

SB 5714

Legislative Work Group on
Eyewitness Evidence

Final Report

Guidelines for the collection of eyewitness evidence and
recommendations for law enforcement training

April 19, 2020

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Executive Summary

Substitute Senate Bill 5714 was unanimously passed on April 25, 2019 and it authorized the creation of a statewide work group whose focus was maximizing the reliability of eyewitness evidence collected during criminal investigations. The duties of the group included the following:

- a) Developing model guidelines for the collection of eyewitness evidence consistent with the model policies adopted in 2015 by the Washington Association of Sheriffs and Police Chiefs (WASPC) and the Washington Association of Prosecuting Attorneys (WAPA). The model guidelines must also:
 - i. Be based on credible field, academic, or laboratory research on eyewitness memory; be designed to reduce erroneous eyewitness identifications and enhance the reliability and objectivity of eyewitness identifications; and
 - ii. Include standards for blind administration of the identification procedure, filler selection, instructions to the witness, and documenting a statement of witness confidence immediately following any positive identification;
- b) Designing law enforcement training for the collection and documentation of eyewitness evidence based on the model guidelines developed pursuant to this subsection; and
- c) In consultation with the University of Washington, Tacoma and the Criminal Justice Training Commission (CJTC), designing a pilot project for implementing and evaluating the effectiveness of the training curriculum developed pursuant to this subsection.

The Work Group was established in the late summer of 2019 and consisted of Senator Manka Dhingra, Representative John Lovick, Washington State Patrol Assistant Chief Rob Huss, James McMahan (WASPC), Courtney Popp (CJTC), Andy Miller (WAPA), Mark Larson (WAPA), Rachel Forde (Washington Defender Association), Lara Zarowsky (Washington Innocence Project), Dr. Stephen Ross (University of Washington, Tacoma), and Assistant Chief Carl Kleinknecht (Bellevue Police Department).

The work group met at least monthly from August through December 2019 with additional work performed by subcommittee team members as needed. Meetings took place in Bellevue, Burien, and Olympia. Other law enforcement subject matters were enlisted to review and offer critiques on the proposed processes, protocols and training modules and consisted of Detectives and/or Patrol Officers from Bellevue PD, Issaquah PD, Mercer Island PD, King County Sheriff's Office, Normandy Park PD, Tukwila PD, and Washington State Troopers from Eastern Washington.

The Work Group successfully drafted the model guidelines, standard operating procedures, law enforcement training curriculum, and pilot project. This document outlines a training development/delivery strategy and pilot research project designed to identify the effective means to promote widespread adoption of the new model guidelines and associated field guides across

Washington law enforcement. By doing so, this training and pilot project will assist with ensuring eyewitness identification procedures performed in Washington State are legally sound, consistent, and improve investigative efficiency and effectiveness through the collection of more reliable evidence. Procedures conducted in this manner are also less likely to result in mistaken identifications and wrongful convictions.

The training objectives consist of the following:

20-Minute Roll Call Training:

A 20-minute roll call training will introduce the revised model guidelines and standard operating procedure documents, and demonstrate how officers should use the field guide checklists to generate and document reliable identification evidence in their investigations.

Line Officer Practical Online Training:

An online training course will identify common vulnerabilities associated with eyewitness identification procedures, explain the psychological processes of memory and decision-making, provide state and federal statutory and case law regulating the collection of eyewitness evidence, review the new model guidelines, walk students through each identification procedure using the appropriate standard operating procedures and field guide checklists, and explain how utilizing these aids will generate more reliable, better documented identification evidence in their investigations. The training course is anticipated to be between 90- and 180-minutes long with the exact length determined during development.

Supervisor Overview Online Training:

An online training course will be directed to those supervising the line officers who conduct eyewitness identification procedures. This course will explain the evolution of science and law that led to the development of the revised guidelines for eyewitness identification procedure practices; briefly review the new model guidelines; introduce the field guides; and explain how ensuring that their supervisees follow the new guidelines and utilize the field guides will generate more reliable, better documented identification evidence. The training course is anticipated to be between 30- and 60-minutes long with the exact length determined during development.

Training Deliverables:

- Online Training Module 1: Line Officer Practical (90-180 minute)
- Online Training Module 2: Supervisor Overview (30-60 minute)
- Training Manual (digital)
- Investigative Aids/Checklists

Background

The legislature recognizes that prosecuting attorneys, law enforcement, and society at large strive for a criminal justice system that minimizes the risk that innocent people will be convicted. The legislature further recognizes that mistaken identification by witnesses to crime have contributed to the conviction of the innocent in Washington state. Through the development of best practices related to the collection of eyewitness evidence and the adoption of model guidelines to implement such practices, the legislature aims to improve the quality of such evidence and reduce the risk of wrongful conviction related to these contributing factors.

The Washington State Eyewitness Policy Committee (WSEPC) formed in 2013 to address the issue of reforming eyewitness identification procedures in Washington State. Consisting of a multidisciplinary group of prosecutors, law enforcement agents, social scientist, innocence advocate, and a defense attorney, the WSEPC sought to develop recommended “best practices” for the collection of eyewitness evidence and develop effective strategies for implementing these recommendations into law enforcement practice. Through these efforts, the WSEPC developed a model policy that was adopted in 2015 by both the Washington Prosecuting Attorney Association and the Washington Association of Sheriffs and Police Chiefs.

Although guidelines were adopted by WASPC and WAPA and disseminated to each organization’s representative agencies and members, a study conducted by the WSEPC in 2016 indicated that only approximately ten percent of officers surveyed had read the guidelines and fewer than five percent had received training consistent with these new recommended practices. Furthermore, this study discovered that there was wide variability in how identification procedures were being conducted across the participating agencies and many were not employing procedures consistent with the WASPC and WAPA recommendations. Given the varying degrees of awareness of and adherence to the WASPC/WAPA model guidelines, the Legislature convened this Work Group to increase the awareness of and use of evidence-based investigative procedures for collecting eyewitness evidence through the State.

The duties of the 2019 Eyewitness Evidence Work Group encompassed:

- a) Developing model guidelines for the collection of eyewitness evidence consistent with the model policies adopted in 2015 by WASPC/WAPA; The model guidelines must also: Be based on credible field, academic, or laboratory research on eyewitness memory; be designed to reduce erroneous eyewitness identifications and enhance the reliability and objectivity of eyewitness identifications; and include standards for blind administration of the identification procedure, filler selection, instructions to the witness, and documenting a statement of witness confidence immediately following any positive identification;
- b) Designing law enforcement training for the collection and documentation of eyewitness evidence based on the model guidelines developed pursuant to this subsection; and
- c) In consultation with the University of Washington Tacoma and the CJTC, designing a pilot project for implementing and evaluating the effectiveness of the training curriculum.

The Work Group's first task was to review all aspects of the WASPC and WAPA model policies to ensure the relevance with current case law and procedures. A subcommittee was then formed to identify any street-level, operational obstacles that hindered widespread adoption of the model policies while another subcommittee met to develop the field guides/checklists and training components.

A robust training development and pilot project plan was the output of the Work Group and is attached to this report for further details.

Conclusion

Providing for public safety is the quintessential responsibility of government. Providing for just outcomes in the criminal justice system should be the charge for all involved in that process—training staff at the police academy, police officers, prosecutors, defense attorneys, jurors, appellate courts and Innocence Project professionals. A false conviction of an actually innocent person is a miscarriage of justice that shatters lives, fosters deep suspicion of the system, and creates a lack of confidence between police officers and the public that they serve.

By implementing the recommendations detailed in this report we can ensure that eyewitness identification procedures performed in Washington State are legally sound, consistent, and improve investigative efficiency and effectiveness through the collection of more reliable evidence. Procedures conducted in the manner outlined in this report are also less likely to result in mistaken identifications and wrongful convictions and thereby increase confidence in the final outcomes of the criminal justice system.

Model Guidelines
Minimum Standards for Conducting Eyewitness Identification Procedures
Washington State Legislature Eyewitness Evidence Work Group

PURPOSE

This policy provides law enforcement with minimum standards for the collection of eyewitness identification evidence. When used, these standards will increase the probative value of eyewitness evidence and reduce the incidence of false identifications.

