or a live lineup with any remaining witnesses.

2. Administration

a. Instruct Witness

Each witness should be instructed outside the presence of the other witnesses. The show-up administrator should give the witness a written copy of the following Witness Certification Statement and should read the instruction statement aloud at the beginning of the show-up identification procedure:

In a moment, I am going to show you a person who may or may not be the person who committed the crime.

You should not feel you have to make an identification. It is as important to exclude innocent persons as it is to identify the perpetrator. The investigation will continue whether or not you make an identification.

Because you are involved in an ongoing investigation, in order to prevent damaging the investigation, you should avoid discussing this identification procedure or its results.

Do you understand the procedure and the instructions I have given you?

b. Presentation of Suspect and Questioning of Witness

Present the suspect to the witness and ask the witness whether the person they are looking at is the person they saw commit the crime.

If the witness answers "Yes," ask the witness to describe, in their own words, how certain they are.

c. Document Witness's Response

Document the witness's response using the witness's own words.

d. Multiple Identification Procedures With Same Witness

Avoid multiple identification procedures in which the same witness views the same suspect more than once.

e. Avoid Requirement of Performance by the Suspect

Do not require show-up suspects to put on clothing worn by, speak words uttered by, or perform other actions of the perpetrator.

f. Avoid Conduct Suggestive of the Suspect's Guilt

Officers should avoid words or conduct that may suggest to the witness that the individual is or may be the perpetrator.

g. Contact Among Witnesses

Remind the witness not to talk about the show-up to other witnesses until police or prosecutors deem it permissible.

3. Special Procedures are Required for Illiterate Persons or Persons Who Possess Limited English Proficiency

a. Be Alert to People Who do not Speak English or Possess Limited English Proficiency

Given the diversity of communities, police officers may encounter persons who do not speak English or who possess limited English proficiency in the course of a criminal investigation. Where presented with this situation, officers should carefully consider the ethical and legal ramifications of how to handle the case when there is a language barrier.

b. Using an Interpreter

Unless the show-up administrator speaks the victim's or witness's language fluently, an interpreter should be used for persons who do not speak English. Law enforcement personnel should consider arranging for an interpreter if a person interviewed:

- 1) Is unable to communicate in English
- 2) Has a limited understanding of English
- 3) Is deaf, hearing impaired, or speaking impaired
- 4) Is otherwise physically challenged to communicate in English

4. Documentation

In order to strengthen the evidentiary value of the administration it should be documented in full including the time, date, and location of the procedure, identities of persons present, and the outcome of the procedure. Video documentation (with audio) is the preferred method. Audio recording is the preferred alternative. If

neither method is employed, then the reason for not video or audio recording should be documented.

Appendix A

Witness Certification Statement for Photo Array

Reference No.:

Offense:

Date of Offense:

Witness:

Time, Date, and Place of Photo Array:

Persons present:

Instructions:

In a moment, I am going to show you a series of photos. The person who committed the crime may or may not be included. I do not know whether the person being investigated is included.

The investigation will continue whether or not you make an identification. Even if you identify someone during this procedure, I will continue to show you all photos in the series. Keep in mind that things like hair styles, beards, and mustaches can be easily changed and that complexion colors may look slightly different in photographs.

*You should not feel you have to make an identification. It is as important to exclude innocent persons as it is to identify the perpetrator. The photos will be shown to you one at a time. Take as much time as you need to look at each one. After each photo, I will ask you "Is this the person you saw **[insert description of act here]**?" Take your time answering the question. If you answer "Yes," I will then ask you, "In your own words, can you describe how certain you are?"*

Because you are involved in an ongoing investigation, in order to prevent damaging the investigation, you should avoid discussing this identification procedure or its results.

Do you understand the way the photo array procedure will be conducted and the other instructions I have given you?

Consent to Participate:

I have read these instructions, or they have been read to me, and I understand the instructions. I am prepared to review the photographs and I will follow the instructions provided on this form.

Signed: _____
(Witness)

I certify that I have translated and read the instructions to the witness.

