<Agency Logo Here>

Subject: **Eyewitness Identification**

Policy Number: (If applicable, policy number here) Effective Date: (If applicable, effective date here) Revision Date(s): (If the policy is revised, revision date here)

# PURPOSE

It is the purpose of this policy to establish guidelines for eyewitness identifications using showups, photo arrays, and lineups.1

Minimum Standards on Eyewitness Identification as Required by LB1000.

LB1000 of 2016 requires all law enforcement agencies in the state to adopt a written policy on eyewitness identification that includes the minimum standards set forth by the Nebraska Commission on Law Enforcement and Criminal Justice. The minimum standards shall include:

1. Independent administration of the live or photo lineup, meaning that the officer administering the lineup or photo array has no knowledge of the suspect’s identity. If this is not practical, a functional equivalent (FE) procedure shall be used, as described in the model policy issued by the Nebraska Commission on Law Enforcement and Criminal Justice.
2. Instructions to the witness that they should not feel they have to make an identification and the investigation will continue regardless of whether an identification is made.
3. Use of non-suspect “fillers” that generally match the witness’s description of the perpetrator and do not make the suspect stand out.
4. Eliciting a witness confidence statement immediately after an identification is made, in which the witness is asked to state in his or her own words the level of certainty in the selection.

1 This is in keeping with the intent of LB1000 of the One Hundred and Fourth Nebraska Legislature, Second Session. Please consult your legal advisor for any local ordinances which affect your agency.

# POLICY

Eyewitness identification is a frequently used investigative tool. Officers shall strictly adhere to the procedures set forth herein, in order to maximize the reliability of identifications and gather evidence that conforms to contemporary eyewitness identification protocols.

# DEFINITIONS

***Functional Equivalent (FE) Procedures:*** Procedures used when an independent administrator is not available. FE procedures permit the investigative officer to conduct a photo array using procedures that preclude him or her from knowing the suspect is presented to the witness.

***Independent Administrator:*** The officer administering the lineup or photo array who has no knowledge of the suspect’s identity.

***Lineup:*** Live presentation of individuals, before an eyewitness, for the purpose of identifying or eliminating suspects.

***Photo Array:*** Showing photographs to an eyewitness for the purpose of identifying or eliminating suspects.

***Sequential:*** Presentation of photos or individuals in a live lineup to a witness one at a time rather than all at once.

***Showup:*** The presentation of a suspect to an eyewitness in a short time frame following commission of a crime to confirm or eliminate him or her as the perceived perpetrator. Showups, also referred to as *field identifications*, are conducted in a contemporaneous time frame and setting with the crime.

***Simultaneous:*** Presentation of photos or individuals in a live lineup to a witness all at once.

# PROCEDURES

* 1. Showups

The use of showups should be avoided whenever possible in preference for the use of a photo array or a lineup. However, when circumstances require the prompt display of a suspect to a witness, the following guidelines shall be followed to minimize potential suggestiveness:

* + 1. Document the witness’s description of the perpetrator prior to conducting the showup.
    2. Use showups only when the suspect is detained within a reasonably short time frame following the offense.
    3. Do not use single suspect showups if probable cause to arrest the suspect has already been established.
    4. Transport the witness to the location of the suspect whenever possible, rather than bringing the suspect to the witness.
    5. Do not conduct showups when the suspect(s) are in patrol cars, handcuffed, or physically restrained by police officers, unless necessary due to safety concerns.
    6. Do not take suspects to the witness’s residence, unless it is the scene of the crime.
    7. Caution the witness that the person he or she is about to see, may or may not be the perpetrator.
    8. Separate witnesses and do not allow communication between them before or after conducting the showup.
    9. If one witness identifies the suspect, use a lineup or photo array for remaining witnesses.
    10. Do not present the same suspect to the same witness more than once.
    11. Do not require showup suspects to put on clothing worn by, speak words uttered by, or perform other actions of the perpetrator.
    12. Officers should scrupulously avoid words or conduct of any type that may suggest to the witness that the individual is or may be the perpetrator.
    13. Ask the witness how certain he or she is of any identification that is made of the suspect. Document the exact words used by the witness without prompting the witness to elaborate.
    14. Remind the witness not to talk about the showup to other witnesses until police or prosecutors deem it permissible.
    15. Record the identification process using an in-car camera or other audiovisual recording device where available.
    16. Document the time and location of the showup, the officers present, and the outcome of the procedure.
  1. Photographic Identifications
     1. Creating a Photo Array
        1. The photo array should consist of a minimum of six photographs. Use a minimum of five non-suspect filler photos together with only one suspect photo. It is recommended that a non-suspect filler photo be used as the lead photo and that two blank photos be introduced following the sixth photo. Number all photos and blanks.
        2. Use contemporary photographs of individuals who are reasonably similar in age, height, weight, and general appearance and are of the same sex and race, in accordance with the witness’s description of the suspect. Do not mix color and black and white photos; use photos of the same size and basic composition; never mix mug shots with other photos; and do not include more than one photo of the same suspect.
        3. Cover any portions of mug shots or other photos that provide identifying information on the subject, and similarly cover other photos used in the array.
     2. Conducting the Photo Array
        1. An investigator or officer who is unaware of the identity of the suspect, acting as an independent administrator, shall present the photos, if possible.
        2. If an independent administrator is not available, the investigative officer shall use the following FE procedures:
           1. Place the suspect and filler photos in a folder. Include four blank folders, for a total of ten.
           2. Shuffle the folders before giving them to the witness.
           3. The officer administering the array should position him or herself so that he or she cannot see inside the folders as they are viewed by the witness.
        3. Whenever reasonably possible, make an audiovisual recording of the Photo Array identification procedure.
        4. Give the witness a copy of the following instructions prior to presenting the photo array and read the instructions aloud before the identification procedure.