POLICY

This agency will conduct eyewitness identification procedures in a manner consistent with these guidelines in order to standardize the identification procedures employed by law enforcement and maximize the reliability of the eyewitness evidence collected.

DEFINITIONS

Administrator – The individual conducting an identification procedure with a victim/witness. The administrator can be any detective, patrol officer, or evidence technician as allowed by the administering agency’s internal policy.

Blind Administration – An identification procedure in which the administrator of the procedure does not know which physical lineup/photo array member is the suspect. Also known as double-blind administration.

Blinded Administration – An alternative to blind administration in which the administrator of the procedure knows which physical lineup/photo array member is the suspect, but steps are taken to ensure the administrator does not know which physical lineup/photo array member is being viewed by the victim/witness at any given time. These methods help prevent the administrator from inadvertently influencing the witness during the procedure. Alternatives may include sitting out of the line of sight of the witness while they are viewing the physical lineup/photo array, administration of the array using electronic devices (e.g., computer/tablet), or the folder shuffle method.

Composite - A facial reproduction of a perpetrator created in collaboration with a victim/witness of a crime. Composites may be created through artistic renderings (e.g., artist’s sketches), mechanical systems (e.g., IdentiKit), and software programs (e.g., Faces 4.0, IdentiKit 7 HD).

Confidence Statement – A statement in the victim/witness’s own words, taken immediately after the identification has been made, that articulates the witness’s level of confidence in their identification.

Field Showup – An identification procedure in which a single suspect is presented in order to determine whether the victim/witness recognizes a person involved with the crime. Typically includes the in-person presentation of a suspect in the field and occurs close in time and proximity to the incident under investigation.

Fillers – Non-suspect photographs or physical lineup members included in addition to the suspect or the suspect's photograph in an identification procedure.

Folder Shuffle - A type of blinded administration for a photo array in which the administrator cannot see or track which photograph is being presented to the witness until after the procedure is completed. This method requires the administrator to place each photograph in the array into separate, identical folders and then shuffle the folders, so they do not know the position of any array members in the folder sequence. The folders are then presented to the witness one-at-a-time with the witness required to make a decision on each photograph before being shown the subsequent photograph.

Identification Procedure – Any procedure that includes the suspect, in person or via photograph, and tests the witness's memory of a person involved with the crime. Includes field showups, photo arrays, physical lineups, image collection searches, or composite production.

Image Collection Search - An identification procedure in which a collection of photographs in which no specific individual has been identified as a suspect is displayed for the purpose of determining whether the victim/witness recognizes a person involved with the crime. This collection of photographs may include, but is not limited to, social media profiles, booking photographs, mugbooks, jail/prison rosters, yearbooks, team rosters, and agency/organizational membership rosters.

Photo Array – An identification procedure in which a series of photographs of persons, including a suspect, is displayed for the purpose of determining whether the victim/witness recognizes a person involved with the crime.

Physical Lineup – An identification procedure in which a group of persons, including a suspect, is displayed for the purpose of determining whether the victim/witness recognizes a person involved with the crime.

Sequential Presentation – A method for presenting the physical lineup/photo array members such that each individual/photograph is presented one-at-a-time to the victim/witness. The victim/witness is required to make a decision about a specific individual/photograph before that individual/photograph is removed and the witness is shown the next individual/photograph in the sequence.

Simultaneous Presentation – A method for presenting the physical lineup/photo array members such that all individuals/photographs are presented to the victim/witness at the same time. The victim/witness is allowed to view all photographs and make a decision about whether they recognize any of the individuals/photographs.

MINIMUM STANDARDS

Identification procedures should be conducted in a manner consistent with the minimum standards outlined below.

A. Selecting the Appropriate Identification Procedure

1. The investigator should determine when an identification procedure is to be conducted after taking into account the following important considerations:
 - a. Only one identification procedure should be conducted with each victim/witness for each suspect. This investigative tool should be well thought out and done in the right time period. An improperly conducted identification procedure for any one suspect cannot be redone or remedied later with a correct procedure containing that same suspect.
 - b. The investigator should exhaust all other reasonable investigatory opportunities to develop a suspect before conducting an identification procedure. An identification procedure conducted without corroborating evidence creates a risk for false identification.
 - c. Regardless of the manner in which a specific lead was generated (e.g., digital images, informants, tip lines), any identification procedure should be conducted according to the procedures outlined in these guidelines.
 - d. The victim/witness should be thoroughly interviewed at some point prior to the identification procedure and as close to the event as possible. Investigators should use open-ended, non-suggestive questions to solicit a complete description of both the event and the suspect.
 - e. The existence of multiple witnesses creates an important opportunity in an investigation. In a situation where law enforcement is attempting to generate probable cause or leads and does not possess corroborating evidence, an officer might choose to use a single witness in an identification procedure (e.g., showup, image collection search, composite, photo array). Other witnesses should be reserved for identification procedures to be conducted when the evidence is more fully developed.

2. The investigator should determine which identification procedure will be conducted after taking into account the circumstances of the investigation at hand, and the following considerations:
 - a. *Photo Array* - When constructed and administered in accordance with these guidelines, a photo array is a reliable test of a victim/witness's memory.
 - b. *Physical Lineup* - Physical lineups can be reliable tests of a victim/witness's memory, but are often less than optimum due to the difficulty of finding appropriate fillers; the challenges of managing the interaction between various witnesses, victims, and lineup administrators; and the amount of time and resources required to appropriately construct and administer a lineup. In some situations, a physical lineup may be preferable (e.g., when the witness describes a distinctive feature of the perpetrator's body, gait, or other specific physical movement).
 - c. *Field Showup* - Field showup identifications are considered by courts to be more suggestive than photo arrays or physical lineups and should be performed only when the circumstances require the immediate display of a suspect to a victim or witness. A field showup should not be conducted when it is possible to construct and administer a photo array or physical lineup in accordance with these guidelines.
 - d. *Image Collection Searches & Composites* - If all reliable leads for suspect generation have been exhausted, image collection searches and composite production may be used as alternative identification procedures. These techniques may result in identifying a suspect, but the results are less reliable than those developed through properly conducted photo arrays and physical lineups.

B. Selecting Fillers for Photo Arrays and Physical Lineups

1. All photo arrays and physical lineups should contain only one suspect.
2. In cases with multiple suspects, a separate photo array/physical lineup with unique fillers should be created for each suspect. A filler should not be used in more than one photo array/physical lineup shown to the same victim/witness.
3. All photo arrays and physical lineups should contain a minimum of five fillers.
4. Fillers and the suspect should be placed randomly in the physical lineup/photo array. If the physical lineup/photo array is sequentially presented, the suspect should never be placed in the first position. If presenting the physical lineup/photo array to multiple witnesses, the fillers and suspect should be randomized for each victim/witness.

5. Fillers should be selected in a manner that ensures that the suspect does not stand out.
6. Fillers should generally fit the victim/witness's description of the suspect. When there is a limited description or when the description differs from the suspect in significant features, the fillers should resemble the suspect's appearance. However, complete uniformity of features is not required. Avoid selecting fillers that so closely resemble the suspect that a person familiar with the suspect might find it difficult to distinguish the suspect from the fillers.
7. If a suspect was identified based on similarity to a composite or surveillance video/photograph, fillers should also be selected based on their similarity to the composite or surveillance video/photograph.
8. If a suspect has a unique feature such as a scar or tattoo, technology may be used to duplicate the suspect feature on the fillers, or the suspect feature may be covered (not removed), with that same cover replicated on each of the fillers in the same manner and location. The original photographs, the altered versions, and the method of alteration should be included in the investigative report.
9. If the suspect is described as wearing distinctive clothing, either all individuals should wear similar distinctive clothing or none of the individuals should be presented in that clothing.
10. Once constructed, the physical lineup/photo array should be evaluated to ensure that none of the individuals stands out from the rest. If any filler is identified as standing out from the rest, that filler should be replaced. If the suspect stands out from the fillers, the physical lineup/photo array should be reconstructed to ensure the suspect does not stand out.

