

## PLANNING, RESEARCH AND DEPLOYMENT

### TRANSMITTAL OF WRITTEN DIRECTIVE

**FOR SIGNATURE OF:** James E. White, Chief of Police

**TYPE OF DIRECTIVE:** Manual Directive 203.11

**SUBJECT:** EYEWITNESS IDENTIFICATION AND LINEUPS

**ORIGINATED OR REQUESTED BY:** Planning, Research and Deployment

#### **APPROVALS OR COMMENTS:**

The contents of the above Written Directive mirror the contents of DPD Manual Directive Order 203.11, "Eyewitness Identification and Lineup." The italicized changes/additions were mandated by Chief of Police James E. White. The contents of this Written Directive were reviewed by Captain Heather Cameron, of Investigative Operations. This Written Directive then underwent an additional review conducted by Planning, Research and Deployment. The newly revised Written Directive will rescind the current Eyewitness Identification and Lineup Written Directive (203.11). Upon completion of executive review, and approval by the Chief of Police, the newly revised Written Directive will then be forwarded to the BOPC for review.

This policy has extensive changes because procedures have changed since its last update. Planning, Research and Deployment (PRD) referenced the IACP model policy for current procedures. The recommended changes reflected in this policy are as follows:

- **203.11 – 1 – Purpose** – added - "*... procedures involving showups, photo arrays, and live lineups. Erroneous eyewitness identifications have been cited as the factor most frequently associated with wrongful convictions. Therefore, in addition to eyewitness identification, all appropriate investigative steps and methods should "Should" in this sentence changed to "must" or "are required".... "Should" leaves it to the officer's discretion on how to or if he/she is required to investigate further to uncover evidence that either supports or eliminates the suspect identification be employed to uncover evidence that either supports or eliminates the suspect identification.*"
- **203.11-2 – Policy** – added – "*...erroneous identifications and gather evidence that conforms to established legal procedures.*"
- **203.11 - 3.1 Administrator** - definition added – "*The law enforcement official conducting the identification procedure.*"

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- **203.11 - 3.2 *Blinded Presentation*** – Definition removed in its entirety.
- **203.11 - 3.2 *Double-Blind Presentation*** – definition added - *“The administrator conducting the identification procedure does not know the suspect’s identity.”*
- **203.11 - 3.3 *Filler*** – definition added - *“A live person, or a photograph of a person, included in an identification procedure who is not considered a suspect.”*
- **203.11 - 3.4 *Live Lineup*** – definition added – *“The process of presenting live individuals to an eyewitness for the purpose of identifying or eliminating suspects.”*
- **203.11 - 3.5 *Photo Array*** – definition added - *“A means of presenting photographs to an eyewitness for the purpose of identifying or eliminating suspects.”*
- **203.11 - 3.6 *Sequential*** – definition added - *“Presentation of a series of photographs or individuals to a witness one at a time.”*
- **203.11 - 3.7 *Showup*** – definition added - *“The presentation of a suspect to an eyewitness within a short time frame following the commission of a crime to eliminate them as a possible perpetrator. Showups, sometimes referred to as field identifications, are conducted in a contemporaneous time frame and proximity to the crime.”*
- **203.11 - 3.8 *Simultaneous*** – definition added - *“Presentation of a series of photographs or individuals to a witness all at once.”*
- **203.11 - 4.1 *Showups*** - Items (a) through (r) - This section is new in its entirety.
- **203.11-4.2 *Basic Procedures for Conducting a Live Lineup or Photo Array*** – *Items (1) through (18) - This section is new in its entirety. Item (3) – Added - “All photo lineups will be conducted using the sequential, double-blind presentation technique to ensure effective eye-witness identification. This means that an investigator other than the lead investigator, who does not know who the suspect is, will present the line- up to the victim and or witness. It also means that photographs will be presented one-by-one to the victim and or witness.”* Recently added to this section – *Item (6) – “...i.e., twins, look-alikes, facial recognition derived images, etc).”* Also recently added to this section – *“Prior to conducting a photographic line-up, a supervisor shall ensure that there is an independent basis established that the suspect, who will be presented in the line-up, committed the crime. The photographic lineup shall not contain an image derived from facial recognition.”*