“*You will be asked to view a series of photos of individuals. It is just as important to clear innocent persons from suspicion as to identify guilty parties. I don’t know whether the person being investigated is included in this series. Individuals present in the series may not appear exactly as they did on the date of the incident because features such as head hair and facial hair are subject to change. You should not feel that you have to make an identification. If you do identify someone, I will ask you to describe in your own words how certain you are. Take as much time as you need to examine each photo. [If you make identification, I will continue to show you the remaining photos in the series (if using sequential presentation)]. Regardless of whether you make identification, we will continue to investigate the incident. Since this is an ongoing investigation, you should not discuss the identification procedures or results with anyone.*

* + - 1. Position the photos so that the witness does not know the number of photos that will be shown.
      2. Show the photo array to only one witness at a time; separate witnesses so they will not be aware of the responses of other witnesses.
      3. Avoid multiple identification procedures in which the same witness views the same suspect more than once.
      4. Do not comment on selections or outcomes of the procedures in any way.
      5. Ask the witness how certain he or she is of any identification that is made of the suspect. Document the exact words used by the witness without prompting the witness to elaborate.
      6. Ask the witness to complete and sign the photo display form.
      7. Preserve the photo array, together with full information about the identification process for future reference.
  1. Lineups
     1. Creating the Lineup
        1. Use a minimum of six persons who are reasonably similar in age, height, weight, and general appearance and are of the same sex and race.
        2. If there is more than one suspect, include one each in separate lineups.
     2. Conducting the Lineup
        1. An independent administrator shall conduct the lineup whenever reasonably possible.
        2. If an independent administrator is unavailable, the investigating officer must take all reasonable precautions to avoid giving any unintentional cues to the witness.
        3. Present a copy of the instructions contained in B.2.d above (adapted for lineups instead of photo array) of this policy to the witness and read them aloud before proceeding with the identification process.
        4. Present each individual sequentially or simultaneously to a single witness. In the case of multiple witnesses, present the lineup to each witness separately.
        5. Whenever possible, make an audiovisual recording of the lineup and identification process. If this is not possible, take and preserve a still photograph of each individual in the lineup and document all persons present during the lineup.
        6. Ask the witness how certain he or she is of any identification that is made of the suspect. Document the exact words used by the witness without prompting the witness to elaborate.
        7. Upon completion of the lineup, ask the witness to sign and date the record of results.

1. The primary investigating officer is responsible for the following:
   1. Scheduling the lineup on a date and at a time that is convenient for all concerned parties, to include the prosecuting attorney, defense counsel, and all witnesses.
   2. Fulfilling the necessary legal requirements for transfer of the subject to the lineup location should he or she be incarcerated at a detention center. The officer shall make arrangements for picking up the prisoner, to include a timely notice to the detention center concerning the pickup.
   3. Making arrangements to have persons act as fill-ins at the lineup who are of the same race, sex, approximate height, weight, age, and physical appearance and who are similarly clothed.
   4. Avoiding the use of fill-ins who so closely resemble the suspect that a person familiar with the suspect might find it difficult to distinguish the suspect from the fillers.
   5. Creating a consistent appearance between the suspect and the fillers with respect to any unique or unusual features (e.g., scars, tattoos, and facial hair) used to describe the perpetrator by artificially adding or concealing that feature.
   6. Placing suspects in different positions in each lineup, both across cases and with multiple witnesses in the same case.
   7. Ensuring that the prisoner has been informed of his or her right to counsel if formal charges have been made against him or her and that he or she has the opportunity to retain counsel or request that counsel be provided.
   8. Obtaining a written waiver on the prescribed departmental form should the prisoner waive his or her right to counsel.
   9. Allowing counsel representing the accused sufficient time to confer with his or her client prior to the lineup and to observe the manner in which the lineup is conducted.
   10. Ensuring all persons in the lineup are numbered consecutively and are referred to only by number.
   11. Ensuring that a complete written record and, if possible, an audiovisual recording of the lineup proceedings are made and retained.
   12. Ensuring that witnesses are not permitted to see or be shown any photos of the accused immediately prior to the lineup.
   13. Ensuring that only one witness views the lineup at a time and that witnesses are not permitted to speak with one another during lineup proceedings.
   14. Scrupulously avoiding the use of statements, clues, and casual comments or providing unnecessary or irrelevant information that in any manner may influence the witness’s decision-making process or perception.