C. Minimizing Suggestiveness and Perceived Suggestiveness

1. All photo arrays and physical lineups should be conducted using blind presentation. When the administrator does not know the identity of the suspect, any actual or perceived suggestiveness in the procedure is reduced, and the administrator is safeguarded from influencing the victim/witness with verbal or nonverbal cues.
2. When blind presentation is not feasible, blinded presentation should be used.

D. Instructing Victims and Witnesses

1. At all points in the pre-identification procedure process, administrators should avoid implying or telling a victim/witness that a specific suspect for the crime has been identified. This includes when a victim/witness is contacted to schedule an identification procedure.

2. Administrators should provide these *minimum* instructions to a victim/witness immediately before conducting an identification procedure:
 - a. Any decision must be entirely your own. To that end, do not assume that I know whether a person being investigated is included in this group.
 - b. Keep in mind that the person who committed the crime may or may not be included in the showup/photo array/lineup. You should not feel that you have to make an identification. It is just as important to clear innocent persons from suspicion as it is to identify guilty parties.
 - c. Keep in mind that if the person who committed the crime is not in the group, the correct answer would be “not present” or “none of these.”
 - d. If you are unable to make a decision, you have the option of responding “I don’t know”. We will continue our investigation whether or not you make a decision.
 - e. If you make a decision, I will ask you to state how confident you are in that decision.
 - f. Do not discuss this procedure with any other witnesses in the case or the media. Keeping the results of this procedure to yourself is necessary to preserve the integrity of the investigation.
3. Administrators should ensure that they do NOT provide any instruction to the victim/witness that implies that the perpetrators appearance may have changed and/or that they might look different in the physical lineup/photo array than they did at the time of the crime.

E. Presentation Format

1. Administrators may choose to employ either simultaneous or sequential presentation of the physical lineup/photo array. Neither manner of presentation has been determined to produce more reliable evidence than the other.

F. Witness Contamination

1. Victims/witnesses should be separated immediately after the criminal event and should be discouraged from speaking with one another about what they saw (including discussing the crime on social media).
2. Discourage victims/witnesses from pursuing information about the crime on the internet or other media outlet.
3. Administrators should instruct victims/witnesses that they should not discuss identification decisions with each other and explain to victims/witnesses that doing so could be harmful to the investigation.

4. All interviews and identification procedures should be conducted with each victim/witness separately. Steps should be taken to ensure that victims/witnesses do not become aware of the statements and/or identification decisions of other victims/witnesses.
5. All interviews should include the use of open-ended, non-suggestive questioning tactics.
6. Administrators should not provide any feedback to a victim/witness regarding their decision in an identification procedure. In addition to explicit statements or confirmations, administrators should take steps to ensure their body language or demeanor isn't unintentionally interpreted as nonverbal feedback.

G. Documenting the Procedure

1. All interviews and the entire identification procedure, including pre-lineup instructions and witness confidence statement, should be video recorded and fully documented. Audio recording is the preferred alternative when video recording is not possible. If neither video nor audio-recording is possible, or if the witness does not consent to recording, administrators should produce a detailed written report of the interview or identification procedure immediately following completion of the procedure.
2. A confidence statement should be obtained immediately after the victim/witness decides (either positive or negative). The exact words used by the victim/witness in expressing his/her degree of confidence should be documented. The confidence of eyewitness evidence is a stronger predictor of accuracy when gathered immediately after a properly conducted identification procedure because it is not yet influenced by the many possible sources of post-identification feedback.

Sample operating procedures

The following procedures are designed to maximize the quality of eyewitness evidence collected during criminal investigations by reducing mistaken eyewitness identifications, increasing reliability and objectivity of the identification procedures, and ensuring proper collection and preservation of eyewitness evidence. These procedures are consistent with the model guidelines developed by the Legislative Work Group on Eyewitness Evidence. Sample operating procedures are provided for the most commonly used identification methods (i.e., showups and photo arrays). Sample operating procedures for other, less commonly used methods are not provided due to inconsistencies in the resources and methods available to agencies for conducting these other procedures (i.e., physical lineups, image collection searches, and composites). However, these procedures should incorporate many of the same processes outlined in the sample operating procedures provided in this document and agencies should ensure that their processes are consistent with the model guidelines for collecting eyewitness evidence.

I. Descriptions of Eyewitness Identification Methods

A. **Photo Arrays:** An identification procedure in which a series of photographs of persons, including a suspect, is displayed for the purpose of determining whether the victim/witness recognizes a person involved with the crime. The array can either be presented in a sequential or simultaneous manner. When constructed and administered in accordance with this policy, a photo array is a reliable test of a victim/witness's memory.

1. **Sequential, Blind Photo Array** – A photo array in which the photographs are presented one at a time to the victim/witness by an administrator who does not know which photograph in the array is of the suspect. 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** – A photo array in which the photographs are presented one at a time to the victim/witness by an administrator who knows which photograph in the array is of the suspect, but who takes steps (e.g., using the folder shuffle method; sitting out of the victim/witness's line of sight while witness is viewing the photo array) to prevent the administrator from knowing which photograph the victim/witness is viewing at any specific time. This method typically involves an administrator who is familiar with the case and knows who the suspect is.

3. **Simultaneous, Blind Photo Array** – Also known as a “blind six-pack”, a photo array in which the photographs are presented all at the same time to the victim/witness by an administrator who does not know which photograph in the array is of the suspect. 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. **Simultaneous, Blinded Photo Array** – Also known as a “blinded six-pack”, a photo array in which the photographs are presented all at the same time to the victim/witness by an administrator who knows which photograph in the array is of the suspect, but who takes steps (e.g., sitting out of the victim/witness’s line of sight while the witness is viewing the photo array) to prevent the administrator from knowing which photograph the victim/witness is viewing at any specific time. This method typically involves an administrator who is familiar with the case and knows who the suspect is.

B. Physical Lineups: An identification procedure involving the live display of a group of persons, including a suspect, for the purpose of determining whether the victim/witness recognizes a person involved with the crime. The lineup members can either be presented in a sequential (one at a time) or simultaneous (all at the same time) manner.

1. **Sequential, Blind Physical Lineup** – A physical lineup in which the lineup members are presented one at a time to the victim or witness by one or more administrators that do not know which individual in the lineup is the suspect. This method requires a preparer who may be familiar with the case and one or more administrators that do not know the identity of the suspect.
2. **Sequential, Blinded Physical Lineup** – A physical lineup in which the lineup members are presented one at a time to the victim/witness by one or more administrators that do know which individual in the lineup is the suspect, but take steps (e.g., sitting out of the victim/witness’s line of sight while the witness is viewing the lineup members, remaining silent prior to the victim/witness making a decision) to prevent the witness from perceiving any information from the administrator(s). This method typically involves one or more administrators that are familiar with the case and know who the suspect is.
3. **Simultaneous, Blind Physical Lineup** – A physical lineup in which the lineup members are presented all at the same time to the victim/witness by one or more administrators that do not know which individual in the lineup is the suspect. This method requires a preparer who may be familiar with the case and one or more administrators that do not know the identity of the suspect.

4. **Simultaneous, Blinded Physical Lineup** – A physical lineup in which the lineup members are presented all at the same time to the victim/witness by one or more administrators that do not know which individual in the lineup is the suspect, but take steps (e.g., sitting out of the victim/witness's line of sight while witness is viewing the lineup members, remaining silent prior to the victim/witness making a decision) to prevent the witness from perceiving any information from the administrator(s). This method typically involves one or more administrators that are familiar with the case and know who the suspect is.

C. **Field Showup:** An identification procedure in which a single suspect is presented to a victim/witness to determine whether the victim/witness recognizes a person involved with the crime. Typically includes the in-person presentation of a suspect in the field and occurs close in time and proximity to the incident under investigation. This procedure can be carried out by any officer.