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- **203.11 - 4.3 Photographic Arrays** – Items (1) through (5) – This section new in its entirety. Item (2) – Added – *“The sequential procedure should be preserved as part of the case file.”* Change “should” to “shall” Also, Nowhere in this policy does it instruct the investigating officer(s) to turn over ALL evidence that was recovered during the investigation of a case/suspect. Historically, it has been left to the officer's discretion and it has been discovered that sometimes only some evidence is made apart of the case file. Evidence that supports the officer's theory of the case is often what gets turned over. Disregarding evidence that may be unsupportive of the suspect's innocence. It is imperative that this policy emphasis that ALL evidence collected in the course of the investigation be turned over to the prosecutor's office. Item (3) – Added – *“witnessing”, “must”, and “Members shall obtain the attorney's information including their name, phone number, address, and P number.”*
- **203.11-4.4 Live Lineups** – Items (1) and (2) – These sections are new in their entirety. Item (3) – Added – *“Lineup”*; item (3a) *“Live lineup”* and *“photo array”* were added; item (3b) *“live lineup”* and *“photo array”* were added; item (3c) *“live lineup”* and *“photo array”* were added; item (4) *“live”, “reasonably”* and *“a photo array”* was added; (4d) *“physically unable to attend a lineup”* was added; item (5a) *“member”* and *“lineup”* were added.
- **203.11-4.5 Refusal of Detainee to Stand in a Lineup** – Item (2) *“At any time”* was added.
- **203.11 - 4.6 Limited Use of Video for Identification Purposes** – Added *“Members shall only utilize video to confirm the identity of a subject should the witness be a close associate or family member of the subject (e.g. mother / father or close friend).”* **“Close friend”** should have a clear definition of what qualifies. This language should either be specifically defined as to leave no misinterpretation by the officer or removed completely for fear of being abuse. Technically, anyone that a person hangs out for a number of days with can be considered a close friend
- **203.11-5 Witnessing Attorney** – Added – Item (1) *“A witnessing attorney shall be present for all live lineups and photo arrays when the suspect is in custody.”* Item (2) – Added – *“Should the suspect be criminally charged and have obtained a lawyer, then the suspect's defense attorney shall act as a witnessing attorney. In all other cases, the officer in charge of the case shall call Notification and Control who shall identify the witnessing attorney.”* Item (3) – Added – *“...of the witnessing attorney's”, “live”* and *“photo array”*. Item (4) – Added – *“live”,* and *“...including a voice test, a handwriting sample, to wear certain clothing to assume a stance, to walk or to gesture.”* Item (5) – Added – *“The OIC's responsibility is to document any objections, procedural violations, or other concerns voiced by the witnessing attorney during the live lineup or photo array.”*
- **NOTE:** The phrase *“witness and victim”* was added throughout the document.

Assistant Chief

  
Office of Professional Development  
August 17, 2023

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<b>F Series</b> 200 Operations	<b>Effective Date</b>	<b>Review Date</b> <i>Two Years</i>	<b>Directive Number</b>  <b>203.11</b>
<b>Chapter</b> 203 – Criminal Investigations			
<b>Reviewing Office</b> <i>Investigative Operations</i>			<input type="checkbox"/> <b>New</b> <input type="checkbox"/> <b>Directive</b> <input checked="" type="checkbox"/> <b>Revised</b> <small>Revisions in <i>italics</i></small>
<b>References</b>			

**EYEWITNESS IDENTIFICATION AND LINEUPS**

**203.11 - 1 PURPOSE**

The purpose of this directive is to establish the guidelines for eyewitness identification procedures involving showups, photo arrays, and live lineups. *Erroneous eyewitness identifications have been cited as the factor most frequently associated with wrongful convictions. Therefore, in addition to eyewitness identification, all appropriate investigative steps and methods should be employed to uncover evidence that either supports or eliminates the suspect identification.*

**203.11 - 2 POLICY**

Members shall strictly adhere to this directive in order to maximize the reliability of identifications, minimize *erroneous identifications*, and gather evidence that conforms to established legal procedures.

