PHOTO IDENTIFICATION PROCEDURE

STANDARD NO(S):   NYSLEAP#: 50.1

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REFER TO: Jack S. Stenberg

I.   OBJECTIVE:

       To establish a policy and procedure with regards to photographic identification
       conducted pursuant to criminal investigations.

II.   POLICY:

       There are various ways to conduct a fair and reliable identification procedure. The
       guidelines below outline how a neutral, fair and reliable identification procedure can
       be conducted by the case investigator or by an administrator unfamiliar with the
       case.

III.   DETAILS:

       A. DEFINITIONS:

       1. **PHOTO ARRAY**: A collection of photographs that are shown to a witness
          to determine if the witness can recognize a person involved with the crime.

       2. **SUSPECT:** Person police believe to have committed the crime.

       3. **FILLER:** A person whose photograph is included in a photo array, but is
          not a suspect in the crime.

       4. **ADMINISTRATOR OF THE PHOTO ARRAY:** The person who is
          conducting the identification procedure. Depending on the jurisdiction and
          the circumstances of the case, a photo array administrator may be the
          investigator assigned to the case or a "blind" administrator. The procedures
          described in this document apply equally to both types of administrators.
          The types of administrators are:

          a. The Investigator Assigned to the Case: The administrator of the photo
             array can be the investigator working on the case.

          b. A "Blind" Administrator: A "blind" administrator is someone who does
             not know which person in the photo array is the suspect. An
             identification procedure is considered "double" blind when it is run by a
             "blind" administrator.

c. Supervisor: In all situations, an SCSO supervisor will participate in the identification procedure. The protocols outlined here apply equally to the supervisor.

B. HOW TO INVITE THE WITNESS TO COME IN FOR AN IDENTIFICATION PROCEDURE:

1. NO KNOWN SUSPECT: The investigator should call the witness and invite him or her in to view photos to possibly identify the perpetrator of the crime.

2. SUSPECT IS KNOWN: When a suspect is known and the investigator calls a witness to arrange for the viewing of a photo array, either at the SCSO, the witness' home or the witness' place of business, the member will simply advise the witness that they intend to conduct an identification procedure and should not say anything about the suspect. For example, the member should say to the witness: "We'd like you to come in to view a photo array in connection with the crime committed on (*date and location*)."

    a. Member Should Remain Neutral: The member should give no opinions about the witness' ability to make an identification.

    b. What to Avoid Saying: Unless the witness specifically asks the investigator if someone is in custody, the witness should not be informed that an arrest has been made and that the police have a suspect that the witness will be viewing. The member should not say: "We have caught the guy. He had your credit card and now we want you to identify him."

C. SHOWING PHOTOGRAPHS WHEN THERE IS NO SUSPECT:

1. When there is no known suspect, multiple photographs can be shown to a witness to see if a suspect can be identified.

2. If possible, a computer program should select the photos based on the description of the perpetrator as provided by the witness.

3. The investigator should record the source of the photographs and, if possible, how many photographs were shown to the witness. However, current computer systems may not have the capacity to record all the photographs shown to the witness.

D. ARRANGING A PHOTO ARRAY FOR A KNOWN SUSPECT:

1. COMPUTER GENERATED ARRAYS: Where possible, computer-generated photo arrays should be used. E-Justice provides an automatic photo array system, which eliminates the claim that the investigator assembled an intentionally biased array. The computer can generate a photo array based on the characteristics of the suspect.

2. FILLERS: The fillers should be similar in appearance to the suspect in the lineup. Similarities should include gender, clothing, facial hair, race, age, height, extraordinary physical features, or other distinctive characteristics. Fillers should not be known to the witness. At least five (5) fillers should be used, in addition to the suspect. Only one (1) suspect should be in each array. If there is more than one (1) suspect, then different fillers should be used in separate arrays for each suspect.

3. PHOTO QUALITY: Photo quality, color and size should be consistent. Administrator should ensure that the photos do not contain any stray markings or information about the subject. Some photo array programs can create similar color backgrounds for all of the pictures. However, in some instances it may not be possible for the photographs to be consistent. The witness should be instructed to ignore any differences in the photographs, such as background, markings, or lighting.

4. INDIVIDUAL CHARACTERISTICS: If individual characteristics are seen in the photo, (for example: clothing, facial hair, race, skin color, age, gender, height, extraordinary physical features, etc.), then these individual characteristics should be as consistent for all photos as possible.