D. **Image Collection Searches:** An identification procedure involving the presentation of a collection of photographs that do not contain a specific suspect. This image collection is presented to a victim/witness to determine whether the victim/witness recognizes a person involved with the crime. This collection of photographs may include, but is not limited to, social media profiles, booking photographs, mugbooks, jail/prison rosters, yearbooks, team rosters, and agency/organizational membership rosters or websites.

E. **Composites:** A facial reproduction of a perpetrator created in collaboration with a victim/witness of a crime. Composites may be created through artistic renderings (e.g., artist's sketches), mechanical systems (e.g., IdentiKit), and software programs (e.g., Faces 4.0, IdentiKit 7 HD).

II. Sample Standard Operating Procedures for Field Showups

A. Preparation

1. Considerations for When to Conduct a Showup

Use showups only when the suspect is detained within a reasonably short time frame following the offense and is found in relatively close proximity to the scene.

2. Conducting Showups with Multiple Suspects

If multiple suspects are on scene, conduct separate showup procedures for each suspect.

3. Conducting Showups with Multiple Witnesses

If multiple witnesses are available, separate the victim/witnesses and do not allow communication between them before, during, or after the showup. Transport each witness individually.

4. Minimizing Use of Showups with Additional Witnesses

If one victim or witness positively identifies the suspect, it is best practice to end the showup procedure, and save the remaining witnesses for future photo arrays or physical lineup identification procedures whenever possible.

5. Document Witness's Description of Subject

Document the victim/witness's description of the subject prior to conducting the showup.

6. Transporting the Victim/Witness to Suspect Location

Transport the victim or witness to the location of the suspect whenever practical, rather than bringing the suspect to the victim/witness's location. The suspect may be taken to a location where the witness can view the suspect for possible identification. Suspects should not be taken to the scene of the crime.

7. Minimizing Appearance of Suspect Guilt

If the suspect needs to be handcuffed for public safety reasons, they should be positioned so that the handcuffs are not visible to the victim or witness. Do not conduct showups when the suspect is in a patrol car or physically restrained by police officers.

B. Assessing Witness Capacity to Participate in the Procedure

Prior to conducting the showup, the administrator should assess the victim's/witness's ability to adequately participate in the procedure

1. Sensitivity to Juvenile Witnesses and Those with Limited Cognitive Capacity

Any concerns with regard to the victim/witness's age, cognitive capacity, or impairment due to intoxication, trauma, or other factors should be addressed prior to conducting the procedure. Consult with your agency legal advisor and/or supervisor for guidance on how to proceed before conducting any identification procedure in these situations.

2. Sensitivity to Witnesses with Literacy Barriers

Victims/witnesses should also be evaluated as to their proficiency to communicate in English prior to the identification procedure. Those deemed to possess limited or no proficiency in speaking or understanding English due to language barriers, literacy barriers, speech impairment, or hearing impairment should be provided with appropriate certified interpretive services in accordance with the agency's Language Access Plan.

C. Administration

1. Minimizing Suggestiveness

Officers should avoid words or conduct that may suggest to the victim or witness that the individual is or may be the subject. Take steps to ensure witnesses are not able to hear radio traffic or receive any confirmation of suspect identity.

2. Instructing the Witness

Each victim or witness should be instructed outside the presence of the other victims/witnesses. The showup administrator should read the victim or witness the standard admonitions provided on the "Officer's Field Card for Show-Up Identifications" aloud at the beginning of the showup identification procedure. The victim/witness should indicate understanding of these instructions prior to viewing the suspect.

3. **Avoid Asking Suspect to Perform Specific Actions**
Do not require showup suspects to put on clothing worn by, speak words uttered by, or perform other actions of the subject.
4. **Presenting the Suspect and Questioning the Witness**
Present the suspect to the victim or witness and ask the victim or witness whether the person they are looking at is the person they saw commit the crime. Immediately after the victim/witness makes a decision (either positive or negative), ask them to describe, in their own words, how certain they are.
5. **Documenting Witness's Response and Certainty**
Document the witness's response and statement of decision certainty using the witness's own words.
6. **Documenting Witness's Decision Reasons**
After documenting the witness's decision certainty statement, give the witness an opportunity to provide any additional or clarifying details that may inform how they arrived at their decision.
7. **Avoid Providing Feedback to Witness**
Do not provide any feedback to the victim or witness regarding their decision. If a witness inquires about whether they identified the suspect, the investigator should inform the witness that no information may be shared with them at that point in the investigation.
8. **Discourage Witness Communication**
Instruct the victim or witness to avoid discussing details of the incident or showup with anyone until police or prosecutors deem it permissible.
9. **Document Unusual Actions**
Document any unusual actions performed by the suspect during the showup (e.g., statements made, physical movements).

D. Documentation

1. **Documenting the Showup Procedure**
 - a) **Recording:**
 1. Video (with audio) recording provides the most complete record of the verbal and non-verbal evidence collected in a showup procedure and should be used when practical.
 2. If video recording is not possible, audio recording is the preferred alternative.
 - b) **Narrative:**
 1. Unless otherwise captured in a video/audio recording consistent with Section II(D)(2)(a), all aspects of the showup procedure must be documented in the narrative report, including at a minimum: the time, date, and location of the procedure; the identities of persons present; the outcome of the procedure; and any verbal or non-verbal information provided by or to the victim/witness including the actual words given by the victim/witness. In addition, any actions or statements made by the suspect during the showup procedure should be documented.

2. In cases where there is no video or audio-only recording, the administrator's narrative report should explain why recording was not used.
 3. Document the interpretive services used during the identification procedure, if applicable.
- c) Case File:
1. A photograph of the suspect's appearance in the showup from the perspective of the witness should be attached to your report.

III. Sample Standard Operating Procedures for Constructing Photo Arrays

A. Selecting Photographs

1. Identifying the Photo Array Preparer

The photo array should be prepared by someone other than the person who will administer the procedure. 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, they should not be conducting the actual administration of the photo array.

2. 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 was taken closest to the date of the crime.

3. Creating Arrays for Multiple Suspects

If there are multiple suspects, include only one suspect's photo in each array. Construct separate photo arrays for each suspect ensuring that each array contains unique fillers.

4. Selecting Fillers

All persons in the photo array should be of the same gender and race and should be reasonably similar in age, height, weight, and general appearance. Each filler should generally fit the description of the subject provided by the victim(s)/witness(es). Where there is a limited or inadequate description of the subject provided by the victim(s)/witness(es) or when the description of the subject differs significantly from the suspect in significant features, fillers should resemble the suspect's appearance. Complete uniformity of features is not required. Avoid selecting fillers that so closely resemble the suspect that a person familiar with the suspect might find it difficult to distinguish the suspect from the fillers.

5. Special Considerations when Suspect Identified by Composite or Surveillance Video/Photograph

If a suspect was identified based on similarity to a composite or surveillance video/photograph, fillers should also be selected based on their similarity to the composite or surveillance video/photograph.

6. **Special Considerations when Suspect has Unique Feature**

If a suspect has a unique feature such as a scar or tattoo, technology may be used to duplicate the suspect feature on the fillers, or the suspect feature may be covered (not removed), with that same cover replicated on each of the fillers in the same manner and location. The original photographs, the altered versions, and the method of alteration should be included in the investigative report.

7. **Special Considerations when Photographs Have Identifying Information**

Cover any portions of the photographs that provide identifying information on the suspect or fillers. If one photograph requires editing to cover identifying information, replicate that same cover on all photographs regardless of whether those photographs have similar identifying information.

8. **Special Considerations When Subject Described Wearing Distinctive Clothing**

If the subject was described as wearing distinctive clothing, ensure that the clothing visible in each photograph is either similar to that distinctive clothing for all individuals or that none of the photographs presents an individual wearing similar distinctive clothing.

9. **Use of Black-and-White and Color Photographs**

Do not mix color and black and white photographs. Use photographs of the same size and basic composition. Never mix mug shots with other types of photographs.

10. **Number of Fillers to Include**

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.

11. **Assessing Array Quality**

Assess the photographs to ensure that no person stands out from the rest. If any filler is identified as standing out from the rest, that filler should be replaced. If the suspect stands out from the fillers, the photo array should be reconstructed to ensure the suspect does not stand out.