**203.11 - 3 Definitions**

**203.11 - 3.1 Administrator**

*The law enforcement official conducting the identification procedure.*

**203.11 - 3.2 Double-Blind Presentation**

*The administrator conducting the identification procedure does not know the suspect’s identity.*

**203.11 - 3.3 Filler**

*A live person, or a photograph of a person, included in an identification procedure who is not considered a suspect.*

**203.11 - 3.4 Live Lineup**

*The process of presenting live individuals to an eyewitness for the purpose of identifying or eliminating suspects.*

**203.11 Eyewitness Identification and Lineups****203.11 - 3.5 Photo Array**

*A means of presenting photographs to an eyewitness for the purpose of identifying or eliminating suspects.*

**203.11 - 3.6 Sequential**

*Presentation of a series of photographs or individuals to a witness and or a victim one at a time.*

**203.11 - 3.7 Showup**

*The presentation of a suspect to an eyewitness within a short time frame following the commission of a crime to eliminate or possibly confirm them as a possible perpetrator. Showups, sometimes referred to as field identifications, are conducted in a contemporaneous time frame and proximity to the crime.*

**203.11 - 3.8 Simultaneous**

*Presentation of a series of photographs or individuals to a witness and or a victim all at once.*

**203.11 - 4 Procedures****203.11 - 4.1 Showups**

*The use of showups should be avoided whenever possible in preference to the use of a live lineup or photo array procedure identified herein. However, when circumstances require the prompt presentation of a suspect to a witness and or a victim, the following guidelines shall be followed to minimize potential suggestiveness and increase reliability:*

- a. Document the witness's and or a victim's description of the perpetrator prior to conducting the show up. This description should be clearly noted as the witness and or victims' description and separate from the description noted by the member.*
- b. Conduct a showup only when the suspect is detained within a reasonable time frame after the commission of the offense and within a close physical proximity to the location of the crime; Define a reasonable time and close physical proximity?*
- c. Members shall obtain supervisory approval before conducting a showup;*
- d. Do not use a showup procedure if probable cause to arrest the suspect has already been established.*
- e. Transport the witness and or the victim to the location of the suspect whenever possible. Members shall not transport the suspect to the witness and or victim;*
- f. If possible avoid conducting a showup when the suspect is in a patrol vehicle, handcuffed, or physically restrained by Department members, unless safety concerns make this impractical;*

**203.11 Eyewitness Identification and Lineups**

- g. **Do** not take a suspect to the witness's and or victim's residence unless it is the scene of the crime and without the consent of both the suspect and the witness or victim; This needs to be cleaned up grammatically.
- h. Prior to presenting the suspect, officers must caution the witness and or victim that the person they are about to see may or may not be the perpetrator – and it is equally important to clear an innocent person. The witness and or victim should also be advised that the investigation will continue regardless of the outcome of the showup;
- i. Do not conduct the showup with more than one witness and or victim present at a time;
- j. Separate witnesses and or victims and do not allow communication between them before or after conducting a showup;
- k. If one witness and or victim identifies the suspect, use a live lineup or photo array for remaining witnesses;
- l. Do not present the same suspect to the same witness and or victim more than once;
- m. Do not require showup suspects to put on clothing worn by, speak words uttered by, or perform other actions of the perpetrator;
- n. Members should avoid words or conduct of any type that may suggest to the witness and or victim that the individual is or may be the perpetrator;
- o. Remind the witness and or victim not to talk about the showup to other witnesses and or victims until police or prosecutors deem it permissible;
- p. Videotape the identification process using an in-car or body-worn camera;
- q. Members shall not use a cellular phone or other mobile communication device for a showup; and
- r. Members shall document the time and location of the showup, the members present, the result of the procedure, and any other relevant information on their officer's daily report.
- s.

**203.11 - 4.2 Basic Procedures for Conducting a Live Lineup or Photo Array**

1. Prior to conducting a live lineup or photo array, members shall have the witness and or victim provide a recap of the incident to provide clarity that the witness and or victim has actual recollection of the incident and the suspect. Members shall document the witness's and or a victim's description of the perpetrator prior to conducting the live lineup or photo array. This description should be clearly noted as the witness and or victims' description and separate from the description noted by the member;
2. Prior to conducting a photographic line-up, a supervisor shall ensure that there is an independent basis established that the suspect, who will be presented in the line-up, committed the crime. The photographic lineup shall not contain an image derived from facial recognition.