5. DOCUMENT CHANGES TO THE PHOTOS: Document any alterations made to photographs in the array, for example, changing the background color of the photo to make them look more uniform.

6. MULTIPLE SUSPECTS: If there are multiple suspects, then each suspect must be placed in a separate photo array. Different fillers should be used for each photo array.

E. INSTRUCTIONS TO WITNESSES VIEWING A PHOTO ARRAY:

Instructions should be given to the witness *before* the identification procedure begins and not while the witness is in the process of viewing the photo array. This will alleviate confusion and minimize any allegations that the investigator provided cues to the witness.

1. WRITTEN INSTRUCTIONS: Members will complete a SCSO Photo Array Form (SCSO-LE-013) which provides written and verbal instructions to the witness. The witness will initial and sign the instructions after reading them, or after having the administrator read the instructions to the witness.

2. NO COMMENT BY THE ADMINISTRATOR UNTIL THE IDENTIFICATION PROCEDURE IS COMPLETED AND DOCUMENTED: Until the information about the identification procedure is documented, the administrator should not comment about the procedure or the next steps in the case. Stray comments that potentially focus a witness' attention to one photo over the others, such as: "Are you sure you

3. INSTRUCTIONS GIVEN *BEFORE* THE VIEWING OF THE ARRAY: Before the identification procedure begins, the administrator should tell the witness what questions will be asked during the identification procedure.

   a. <u>Setting the Context</u>: The investigator should tell the witness that as part of the ongoing investigation into a crime that occurred on (*date*) at (*location*) the witness is being asked to view the photo array to see if the witness recognizes anyone involved with that crime.

   b. <u>Instructions to the Witness to Avoid Any Influence by the Administrator</u>: These instructions let the witness know not to look to the administrator for assistance in either making a selection or ratifying an identification. They also address the possibility of a witness feeling any self-imposed or undue pressure to make an identification. The instructions are as follows:

      1) The person who committed the crime may or may not be present.

      2) Do not assume I know who the perpetrator is.

      3) I want you to focus on the photo array and not to ask me or anyone else in the room for guidance during the procedure.

   c. <u>Instructions to the Witness About the Quality of the Photographs</u>:

      1) Individuals presented in the photo array may not appear exactly as they did on the date of the incident because features such as head and facial hair are subject to change.

      2) Photographs may not always depict the true complexion of a person; it may be lighter or darker than shown in the photo.

      3) Pay no attention to any markings that may appear on the photos, or any other differences in the type or style of the photographs.

4. QUESTIONS ASKED *AFTER* VEWING THE PHOTOGRAPHS:

   a. After viewing the array the witness will be asked:

      1) Do you recognize anyone?

      2) If so, what number photograph do you recognize?

      3) From where do you recognize the person?

b. If the witness' answers are vague or unclear, the administrator will ask the witness what he or she meant by the answer.

F. MULTIPLE WITNESSES VIEWING A PHOTO ARRAY:

1. WITNESSES CANNOT SPEAK TO OTHER WITNESSES ABOUT THE IDENTIFICATION PROCEDURES: If there are multiple witnesses who will be viewing a photo array, they should be told not to speak to each other about the identification procedure before, during and after the process. There are a number of ways to make sure the witnesses do not speak with each other about the identification. The following are some suggestions that will diminish the opportunities that witnesses have of talking to each other before or immediately after the identification procedure.

   a. They can be kept in separate rooms before and after the identification, or

   b. A member can sit with the witnesses to ensure they do not speak about the process or the case, or

   c. The witnesses can be allowed to leave immediately after participating in the procedure, or

   d. The witnesses can be taken to separate areas after the identification procedure for further interviews with member.

2. SHOWING THE SAME ARRAY TO MULTIPLE WITNESSES: The witnesses must view the photo arrays separately. One photo array per suspect can be shown to multiple witnesses, provided there are no markings on the photo array. Duplicate copies of one photo array can be made for each witness, particularly if the witness will be signing the form. A SCSO Photo Array form (SCSO-LE-013) will be completed for each witness.

G. PROCEDURES FOR VIEWING A PHOTO ARRAY:

1. REMAIN NEUTAL: To protect the integrity of the identification procedure, the administrator must remain neutral throughout the procedure so as not to, even inadvertently, suggest a particular photograph to the witness. Comments that could potentially focus a witness' attention to one photograph over the others, such as: "Are you sure you got a good look at number 2?" or "Can you take another look at number 6?" should not be made before, during or after the procedure. If a witness seeks guidance about whom to pick, the administrator should simply direct the witness to focus on the array.