Signed: _____
(Translator, if applicable)

Signed: _____
(Photo Array Administrator)

Identification Result:

I have picked photo number _____

Signed: _____
(Witness)

I did not pick anyone from the photo array

Signed: _____
(Witness)

Witness Confidence Statement:

Administrator Certification:

The photo that was picked from the photo array by the above-named witness has been identified
as _____

Signed: _____
(Photo Array Administrator)

Appendix B

Witness Certification Statement for Live Lineup

Reference No.:

Offense:

Date of Offense:

Witness:

Time, Date, and Place of Live Lineup:

Persons present:

Instructions:

In a moment, I am going to show you a series of individuals. The person who committed the crime may or may not be included. I do not know whether the person being investigated is included.

The investigation will continue whether or not you make an identification. Even if you identify someone during this procedure, I will continue to show you all individuals in the series. Keep in mind that things like hair styles, beards, and mustaches can be easily changed.

*You should not feel you have to make an identification. It is as important to exclude innocent persons as it is to identify the perpetrator. The individuals will be shown to you one at a time. Take as much time as you need to look at each one. After each individual, I will ask you "Is this the person you saw **[Insert description of act]**?" Take your time answering the question. If you answer "Yes," I will then ask you, "In your own words, can you describe how certain you are?"*

Because you are involved in an ongoing investigation, in order to prevent compromising the investigation, you should avoid discussing this identification procedure or its results.

Do you understand the way the lineup procedure will be conducted and the other instructions I have given you?

Consent to Participate:

I have read these instructions, or they have been read to me, and I understand the instructions. I am prepared to view the individuals, and I will follow the instructions provided on this form.

Signed: _____
(Witness)

I certify that I have translated and read the instructions to the witness.

Signed: _____
(Translator, if applicable)

Signed: _____
(Lineup Administrator)

Identification Result:

I have picked number _____

Signed: _____
(Witness)

I did not pick anyone _____

Signed: _____
(Witness)

Witness Confidence Statement:

Administrator Certification:

The individual who was picked from the live lineup by the above-named witness has been identified

as _____

Signed: _____
(Lineup Administrator)

TAB J

Information on Y-STR
DNA Testing

Y-STR Testing: Enhancing Sexual Assault and Cold Case Workflows

Incorporating Y-STR testing (Y-chromosomal testing) into a cold case sexual assault workflow can be a powerful tool for detecting male DNA foreign to the victim when traditional, autosomal short tandem repeat (STR) testing fails to aid the investigation. During traditional STR testing, male DNA may be masked or in competition with excess amounts of female DNA, which may result in partial or no male STR DNA results. Y-STR testing explicitly targets STR regions on the male Y chromosome that is passed down through the paternal lineage (i.e., father to son). By specifically targeting the Y-chromosome, a Y-STR profile can be unmasked in the presence of female DNA. Table 1 outlines several benefits for incorporating Y-STR testing in cold case sexual assault workflows.

Table 1. Benefits of Y-STR Testing: Y-STR analysis can enhance DNA analysis workflows to help detect male DNA.

BENEFITS OF Y-STR TESTING

Target male-only DNA in mixed samples (i.e., samples having more than one source of DNA)

Determine number of male donors in a mixed sample

Resolve male-to-male mixtures

Provide clarity for inconclusive STR results

Aid in power of exclusion

Detect male DNA from cases involving

- ♦ azoospermic or vasectomized males,
- ♦ saliva following showering,
- ♦ digital penetration,
- ♦ no ejaculation,
- ♦ aged or improperly stored sexual assault kits where sperm cells may be degraded, and
- ♦ extended time intervals between incident and collection.

Y-STR testing is more sensitive than common biological fluid screening methods, such as traditional serology techniques, and even some quantification methods that screen for total amounts of male and human DNA.¹ Thus, Y-STR profiles have been developed in cases where seminal fluid or sperm were not detected by serology or when quantified male DNA is at a low level or even below the limit of detection. Y-STR analysis provides some hope in reinvestigating cases that

may have gone cold, have screened negative, or produced only the victim's DNA.