3. *All photo lineups will be conducted using the sequential, double-blind presentation technique to ensure effective eye-witness identification. This means that an investigator, other than the lead investigator, who does not know who the suspect*

### 203.11 Eyewitness Identification and Lineups

*is, will present the line-up to the witness and or victim. It also means that photographs will be presented one-by-one to the witness and or victim.*

4. *The live lineup or photo array should consist of a minimum of six (6) individuals or photographs. Use a minimum of five (5) fillers and only one suspect.*
5. *Fillers should be reasonably similar in age, height, weight, and general appearance and be of the same sex and race, in accordance with the witness's and or victim's description of the offender.*
6. *Avoid the use of 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 (i.e., twins, look-alikes, facial recognition derived images, etc.).*
7. *Create a consistent appearance between the suspect and the fillers with respect to any unique or unusual features (e.g. scars, tattoos, facial hair) used to describe the perpetrator by artificially adding or concealing that feature on the fillers.*
8. *If there is more than one suspect, include only one in each live lineup or photo array.*
9. *During a double-blind presentation, no one who is aware of the suspect's identity should be present during the administration of the photo array. However, during a live lineup, the witnessing attorney should be present.*
10. *Place suspects in different positions in each live lineup or photo array.*
11. *Neither witnesses nor victims should be permitted to see or be shown any photos of the suspect prior to the live lineup or photo array unless as a part of a continued investigation where a proper lineup was conducted.*
12. *The live lineup or photo array should be shown to only one witness and or victim at a time; members should separate witnesses and or victims so they will not be aware of the responses of other witnesses and or victims.*
13. *Multiple identification procedures should not be conducted in which the same witness and or victim views the same suspect more than once.*
14. *Members shall not use statements, cues, casual comments, or provide unnecessary or irrelevant information that in any manner may influence the witnesses' and or victim's decision-making process or perception.*
15. *The proceeding must be conducted in a fair manner, so as not to be unduly suggestive of the suspect. This is important because any remarks could later be interpreted as an attempt to influence the identification.*
16. *The administrator shall ask the witness and or victim to complete and sign a live lineup or photo array. The Core 4 reforms also require asking the witness for a statement on their level of confidence. "Example-On a scale of 1-10 with 10 being the highest, how confident are you?" This should be documented as well and added to the case file.*
17. *Live lineup and photo array procedures shall be video and audio recorded, unless doing so is not possible. If a procedure is not recorded, a written record shall be created and the reason for not recording shall be documented. In the case of live*

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- lineups that are not recorded, members shall take and preserve a still photograph of each individual in the lineup.*
18. *The administrator shall document all parties present during the live lineup.*

**203.11 Eyewitness Identification and Lineups****203.11 - 4.3 Photographic Arrays**

*Prior to conducting a photographic lineup, a supervisor shall ensure that there is an independent basis established that the suspect, whose picture is to be presented in the course of the photo lineup, committed the crime.*

1. *When creating a photo array, members shall follow the below guidelines:*
  - a. *Do not use a facial recognition derived image;*
  - b. *Use photos contemporary to when the crime occurred;*
  - c. *Use black and white photos only if there are no color photos available;*
  - d. *Do not mix color and black and white photos;*
  - e. *Use photos of the same size and basic composition;*
  - f. *Never mix mug shots with other photos;*
  - g. *Do not include more than one photo of the same suspect; and*
  - h. *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. *The sequential procedure process should be preserved as part of the case file.*
3. *A witnessing attorney must be present if a witness and or victim views photographs when the suspect is in custody. Members shall obtain the attorney's information including their name, phone number, address, and P number.*
4. *The attorney shall initial photocopies of all photographs used in the photo array. The officer in charge of the case shall ensure that attorneys witnessing the photo array are provided with a document outlining the attorney's role at the photo show up.*
5. *Where a witness and or victim identifies the suspect through the use of photographs, the "totality of the circumstances" test is used to determine whether the photographs utilized are not unnecessarily suggestive of any particular suspect.*

**203.11 - 4.4 Live Lineups**

1. *When conducting the live lineup, members shall follow the below guidelines:*
  - a. *If a blind administrator is unavailable, the administrator shall take all reasonable precautions to avoid giving any unintentional cues to the witness and or victim;*
  - b. *Ensure that all persons in the live lineup are numbered consecutively and are referred to only by number; and*
  - c. *Document all parties present at the live lineup.*
2. *The officer in charge of the case is responsible for the following:*