IV. General Considerations for Administering Multiple Photo Arrays

A. Presenting Same Array to Same Witness at a Future Time

If a first photo array identification procedure is constructed, administered, and documented in accordance with these operating procedures, the photo array may be shown to the same witness a second time at the witness request. The change in circumstances for the witness which led them to request a second viewing should be thoroughly documented before conducting the procedure. It is recommended that the witness not be allowed to view the photo array more than two times.

B. Multiple Identification Procedures with the Same Witness

Avoid multiple identification procedures in which the same witness views the same suspect in more than one different photo arrays/physical lineups/image collection searches.

C. **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.

D. **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.

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

A. **Preparation**

1. **Identifying the Photo Array Preparer**

The photo array should be prepared by someone who knows which photograph in the array is of the suspect. This individual must be someone other than the person who will administer the procedure. If the individual that prepares the array must also be the administrator, a blinded procedure should be used. Section VI provides a separate sample standard operating procedure for a sequential blinded photo array administration.

2. **Collecting Photographs to be Included in the Photo Array**

Retrieve the photographs selected to be included in the array from the individual that constructed the array in accordance with Section III.

3. **Placing Individual Photographs in Order**

a) Place a filler in the lead position and write the number "1" on the back of the photograph.

b) Place the remaining photographs which will comprise the photo array in random order and write the number corresponding to their order in the sequence on the back of the photograph.

c) Place two blank photographs at the end of the array and write the number corresponding to their order in the sequence on the back of each blank. A "blank" is a blank sheet of the same type and dimensions of photographic paper as the actual photographs that will not be shown to the victim/witness. "Blanks" are included to cause the witness to think there may still be photographs to view in the sequence which may reduce pressure to choose what the victim/witness may presume to be the last photograph.

4. **Providing Photo Array to the Blind Administrator**

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

B. **Assessing Witness Capacity to Participate in the Procedure**

Prior to conducting the photo array, the administrator should assess the victim's/witness's ability to adequately participate in the procedure

1. **Sensitivity to Juvenile Witnesses and Those with Limited Cognitive Capacity**
Any concerns with regard to the victim/witness's age, cognitive capacity, or impairment due to intoxication, trauma, or other factors should be addressed prior to conducting the procedure. Consult with your agency legal advisor and/or supervisor for guidance on how to proceed before conducting any identification procedure in these situations.
2. **Sensitivity to Witnesses with Literacy Barriers**
Victims/witnesses should also be evaluated as to their proficiency to communicate in English prior to the identification procedure. Those deemed to possess limited or no proficiency in speaking or understanding English due to language barriers, literacy barriers, speech impairment, or hearing impairment should be provided with appropriate certified interpretive services in accordance with the agency's Language Access Plan.

C. Documenting Consent of Witnesses with Literacy Barriers

If the victim/witness is unable to read and/or write, the administrator, in the presence of the victim/witness, will give the explanation, read any forms, and obtain consent and document the consent on the Photo Array Witness Display Form, stating why the victim/witness was unable to sign the form. If an interpreter is used, the administrator should document the name and agency affiliation of the interpreter and have the interpreter sign the Photo Array Witness Display Form if they are physically present.

D. Administration

The administrator of the photo array presentation should be someone who does not know the identity of the suspect. The witness should be informed that the administrator does not have any knowledge regarding who may be suspected of the crime. In a blind procedure, no one present during the administration should know the suspect's identity.

1. 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 use a blinded identification procedure. A blinded identification procedure is conducted in a manner that prevents the administrator from knowing which person in the array the witness is looking at. Section VI provides a separate sample standard operating procedure for a sequential blinded photo array administration.

2. Photo Array Administration Checklist

The photo array administrator should review the Photo Array Administration Checklist prior to conducting the photo array and ensure the procedures described within are followed whenever possible.

3. 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 "Photo Array Witness Display Form (sequential)" and should read the instruction statement aloud at the beginning of each identification procedure.

4. Document Consent to Participate

After reviewing the instructions, the victim/witness should then be asked to read the consent statement on the Photo Array Witness Display Form. After reading, the witness should sign and date indicating they understand the instructions and consent to participate in the identification procedure.

If a witness states they do not understand the instructions, review the instructions they are confused with until they indicate that they understand. Do not administer the array until the witness indicates that they understand the instructions.

If a witness does not provide consent, terminate the identification procedure and document that the reason the witness declined to participate.

Some witnesses may acknowledge that they understand the instructions and consent to participate, but decline to sign the form. When a witness declines to sign, it is sufficient for the investigating officer to document that the witness was appropriately instructed and consented to participate.

5. Presentation of Photographs

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

6. 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?**”

7. Document Witness’s Responses

Document the witness’s response using the witness’s own words. Have the witness complete the appropriate section of the Photo Array Witness Display Form to reflect the outcome of the procedure.

8. 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 they 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.

9. 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.

10. Additional Viewings of the Photo Array Sequence

Only upon request of the witness, may the witness view the photo array again after the first viewing of the sequence has been completed. If the witness requests an additional viewing, the photo array administrator should present the entire photo array a second time in the same order as the original presentation. Any request for and the administration of a second presentation 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.

11. Identification of Special Features

After an identification is made and the witness's responses have been documented, a follow-up interview may be conducted to assess any relevant factors that support the identification (e.g., distinctive facial features, hair, marks, etc.).

12. 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.

13. Multiple Identification Procedures with a Different Witness

If the photo array will be administered with a different witness, have the preparer reorder and renumber the sequence of the photos in the array in accordance with the procedures outlined in Section V(A) for preparing an array. The blind administrator should not reorder the photo array as they do not know which individual in the array is the suspect.

14. Contact Among Witnesses

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

E. Documentation

1. Administration Checklist

The photo array administrator should complete the Photo Array Administration Checklist immediately or as soon as possible upon the completion of the identification procedure.

2. Documenting the Identification Procedure

a) Recording:

1. Video (with audio) recording provides the most complete record of the verbal and non-verbal evidence collected in an identification procedure and should be used when practical.
2. If video recording is not possible, audio recording is the preferred alternative.

- b) Narrative:
 - 1. Unless otherwise captured in a video/audio recording consistent with Section V(E)(2)(a), all aspects of the identification procedure must be documented in the narrative report, including at a minimum: the time, date, and location of the procedure; the identities of persons present; the outcome of the procedure; and any verbal or non-verbal information provided by or to the victim/witness including the actual words given by the victim/witness.
 - 2. In cases where there is no video or audio-only recording, the administrator's narrative report should explain why recording was not used.
 - 3. Document the interpretive services used during the identification procedure, if applicable.
- c) Case File:
 - 1. A complete, original copy of each photograph presented during the identification procedure should be attached to your report in the order in which the photographs were shown.
 - 2. If a victim/witness has made any markings on a photograph while participating in the identification procedure, that original photograph with the markings should be attached.

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

A. Preparation

- 1. Identifying the Photo Array Preparer
 - The photo array must be prepared by someone who knows which photograph in the array is of the suspect.
- 2. Collecting Photographs to be Included in the Photo Array
 - Retrieve the photographs selected to be included in the array from the individual that constructed the array in accordance with Section III.
- 3. Placing Individual Photographs in Order (i.e., the "Folder Shuffle" Method)
 - Prepare the photographs for the "folder shuffle" method of presentation.
 - a) All photographs should be placed inside identical folders that cannot be seen through. The folders should be identical in all ways including, but not limited to, color, size, and shape. There should be no uniquely identifying markings on any folder.
 - b) Place a folder containing a filler in the lead position and write the number "1" on the back of the folder.
 - c) Place the remaining folders which will comprise the photo array in random order and write the number corresponding to their order in the sequence on the back of the folder.