2. INSTRUCTIONS *BEFORE* THE PROCEDURE BEGINS: The witness should be instructed on how to view the array *before* being handed the array. Witnesses should be told to take whatever time they want when they view the array.

3. COVER THE PHOTO ARRAY: The photo array should be handed to the witness in an envelope, or in a folder, so neither the witness nor the officer can see the pictures. This will avoid the possibility of any inadvertent influence by the administrator.

4. ADMINISTRATOR NOT IN THE WITNESS' LINE OF SIGHT, WHERE PRACTICABLE: After being instructed about how to view the array, where practicable, the witness should view the array in such a way that the witness cannot see the administrator at the time the witness is viewing the photos in the array. Where practicable, the administrator should be positioned to see and hear what the witness says as the witness views the array, but should remain out of the witness' line of sight while the witness views the array. This will avoid claims of inadvertent cueing by the administrator and it reduces any inclination by the witness to look at the administrator for guidance. The administrator should neither crowd the witnesses nor interrupt the concentration of the witness. The administrator should never tell the witness to look at a particular photograph.

5. LOCATION OF IDENTIFICATION PROCEDURE: The witness should view the photo array in a location away from things that could influence the witness' identification, for example, other evidence in the case, wanted posters about the case and other information about the suspect, e.g., the suspect's rap sheet. A photo array can be viewed away from a police facility, for example, at the witness' home or place of business.

H. DOCUMENTING THE IDENTIFICATION PROCEDURE:

1. TRAINING, PROTOCOLS AND FORMS: Standardized instructions and questions contained in SCSO-LE-013 will be read to all witnesses.

2. PRESERVING THE PHOTO ARRAY: The photo array should be preserved in the original form it was shown to each witness. A copy of the photo array used should be given to the Assistant District Attorney as soon as practicable.

3. DOCUMENT THE PHOTO ARRAY PROCEDURE: Document all the people involved in the identification procedure, where it took place and the date and time it took place.

4. RECORDING THE WITNESS' STATEMENT AND PHYSICAL REACTION: Any comments made by the witness at the time of the identification should be written down. The documentation should not merely state: "positive" or "negative" results. The witness' words uttered during and after the identification procedure should be recorded, for example, "It is definitely #1", "If I had to pick, it would be #2", "I'm not sure, but it might be #3." The witness' words and physical reactions should be recorded.

5. FOLLOW-UP QUESTIONS: If the witness is vague in his or her answer, such as "I think it is #3" or "It looks like #3", then the administrator should say: "You said [*I think it is #3*], what do you mean by that?" The witness' answer should be documented.

6. SIGNING THE PHOTO ARRAY OR A FORM: To record the result of the photo array, the witness can sign and date the photograph that was selected or sign an identification form. If there are multiple witnesses, a fresh, unsigned photo array must be shown to subsequent witnesses.

I. SPEAKING WITH THE WITNESS AFTER THE IDENTIFICATION PROCEDURE:

1. RECORD THE WITNESS' STATEMENTS BEFORE DISCUSSING NEXT STEPS: The administrator, or another appropriate person, should record the statements of the witness regarding the identification procedure *before* talking with the witness about next steps.

2. DISCUSSING NEXT STEPS: Once the identification procedure is concluded and documented, the administrator can talk to the witness about how the case will proceed or what the next steps in the case may be, for example, we will continue to search for the perpetrator (where there has been no identification), or we will contact you about meeting with the Assistant District Attorney next week, etc. After the identification procedure, witnesses frequently have questions about the case. It is entirely appropriate for the investigator to accurately answer questions about the case, including whether an arrest will be made.

3. DO NOT COMMENT ON THE IDENTIFICATION: The administrator should never comment on or make gestures about the identification itself by saying things such as: "Great job." Or "We knew you would recognize him." or even nodding in agreement. Such comments or reactions may subsequently affect the witness' confidence in his or her identification. The administrator should remain neutral about the identification when speaking with the witness.

4. DO NOT DISCUSS THE IDENTIFICATION WITH OTHER WITNESSES: The witness should be told not to discuss what was said, seen or done during the identification procedure with other witnesses, nor should the administrator speak to the witness about other identification procedures conducted..

J. TRAINING:
Proper training is a critical component of conducting a fair and reliable identification procedure. Investigators who will be participating in the identification procedures in any way by picking up the witnesses, creating the photo array or instructing the witnesses, should be trained in these procedures.