**203.11 Eyewitness Identification and Lineups**

- a. **Scheduling** the live lineup on a date and at a time that is convenient for all concerned parties, to include the witnessing attorney and any witnesses and or victims; Efforts should be made to conduct the lineup as soon as possible
  - b. Ensuring compliance with any legal requirements for transfer of the subject to the live lineup location if they are incarcerated at a detention center; and
  - c. Making arrangements to have persons act as fillers.
3. A written record, the *Lineup* and Photo Identification Record (DPD355), should include:
    - a. Names, age, and addresses of all persons whose photographs are to be used in the *live lineup or photo array*;
    - b. Physical description of all persons whose photographs are to be used in the *live lineup or photo array*;
    - c. Names and addresses of all persons present at the *live lineup or photo array*; and
    - d. Statements of identifying witnesses and or victims while making the identification.
  4. A *live* lineup cannot be avoided by having a witness and or victim view photographs when a formal *live* lineup is *reasonably* possible. A *photo array* shall not be conducted if the suspect is in custody, unless:
    - a. It is not possible to arrange a proper lineup;
    - b. There are an insufficient number of persons available with the defendant's physical characteristics;
    - c. The nature of the case requires immediate identification;
    - d. The witnesses and or victims are *physically unable to attend a lineup*; or
    - e. The subject refuses to participate in a lineup and by this action would seek to destroy the value of the identification.
  5. All live lineups shall be photographed.
    - a. The name, rank, and assignment of the *member* taking the photograph shall be entered on the *Lineup* and Photo Identification Record (DPD355), in the box designated "OTHERS PRESENT." The photograph shall then be attached to the *Lineup* and Photo Identification Record and become a permanent part of the court file.
    - b. The officer in charge of the case shall be responsible for the photographing of lineups conducted at all other locations.

**203.11 - 4.5 Refusal of Detainee to Stand in a Lineup**

1. If a detainee refuses to stand in a lineup, the following procedures shall be followed:

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- a. A determination shall be made as to the availability of a photograph of the detainee suitable for use in photograph identification; and
  - b. Photograph identification can be used in lieu of a lineup if the subject refuses to participate in a lineup and, by the subject's action, would seek to destroy the value of the identification.
2. Regardless of whether a photograph is available or not, between the hours of 8:30 a.m. to 4:30 p.m. on weekdays and from 8:30 a.m. to 1:00 p.m., on Saturdays, Sundays, and holidays, the Wayne County Prosecutor's Office shall be contacted. *At any other time*, the Control Desk shall be contacted for the number of the on-duty assistant prosecuting attorney.
  3. The prosecuting attorney contacted shall be informed if a photograph of the detainee is available or not and shall be informed that the detainee refuses to participate in a lineup. Department members and detention personnel shall be guided by the advice of the prosecuting attorney. Although the Michigan Supreme Court has ruled that forced participation in a lineup does not constitute unreasonable search and seizure, no force shall be exerted to force participation of a detainee in a lineup unless the prosecuting attorney contacted gives direction for such action.

**203.11 - 4.6 Limited Use of Video for Identification Purposes**

*Members shall only utilize video to confirm the identity of a subject should the witness and or victim be a close associate or family member of the subject (e.g. mother / father or close friend).*

**203.11 - 5 Witnessing Attorney**

1. *A witnessing attorney shall be present for all live lineups and photo arrays when the suspect is in custody.*
2. *Should the suspect be criminally charged and have obtained a lawyer, then the suspect's defense attorney shall act as a witnessing attorney. In all other cases, the officer in charge of the case shall call Notification and Control who shall identify the witnessing attorney.*
3. *The purpose of the witnessing attorney's presence is not to interfere with the conduct of the live lineup or photo array but to observe the procedures used by the law enforcement officers, so that in any subsequent court proceeding the accused will have a lawyer as a witness to any unfair suggestive procedures that may have been employed during the lineup or photo array.*
4. *Under no circumstances may a lawyer interfere with the conduct of the live lineup. While counsel may advise a client not to make incriminating statements, counsel may not advise a client to refuse to participate in the live lineup or any requested physical demonstrations including a voice test, a handwriting sample, to wear certain*

## 203.11 Eyewitness Identification and Lineups

*clothing to assume a stance, to walk or to gesture.* If any lawyer should so advise a client, the Prosecuting Attorney's Office should be notified so that appropriate action may be considered.

5. *The OIC's responsibility is to document any objections, procedural violations, or other concerns voiced by the witnessing attorney during the live lineup or photo array.*