- d) Place two blank folders that are identical to the others used at the end of the array. A “blank folder” is a folder of the same type as the ones in which the actual photographs were placed but do not contain any photographs. These “blank folders” will not be shown to the victim/witness but are included to cause the witness to think there may still be photographs to view in the sequence which may reduce pressure to choose what the victim/witness may presume to be the last photograph.
4. **Providing Photo Array to the Administrator**

Present the ordered photo array to the administrator. Do not tell the administrator which folder the suspect is in.
- B. Assessing Witness Capacity to Participate in the Procedure**
- Prior to conducting the photo array, the administrator should assess the victim’s/witness’s ability to adequately participate in the procedure
1. **Sensitivity to Juvenile Witnesses and Those with Limited Cognitive Capacity**

Any concerns with regard to the victim/witness’s age, cognitive capacity, or impairment due to intoxication, trauma, or other factors should be addressed prior to conducting the procedure. Consult with your agency legal advisor and/or supervisor for guidance on how to proceed before conducting any identification procedure in these situations.
 2. **Sensitivity to Witnesses with Literacy Barriers**

Victims/witnesses should also be evaluated as to their proficiency to communicate in English prior to the identification procedure. Those deemed to possess limited or no proficiency in speaking or understanding English due to language barriers, literacy barriers, speech impairment, or hearing impairment should be provided with appropriate certified interpretive services in accordance with the agency’s Language Access Plan.
- C. Documenting Consent of Witnesses with Literacy Barriers**
- If the victim/witness is unable to read and/or write, the administrator, in the presence of the victim/witness, will give the explanation, read any forms, and obtain consent and document the consent on the Photo Array Witness Display Form, stating why the victim/witness was unable to sign the form. If an interpreter is used, the administrator should document the name and agency affiliation of the interpreter and have the interpreter sign the Photo Array Witness Display Form if they are physically present.
- D. Administration**
- A blinded identification procedure is conducted in a manner that prevents the administrator from knowing which person in the array the witness is looking at. The method described below, when combined with the photo array preparation procedures outlined in Section VI(A) is known as the “folder shuffle” method. This approach is used when the administrator of a sequentially-presented photo array knows which individual in the array is the suspect.

1. Blind Administration

If the administrator does not have any direct knowledge of the investigation and does not know who is suspected of committing the crime, a blind procedure is also an appropriate option. Section V provides a separate sample standard operating procedure for a sequential blind photo array administration.

2. Photo Array Administration Checklist

The photo array administrator should review the Photo Array Administration Checklist prior to conducting the photo array and ensure the procedures described within are followed whenever possible.

3. 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 “Photo Array Witness Display Form (folder presentation)” and should read the instruction statement aloud at the beginning of each identification procedure.

4. Document Consent to Participate

After reviewing the instructions, the victim/witness should then be asked to read the consent statement on the Photo Array Witness Display Form. After reading, the witness should sign and date indicating they understand the instructions and consent to participate in the identification procedure.

If a witness states they do not understand the instructions, review the instructions they are confused with until they indicate that they understand. Do not administer the array until the witness indicates that they understand the instructions.

If a witness does not provide consent, terminate the identification procedure and document that the reason the witness declined to participate.

Some witnesses may acknowledge that they understand the instructions and consent to participate, but decline to sign the form. When a witness declines to sign, it is sufficient for the investigating officer to document that the witness was appropriately instructed and consented to participate.

5. Presentation of Photographs

Present each folder to the witness separately (one at a time), in the order in which they were provided by the preparer. Ensure you are positioned in a manner that prevents you from seeing the photograph inside the folder after the witness opens the folder. Remind the witness to open the folder in a manner that prevents you from seeing the photograph. When the witness is finished viewing each photo, have the witness close the folder and hand it back.

6. 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?”**

7. Document Witness’s Responses

Document the witness’s response using the witness’s own words. Have the witness complete the appropriate section of the Photo Array Witness Display Form to reflect the outcome of the procedure.

8. Present All Folders

Even if the witness makes an identification, present the witness with the next folder until you have gone through all folders. If a witness asks why they must view the rest of the folders, despite already making an identification, simply tell the witness that to assure objectivity and reliability, the witness is required to view all of folders.

9. 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.

10. Additional Viewings of the Photo Array Sequence

Only upon request of the witness, may the witness view the photo array again after the first viewing of the sequence has been completed. If the witness requests an additional viewing, the photo array administrator should present the entire photo array a second time in the same order as the original presentation. Any request for and the administration of a second presentation 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.

11. Identification of Special Features

After an identification is made and the witness’s responses have been documented, a follow-up interview may be conducted to assess any relevant factors that support the identification (e.g., distinctive facial features, hair, marks, etc.).

12. 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.

13. Multiple Identification Procedures with a Different Witness

If the photo array will be administered with a different witness, have the preparer reorder and renumber the sequence of the photos in the array in accordance with the procedures outlined in Section V.A. for preparing an array.

14. Contact Among Witnesses

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

E. Documentation

1. Administration Checklist

The photo array administrator should complete the Photo Array Administration Checklist immediately or as soon as possible upon the completion of the identification procedure.

2. Documenting the Identification Procedure
 - a) Recording:
 1. Video (with audio) recording provides the most complete record of the verbal and non-verbal evidence collected in an identification procedure and should be used when practical.
 2. If video recording is not possible, audio recording is the preferred alternative.
 - b) Narrative:
 1. Unless otherwise captured in a video/audio recording consistent with Section V(E)(2)(a), all aspects of the identification procedure must be documented in the narrative report, including at a minimum: the time, date, and location of the procedure; the identities of persons present; the outcome of the procedure; and any verbal or non-verbal information provided by or to the victim/witness including the actual words given by the victim/witness.
 2. In cases where there is no video or audio-only recording, the administrator's narrative report should explain why recording was not used.
 3. Document the interpretive services used during the identification procedure, if applicable.
 - c) Case File:
 1. A complete, original copy of each photograph presented during the identification procedure should be attached to your report in the order in which the photographs were shown.
 2. If a victim/witness has made any markings on a photograph while participating in the identification procedure, that original photograph with the markings should be attached.

VII. Sample Standard Operating Procedures for Simultaneous, Blind Photo Array Administrations

A. Preparation

1. Identifying the Photo Array Preparer
The photo array can be prepared by any individual.
2. Collecting Photographs to be Included in the Photo Array
Retrieve the photographs selected to be included in the array from the individual that constructed the array in accordance with Section III.
3. Placing Individual Photographs in the Array
Randomly place the photographs across the positions in the array.
4. Providing Photo Array to the Blind Administrator
Present the photo array to the independent administrator. If the preparer knows which individual in the array is the suspect, do not tell the independent administrator which position the suspect is in.

B. Assessing Witness Capacity to Participate in the Procedure

Prior to conducting the photo array, the administrator should assess the victim's/witness's ability to adequately participate in the procedure

1. Sensitivity to Juvenile Witnesses and Those with Limited Cognitive Capacity

Any concerns with regard to the victim/witness's age, cognitive capacity, or impairment due to intoxication, trauma, or other factors should be addressed prior to conducting the procedure. Consult with your agency legal advisor and/or supervisor for guidance on how to proceed before conducting any identification procedure in these situations.

2. Sensitivity to Witnesses with Literacy Barriers

Victims/witnesses should also be evaluated as to their proficiency to communicate in English prior to the identification procedure. Those deemed to possess limited or no proficiency in speaking or understanding English due to language barriers, literacy barriers, speech impairment, or hearing impairment should be provided with appropriate certified interpretive services in accordance with the agency's Language Access Plan.

C. Documenting Consent of Witnesses with Literacy Barriers

If the victim/witness is unable to read and/or write, the administrator, in the presence of the victim/witness, will give the explanation, read any forms, and obtain consent and document the consent on the Photo Array Witness Display Form, stating why the victim/witness was unable to sign the form. If an interpreter is used, the administrator should document the name and agency affiliation of the interpreter and have the interpreter sign the Photo Array Witness Display Form if they are physically present.

D. Administration

The administrator of the photo array presentation should be someone who does not know the identity of the suspect. The witness should be informed that the administrator does not have any knowledge regarding who may be suspected of the crime. In a blind procedure, no one present during the administration should know the suspect's identity.

1. 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 use a blinded identification procedure. A blinded identification procedure is conducted in a manner that prevents the administrator from knowing which photograph in the array the witness is viewing at any specific time. Section VIII provides a separate sample standard operating procedure for a simultaneous blinded photo array administration.

