

FLORIDA HIGHWAY PATROL POLICY MANUAL

	SUBJECT LINE-UPS, SHOW-UPS AND PHOTOGRAPHIC LINE-UPS	POLICY NUMBER 22.15
		ISSUE DATE 02/01/10
		REVISION DATE 08/04/17
		TOTAL PAGES 7

22.15.01 PURPOSE

To provide procedures and guidelines for using photographic line-ups, physical line-ups and show-ups in establishing reliable eyewitness identification testimony by a witness. The collection of reliable eyewitness identification evidence and the avoidance of erroneous eyewitness identification evidence are essential in assuring that justice is obtained in our criminal justice system.

22.15.02 AUTHORITY

Section 92.70, Florida Statutes

22.15.03 POLICY

When necessary, members of the Florida Highway Patrol will compose photographic and physical line-ups in such a manner that the suspect does not unduly stand out. The manner in which an identification procedure is conducted can affect the reliability, fairness and objectivity of the identification. Use of the procedures outlined in this policy can minimize the effect of external influences on a witness' memory. Identification obtained through a line-up composed in this manner may have stronger evidentiary value than one obtained without these procedures. Generally, physical line-ups are not used.

22.15.04 DEFINITIONS

The following definitions are applicable to this directive:

- A. **SHOW-UP** – An identification procedure in which an eyewitness is presented with a single suspect within a short time (one hour) following the commission of a crime for the purpose of determining whether the victim/witness identifies this individual as the perpetrator.
- B. **PHOTOGRAPHIC LINE-UP** – An identification procedure, in which an array of photographs, including a photograph of the suspect of an offense and additional photographs of other persons not suspected of the offense, are displayed to an eyewitness for the purpose of determining whether the victim/witness identifies the suspect as the perpetrator.

- C. **PHYSICAL LINE-UP** – An identification procedure, in which a group of persons, including the suspect of an offense and other persons not suspected of the offense, are displayed to an eyewitness for the purpose of determining whether the victim/witness identifies the suspect as the perpetrator.
- D. **FILLER** – Either a person or a photograph of a person who is NOT suspected of an offense and is included in an identification procedure.
- E. **IDENTIFICATION PROCEDURE** – For the purposes of this policy, the identification procedure relates to the physical line-up, photographic line-up or show-up which occurs as a result of member initiated investigation.
- F. **CONFIDENCE STATEMENT** – A declaration provided by the eyewitness immediately upon identification and before any feedback is provided, in which he/she articulates in his/her own words the level of confidence he/she has in the identification he/she has made.
- G. **INDEPENDENT ADMINISTRATOR** – An investigator administering a line-up or photo array that has no knowledge of the suspect’s identity. (Sometimes referred to as a “Blind Administrator.”)

22.15.05 RESPONSIBILITIES

It is the responsibility of each member to properly identify perpetrators of crimes investigated by the Florida Highway Patrol. The standard for the identification will be influenced by the type of investigation. It is the responsibility of each member to ensure all physical and photographic line-ups are properly composed, procedural guidelines are explained and the identification or non-identification of an individual is made without influence. Any member who administers a photographic line-up or a physical line-up shall receive initial training and shall be familiar with the agency policy and procedures. Periodic refresher training on the agency policy and procedures shall be provided for members involved in eyewitness identification efforts. In-service training should be provided based on future court rulings and statutory changes.

All photographic line-ups, and physical line-ups shall be conducted by an independent administrator, however in lieu of using an independent administrator, alternative methods as per Section 92.70, Florida Statutes may be used.

22.15.06 PROCEDURES

- A. COMPOSING LINE-UPS

Except in exigent circumstances, members will contact the Intelligence and Analysis Section of the Bureau of Criminal Investigations and Intelligence for assistance in composing a photographic line-up.

Fair composition of a line-up enables the witness to provide a more accurate identification or non-identification.