Y-STR Analysis: New Hope for Cold Cases

- ♦ Cold case reinvestigations
- ♦ Negative screenings
- ♦ Victim DNA only

Newer STR commercial kits—such as PowerPlex®Fusion, PowerPlex®Fusion 6C, AB GlobalFiler™, and QIAGEN Investigator® 24plex—have incorporated at least one additional male-specific marker to assist with the following:

- ♦ Detection of male DNA
- ♦ Determination of the number of contributors in a mixture
- ♦ Guidance in decision-making for proceeding with Y-STR testing

In one study, combining autosomal STR testing with Y-STR testing resolved 1 in 10 cases with previous inconclusive STR results, detected an increase in the number of male contributors in a mixed sample, and provided highly informative DNA profiles in an additional 21% of cases.¹ Approaches that combine match probabilities of STR and Y-STR profiles to increase the rarity of a match will prove beneficial in cases where there is a Y-STR profile with limited STR profile data.^{2,3}

Vaginal and anal swabs were collected from a 15-year-old female 48 hours after an alleged penile penetration incident. No spermatozoa were found, but a 16-allele Y-STR profile that matched the suspect was developed from the vaginal swab.⁴

As technology improves, resulting in increases in sensitivity, the detection of male DNA in sexual assaults is becoming more achievable at extended intervals between an incident and the collection of samples. Although producing DNA profiles within 48–72 hours post-coital is common, Y-STR profiles are pushing the limits of 144 hours (6 days).⁵ Enhanced methods, such as post-polymerase chain reaction (PCR) purification and nested PCR, have been successful, in

a research setting, detecting Y-STR profiles from properly collected cervicovaginal samples 9 days post-coital.⁶ As emerging technologies are implemented in crime laboratories, policies about collection times may allow for longer periods between assault, exam, and collection.

A commonly cited limitation to Y-STR testing is the lack of discrimination power because of its haploid nature and inheritance pattern.⁷ Commercial kits that in the past could not distinguish between related males and—in some circumstances—even unrelated males, have reduced that limitation. Connecting patrilineal lines is helpful for establishing ancestry and in missing persons or mass disaster events; however, further distinction between relatives would aid more criminal investigations. For criminal forensic use, research into rapidly mutating Y-STRs has shown an increase in differentiation between unrelated and related males.⁸ Newer Y-STR commercial kits, such as PowerPlex® Y23 and Yfiler™ Plus, have incorporated rapidly mutating Y-STR locations to increase the usefulness of Y-STR analysis in forensic investigations.

Ultimately leading to the success of Y-STR workflows is establishing local or national Y-STR databases. Until databases are created, having possible suspect reference samples will be critical for the success of a Y-STR program. Currently, the Combined DNA Index System, known as CODIS, accepts Y-STR profiles for missing person-related indexes, but CODIS does not house a national, criminal, Y-STR database.⁹ In Austria, the National DNA Database expanded to include Y-STRs, based on an in-house study that a sexual perpetrator was identified using Y-STRs in 38 of 239 sexual offenses.¹⁰ In the first 40 cases uploaded to Austria's expanded database, a common Y-STR profile linked 3 rape cases together, identifying a perpetrator for all 3 crimes. In addition, a link between 2 additional rapes identified two perpetrators as father and son. Success will continue to improve with the utilization of Y-STR analysis and growing the database.

Thanks to cold case funds and the latest Y-STR technology, the Boston Police Department solved the rape and murder mystery surrounding Mary Sullivan, a victim of the so-called Boston Strangler, almost 50 years after her death.¹¹

Continued shifts in DNA platforms, such as the implementation of massively parallel sequencing, will allow for even more efficient, combined autosomal STR and Y-STR workflows. Until those shifts occur, laboratories should consider the efficacy of current technology and how implementing Y-STRs can improve solvability in sexual assaults and cold cases.

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