2. Photo Array Administration Checklist

The photo array administrator should review the Photo Array Administration Checklist prior to conducting the photo array and ensure the procedures described within are followed whenever possible.

3. 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 “Photo Array Witness Display Form (simultaneous)” and should read the instruction statement aloud at the beginning of each identification procedure.

4. Document Consent to Participate

After reviewing the instructions, the victim/witness should then be asked to read the consent statement on the Photo Array Witness Display Form. After reading, the witness should sign and date indicating they understand the instructions and consent to participate in the identification procedure.

If a witness states they do not understand the instructions, review the instructions they are confused with until they indicate that they understand. Do not administer the array until the witness indicates that they understand the instructions.

If a witness does not provide consent, terminate the identification procedure and document that the reason the witness declined to participate.

Some witnesses may acknowledge that they understand the instructions and consent to participate, but decline to sign the form. When a witness declines to sign, it is sufficient for the investigating officer to document that the witness was appropriately instructed and consented to participate.

5. Presentation of Array

Present the photo array to the witness. When the witness is finished viewing the array, have the witness hand the array back.

6. Question Witness

After the witness has looked at the array and handed it back to you, ask: “**Are any of the individuals the person you saw [insert description of act here]?**” If the witness answers “Yes” or “No” ask the witness, “**In your own words, can you describe how certain you are?**”

7. Document Witness’s Responses

Document the witness’s response using the witness’s own words. Have the witness complete the appropriate section of the Photo Array Witness Display Form to reflect the outcome of the procedure.

8. 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.

9. Identification of Special Features

After an identification is made and the witness’s responses have been documented, a follow-up interview may be conducted to assess any relevant factors that support the identification (e.g., distinctive facial features, hair, marks, etc.).

10. Subsequent Use of Materials

Ensure that if the witness writes on, marks, or in any way alters the photo array, that array must not be used in subsequent procedures.

11. Multiple Identification Procedures with a Different Witness

If the photo array will be administered with a different witness, have the preparer reorder the photos in the array in accordance with the procedures outlined in Section VI.A. for preparing an array.

12. Contact Among Witnesses

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

E. Documentation

1. Administration Checklist

The photo array administrator should complete the Photo Array Administration Checklist immediately or as soon as possible upon the completion of the identification procedure.

2. Documenting the Identification Procedure

a) Recording:

1. Video (with audio) recording provides the most complete record of the verbal and non-verbal evidence collected in an identification procedure and should be used when practical.
2. If video recording is not possible, audio recording is the preferred alternative.

b) Narrative:

1. Unless otherwise captured in a video/audio recording consistent with Section VII(E)(2)(a), all aspects of the identification procedure must be documented in the narrative report, including at a minimum: the time, date, and location of the procedure; the identities of persons present; the outcome of the procedure; and any verbal or non-verbal information provided by or to the victim/witness including the actual words given by the victim/witness.
2. In cases where there is no video or audio-only recording, the administrator's narrative report should explain why recording was not used.
3. Document the interpretive services used during the identification procedure, if applicable.

c) Case File:

1. A complete, original copy of the photo array presented during the identification procedure should be attached to your report.
2. If a victim/witness has made any markings on the photo array while participating in the identification procedure, that marked photo array should be attached to your report.

VIII. Sample Standard Operating Procedures for Simultaneous, Blinded Photo Array Administrations

A. Preparation

1. Identifying the Photo Array Preparer

The photo array must be prepared by someone other than the individual that will be administering the array.

2. Collecting Photographs to be Included in the Photo Array

Retrieve the photographs selected to be included in the array from the individual that constructed the array in accordance with Section III.

3. Placing Individual Photographs in the Array

Randomly place the photographs across the positions in the array. Then place the array inside a manila folder.

4. Providing Photo Array to the Administrator

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

B. Assessing Witness Capacity to Participate in the Procedure

Prior to conducting the photo array, the administrator should assess the victim's/witness's ability to adequately participate in the procedure

1. Sensitivity to Juvenile Witnesses and Those with Limited Cognitive Capacity

Any concerns with regard to the victim/witness's age, cognitive capacity, or impairment due to intoxication, trauma, or other factors should be addressed prior to conducting the procedure. Consult with your agency legal advisor and/or supervisor for guidance on how to proceed before conducting any identification procedure in these situations.

2. Sensitivity to Witnesses with Literacy Barriers

Victims/witnesses should also be evaluated as to their proficiency to communicate in English prior to the identification procedure. Those deemed to possess limited or no proficiency in speaking or understanding English due to language barriers, literacy barriers, speech impairment, or hearing impairment should be provided with appropriate certified interpretive services in accordance with the agency's Language Access Plan.

C. Documenting Consent of Witnesses with Literacy Barriers

If the victim/witness is unable to read and/or write, the administrator, in the presence of the victim/witness, will give the explanation, read any forms, and obtain consent and document the consent on the Photo Array Witness Display Form, stating why the victim/witness was unable to sign the form. If an interpreter is used, the administrator should document the name and agency affiliation of the interpreter and have the interpreter sign the Photo Array Witness Display Form if they are physically present.

D. Administration

A blinded identification procedure is conducted in a manner that prevents the administrator from knowing which person in the array the witness is looking at. This approach is used when the administrator of the photo array presentation knows which individual in the array is the suspect.

1. Blind Administration

If the administrator does not have any direct knowledge of the investigation and does not know who is suspected of committing the crime, a blind procedure is also an appropriate option. Section VII provides a separate sample standard operating procedure for a simultaneous blind photo array administration.

2. Photo Array Administration Checklist

The photo array administrator should review the Photo Array Administration Checklist prior to conducting the photo array and ensure the procedures described within are followed whenever possible.

3. 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 “Photo Array Witness Display Form (simultaneous-folder)” and should read the instruction statement aloud at the beginning of each identification procedure.

4. Document Consent to Participate

After reviewing the instructions, the victim/witness should then be asked to read the consent statement on the Photo Array Witness Display Form. After reading, the witness should sign and date indicating they understand the instructions and consent to participate in the identification procedure.

If a witness states they do not understand the instructions, review the instructions they are confused with until they indicate that they understand. Do not administer the array until the witness indicates that they understand the instructions.

If a witness does not provide consent, terminate the identification procedure and document that the reason the witness declined to participate.

Some witnesses may acknowledge that they understand the instructions and consent to participate, but decline to sign the form. When a witness declines to sign, it is sufficient for the investigating officer to document that the witness was appropriately instructed and consented to participate.

5. Presentation of the Array

Present the folder containing the photo array to the witness and ensure you are positioned in a manner that prevents you from seeing the photographs inside the folder after the witness opens the folder. Remind the witness to open the folder in a manner that prevents you from seeing the photographs. Instruct the witness to open the folder and view the array. When the witness is finished viewing the array, have the witness close the folder and hand it to you.

6. Question Witness

After the witness has looked at the array and handed the folder back to you, ask: **“Are any of the individuals the person you saw [insert description of act here]?”** If the witness answers “Yes” or “No” ask the witness, **“In your own words, can you describe how certain you are?”**

7. Document Witness’s Responses

Document the witness’s response using the witness’s own words. Have the witness complete the appropriate section of the Photo Array Witness Display Form to reflect the outcome of the procedure. Do not review any photographs within the folder until these responses are documented.

8. 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.

9. Identification of Special Features

After an identification is made and the witness’s responses have been documented, a follow-up interview may be conducted to assess any relevant factors that support the identification (e.g., distinctive facial features, hair, marks, etc.).

10. Subsequent Use of Materials

Ensure that if the witness writes on, marks, or in any way alters the photo array, that array must not be used in subsequent procedures.

11. Multiple Identification Procedures with a Different Witness

If the photo array will be administered with a different witness, have the preparer reorder the photos in the array in accordance with the procedures outlined in Section VII.A. for preparing an array.

12. Contact Among Witnesses

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

E. Documentation

1. Administration Checklist

The photo array administrator should complete the Photo Array Administration Checklist immediately or as soon as possible upon the completion of the identification procedure.