In composing a line-up, the member shall:

1. Include only one suspect in each identification procedure.
2. Select fillers who generally fit the witness' description of the perpetrator. When there is limited or inadequate description of the perpetrator provided by the witness, or when the description of the perpetrator differs significantly from the appearance of the suspect, fillers shall resemble the suspect in significant features.
3. If multiple photos of the suspect are reasonably available to the investigator, select a photo resembling the suspect description or appearance at the time of the incident. Refer to the FHP Simultaneous Photo Array Form – Administrator (HSMV 60080) and the FHP Simultaneous Photo Array Form – Witness (HSMV 60081).
4. In photographic line-ups, include a *minimum* of five fillers (non-suspects) per identification procedure. A filler photo shall be used in the lead photo position in a simultaneous line-up and a sequential photographic line-up administered by the Independent Administrator. In physical line-ups five fillers may not be readily available, but there shall always be at least two alternate choices for the victim/witness to view.
5. Consider that complete uniformity of features is not required. Avoid using fillers who so closely resemble the suspect that a person familiar with the suspect might find it difficult to distinguish the suspect from the fillers.
6. Consider placing suspects in different positions in each line-up, both across cases and with multiple witnesses in the same case. Position the suspect randomly in the line-up.
7. When showing a new suspect, avoid reusing fillers in line-ups shown to the same witness.
8. If using a photographic line-up ensure that no writings or other information is visible to the witness.
9. Once you've assembled the line-up, review the line-up to ensure the suspect does not unduly stand out.
10. Preserve the presentation order of the photographic line-up. In a photographic line-up, the photos themselves shall be preserved in their original condition. It is recommended, but not required, that physical line-ups or photocopy medium be preserved through the use of video and audio recording. If a recording device is not available however, still photographs of the line-up will suffice.
11. Once legal proceedings have begun and an assistant state attorney appointed, the attorney must agree to and be present at a physical line-up. This is not a requirement when using a photographic line-up.

B. PROCEDURAL GUIDELINES PRIOR TO PRESENTING A LINE-UP

Standard instructions provided to the witness prior to presentation of a line-up will likely improve the accuracy and reliability of any identification obtained from the

witness and can facilitate the elimination of innocent parties from the investigation.

The member shall:

1. Utilize the FHP Simultaneous Photo Array Forms – Administrator & Witness (HSMV 60080 and 60081) in conducting all photographic lineup activities.
2. Instruct the witness that he/she will be asked to view a set of photographs or people.
3. Instruct the witness that it is just as important to clear the innocent person from suspicion as to identify the guilty parties.
4. Instruct the witness that individuals in the line-up 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.
5. Instruct the witness that the person who committed the crime may or may not be in the line-up being presented.
6. Assure the witness that regardless of whether or not identification is made, the Department will continue to investigate the incident.
7. Instruct the witness that the procedure requires the investigator to ask the witness to state, in his/her own words, how certain he/she is of any identification.
8. Provide the witness with a signed copy of the Simultaneous Photo Array Form-Witness (HSMV 60081), acknowledging they have received a copy of the instructions.

In cases with multiple witnesses or victims, the viewing of each line-up shall be completed privately by each witness or victim to avoid cross contamination of identification or information.

C. CONDUCTING THE IDENTIFICATION PROCEDURE

The member shall conduct the line-up in a manner conducive to obtaining accurate identification or non-identification decisions. The identification procedure shall be conducted in a manner that promotes the reliability, fairness and objectivity of the witness' identification.

When presenting a line-up, the member shall:

1. Provide viewing instructions to the witness as outlined in subsection (B), "Procedural Guidelines Prior to Presenting a Line-up".
2. Confirm the witness understands the nature of the line-up procedure.
3. Avoid saying anything to the witness that may influence the witness' selection. An Independent Administrator should be utilized. If an

Independent Administrator is not available, the member shall use an alternative method as outlined in Section 92.70, Florida Statutes. Alternative methods may include any of the following:

- a. An automated computer program that can automatically administer the photo lineup directly to the witness preventing the administrator from seeing which photograph the witness is viewing until after the procedure is completed.
 - b. A procedure in which photographs are placed in folders, randomly numbered, and shuffled and then presented to the witness such that the administrator cannot see which photograph is being presented until after the procedure is completed.
 - c. Any other procedure that achieves neutral administration and prevents the administrator from knowing which photograph is being presented to the witness during the identification procedure.
4. In the rare case where a physical line-up is conducted, the suspect and filler individuals will be placed in one room. The victim/witness shall be brought to the monitoring room by an independent administrator where viewing of the individuals can be accomplished privately. If this procedure is used, the victim/witness shall then be moved to another room prior to the removal of the individuals in the line-up (in order to prevent a face-to-face meeting between the victim/witness and suspect).
 5. If identification is made, avoid reporting to the witness any information regarding the individual he/she has selected prior to obtaining the witness' statement of certainty.
 6. Record any results and witness' statement of certainty as outlined in subsection (D), "Recording Identification Results".
 7. Document in writing the line-up procedures, including:
 - a. Identification information.
 - b. If a photographic line-up is used, delineate the sources of all photos used.
 - c. Names of all persons present at the line-up.
 - d. Date and time of the identification procedure.
 8. Instruct the witness not to discuss the identification procedure or its results with other witnesses involved in the case and discourage contact with the media.
 9. If audio or video is used during the line-up, the media used is to be treated as evidence and shall be handled consistent with Department policy and procedure.

D. RECORDING IDENTIFICATION RESULTS

The recording of the outcome of the identification procedure accurately and completely reflects the identification results obtained from the witness. When conducting an identification procedure, the member shall preserve the outcome of the procedure by documenting any identification or non-identification results obtained by the witness.

When conducting any identification procedure, the member shall:

1. Record both identification and non-identification results in writing, including the witness' own words and any non-verbal communications regarding how sure he/she is about the identification. Ensure the results are signed and dated by the witness. Ensure no materials indicating previous identification results are visible to the witness.
2. Ensure the witness does not write on or mark any materials that will be used in other identification procedures.

Preparing a complete and accurate record of the outcome of the identification procedure improves the strength and credibility of the identification or non-identification results obtained from the witness. This record can be a critical document in the investigation and any subsequent court proceedings. Because a show-up is inherently suggestive, compelling reasons must exist before it is decided to use this procedure.

E. SHOW-UP PROCEDURES

Field show-ups can be used whenever a suspect is apprehended within close proximity to the crime and within a reasonable timeframe. Prior to the show-up, investigators will determine and document a complete description of the suspect(s) and provide instructions to witnesses on the show-up process.

1. Compelling reasons under which a show-up identification procedure may be used – A field show-up may be used if the following three conditions are met:
 - a. Location – If a suspect is located in close proximity to the crime scene, and
 - b. Timing – If the suspect is located within an hour of the crime being committed, and
 - c. Physical Description – If the suspect reasonably matches the physical description of a suspect that was provided by a credible witness to the crime.

If any of these conditions is not met, then a photographic line-up will be used.

2. Transportation and Implementation – Victims and/or witnesses shall be transported to the location of suspect detention. Talking should be kept to a minimum during transportation.

- a. Viewing can take place from a patrol vehicle or investigator vehicle providing that there is an unobstructed view.
 - b. Members will choose a location with adequate lighting and assure adequate distance is maintained between the suspect and witnesses for safety and to allow for proper identification or exclusion.
 - c. Members will document where the witnesses were seated in the vehicle when the field show-up took place.
3. Situations where more than one eyewitness is available – If there are multiple victims and/or witnesses; all shall be separated and instructed to avoid discussing details with other witnesses.
4. Witness instruction prior to viewing show-up – Victims and witnesses shall be cautioned that the subject being viewed may or may not be the perpetrator. No talking shall be allowed between the suspect and victim/witness.
5. Determining the level of confidence expressed by the witness – Immediately after the line-up or show-up, the witnesses should provide a statement in their own words, articulating their level of confidence in the identification.
6. Prohibiting feedback by the line-up or show-up administrator – Members will not make suggestive remarks or provide feedback to victims or witnesses and shall eliminate physical suggestions such as handcuffs (when possible) to avoid influencing those viewing the subject.
7. Documenting show-up and the results – The field show-up shall be thoroughly documented including all persons present, the location, lighting and weather conditions and approximate distance that the viewing took place.
 - a. Members will document both identification and non-identification using the witnesses' own words and non-verbal communications.
 - b. Witness statements will also be taken from those involved in the field show-up.
 - c. Members will also document the suspect(s) clothing, demeanor and injuries, if any.