2. Documenting the Identification Procedure

a) Recording:

1. Video (with audio) recording provides the most complete record of the verbal and non-verbal evidence collected in an identification procedure and should be used when practical.
2. If video recording is not possible, audio recording is the preferred alternative.

b) Narrative:

1. Unless otherwise captured in a video/audio recording consistent with Section V(E)(2)(a), all aspects of the identification procedure must be documented in the narrative report, including at a minimum: the time, date, and location of the procedure; the identities of persons present; the outcome of the procedure; and any verbal or non-verbal information provided by or to the victim/witness including the actual words given by the victim/witness.
2. In cases where there is no video or audio-only recording, the administrator's narrative report should explain why recording was not used.
3. Document the interpretive services used during the identification procedure, if applicable.

c) Case File:

1. A complete, original copy of the photo array presented during the identification procedure should be attached to your report.
2. If a victim/witness has made any markings on the photo array while participating in the identification procedure, that marked photo array should be attached to your report.

Training Development and Pilot Project Plan

Recognizing the importance of maximizing the reliability of eyewitness evidence collected during criminal investigations, the Legislature created the Eyewitness Evidence Work Group pursuant to Chapter 359, Laws of 2019 (Section 2). The work group was comprised of subject matter experts from the fields of psychology, law enforcement, prosecution, criminal defense, and exoneration law. The work group was tasked with developing model guidelines for the collection of eyewitness evidence, drafting standard operating procedures for each eyewitness identification procedure, and designing law enforcement training for the collection and documentation of eyewitness evidence based on the model guidelines.

The Work Group met between August and December 2019 to draft the model guidelines and standard operating procedures. Following creation of these guidelines and procedures, the work group developed proposed law enforcement training curriculum and pilot research project. This document outlines the training development/delivery strategy and pilot research project designed to identify the effective means to promote widespread adoption of the new model guidelines and associated field guides across Washington law enforcement. By doing so, this training and pilot project will assist with ensuring eyewitness identification procedures performed in Washington State are legally sound, consistent, and improve investigative efficiency and effectiveness through the collection of more reliable evidence. Procedures conducted in this manner are also less likely to result in mistaken identifications and wrongful convictions.

Training Plan

Training Objectives:

20-Minute Roll Call Training:

A 20-minute roll call training will introduce the revised model guidelines and standard operating procedure documents, and demonstrate how officers should use the field guide checklists to generate and document reliable identification evidence in their investigations.

Line Officer Practical Online Training:

An online training course will identify common vulnerabilities associated with eyewitness identification procedures, explain the psychological processes of memory and decision-making, provide state and federal statutory and case law regulating the collection of eyewitness evidence, review the new model guidelines, walk students through each identification procedure using the appropriate standard operating procedures and field guide checklists, and explain how utilizing these aids will generate more reliable, better documented identification evidence in their investigations. The training course is anticipated to be between 90- and 180-minutes long with the exact length determined during curriculum development.

Supervisor Overview Online Training:

An online training course will be directed to those supervising the line officers who conduct eyewitness identification procedures. This course will explain the evolution of science and law

that led to the development of the revised guidelines for eyewitness identification procedure practices; briefly review the new model guidelines; introduce the field guides; and explain how ensuring that their supervisees follow the new guidelines and utilize the field guides will generate more reliable, better documented identification evidence. The training course is anticipated to be between 30- and 60-minutes long with the exact length determined during curriculum development.

Training Deliverables:

The following materials will be developed and made available to Washington State law enforcement agencies and training organizations:

- **Online Training Module 1: Line Officer Practical (90-180 minute)**
- **Online Training Module 2: Supervisor Overview (30-60 minute)**
- **Training Manual (digital)**
- **Investigative Aids/Checklists**

Training Personnel Needed:

Personnel with varying expertise will be needed to complete the development of the training curriculum. These needs include:

- **Researcher:** Oversee training design, serve as subject matter expert
- **Online Training Developer:** translate policy and materials into online training, work with audio/video professional to create content, coordinate with other subject matter experts/work group to ensure content tracks model policy and satisfies learning objectives
- **Training Administrator:** schedule trainings, track participation, facilitate delivery of online training, coordinate stakeholder outreach and engagement

Training Delivery Costs:

The following costs will be associated with the development of the training curriculum. Determining exact costs were beyond the scope of this Work Group:

- **Personnel Salary**
 - Researcher
 - Online Training Developer
 - Training Administrator
- **Audio/Video Content Creation and Editing**

Training Assessment Research Project

Pilot Project Design:

Prior to statewide implementation of the training program, the Work Group recommends that the legislature commission a pilot project that would evaluate the effectiveness of the training programs and identify the most effective approach to implementing the model guidelines into regular practice. The initial pilot training program will include participation by no fewer than eighteen (18) law enforcement agencies representing diversity in geographical location, agency type (e.g., sheriff and police agencies), agency size [small (<45 commissioned officers), medium (50-89 commissioned officers), and large (95+ commissioned officers)], and population densities (rural, urban cluster, and urban).

Participating agencies will be recruited with assistance from the Washington Association of Sheriffs and Police Chiefs.

The project will use a 3 (line officer training: none/roll call training/online training) x 2 (supervisor training: yes/no) longitudinal quasi-experimental design. Participating agencies will be randomly assigned to one of six groups and receive individualized training in accordance with their assigned group:

- **Group 1: (Control)**
 - General Notification of Model Guidelines, Standard Operating Procedures, and Field Guides
- **Group 2: (Line Officer Roll Call Training)**
 - Agency-wide participation in Line Officer Roll Call Training Course
- **Group 3: (Line Officer Online Training)**
 - Agency-wide participation in Line Officer Online Training Course
- **Group 4: (Supervisor Overview Online Training)**
 - Agency supervisor participation in Supervisor Online Training.
- **Group 5: (Line Officer Roll Call Training & Supervisor Overview Online Training)**
 - Agency-wide participation in Line Officer Roll Call Training Course and agency supervisor participation in Supervisor Online Training.
- **Group 6: (Line Officer Online Training & Supervisor Overview Online Training)**
 - Agency-wide participation in Line Officer Online Training Course and agency supervisor participation in Supervisor Online Training.

The primary purpose of the pilot project is to evaluate the effectiveness of training programs and identify which approach(es) maximize the likelihood that procedures included in the model policy are implemented in practice. To meet this purpose, data will be collected from all investigative reports documenting identification procedures conducted by each agency during the pilot period. This period will last for 90-days pre-intervention and 90-days post-intervention.

This methodology will identify the level of institutional adoption of the model guidelines and field guide checklists in relation to the various training interventions.

Additional analyses will evaluate line officers' and supervisors' perspectives of the training programs, model guidelines, and field guide checklists. Surveys will be completed by officers and supervisors following training and again, by all officers and supervisors, at the end of the pilot project.

Pilot Project Deliverables:

The following materials will be produced following completion of the pilot project:

- **Research Report**
- **Investigative Aids/Checklists (Empirically validated)**
- **Summary Presentation to State Agencies (e.g., WASPC, WAPA)**
- **Peer-reviewed Publications**
- **Academic Conference Presentations**

Pilot Project Personnel Needed:

Personnel with varying expertise will be needed to complete this pilot project. These needs include:

- **Researcher:** Design pilot project, designate data points and research methodology, serve as subject matter expert, develop research materials, organize/collect data, conduct primary and secondary analyses, author research report
- **Training Administrator:** Schedule trainings, assist researcher with tracking participation, assist researcher with data collection, facilitate delivery of online training, coordinate stakeholder outreach and engagement, support research report writing
- **Research Assistants:** Assist with development of research materials, assist with coding of data points, assist with data entry and analysis, support research report writing

Pilot Project Delivery Costs:

The following costs will be associated with the development of the training curriculum. Determining exact costs were beyond the scope of this Work Group:

- **Personnel Salary**
 - Researcher
 - Training Administrator
 - Research Assistants
- **Printing Costs (Investigative Aids/Checklists)**
- **Shipping Costs (Investigative Aids/Checklists, Data Documents/Investigative Reports)**