



POLICE DEPARTMENT

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April 3, 2024

Mr. QuanTez Pressley, Chairperson
Board of Police Commissioners
Detroit Public Safety Headquarters
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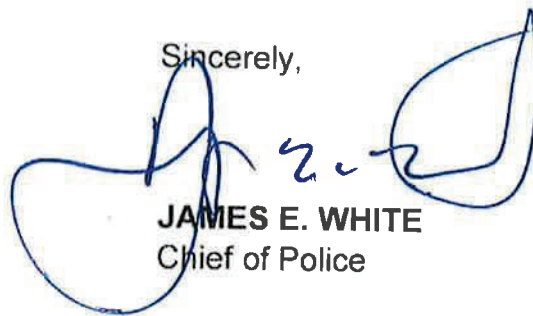
Re: POLICIES FOR REVIEW

Dear Chairperson Pressley:

I am pleased to present to you the attached Facial Recognition Policy, new templates for Facial Recognition, and Eyewitness Identification and Lineups Policy that was collaboratively worked on and agreed upon with Philip Mayor, Ramis Wadood, Dan Korobkin, and Nate Wessler of the American Civil Liberties Union (ACLU), Michael Steinberg of the University of Michigan Law School, and the assistance of the United States District Court – Eastern Michigan District.

Should you have any questions, please feel free to contact 2nd Deputy Chief Grant Ha, Legal Advisor to the Chief of Police, Monday through Friday, 8:00 a.m. until 4:00 pm at 313-596-1803.

Sincerely,



JAMES E. WHITE
Chief of Police

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Attachment:

1. Facial Recognition Policy
2. Facial Recognition Templates
3. Eyewitness Identification and Lineups Policy



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

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 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 – 3.9 Victim

For purposes of this directive, an individual who is allegedly the victim of a crime and who also meets the definition of Witness under this policy.

203.11 – 3.10 Witness

For purposes of this directive, an eyewitness, meaning an individual who saw the suspect in person.

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. 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 showup. 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;*
- c. Members shall obtain supervisory approval before conducting a showup;*

203.11 Eyewitness Identification and Lineups

- 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;
- 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;
- h. 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.

203.11 Eyewitness Identification and Lineups**203.11 - 4.2 Basic Procedures for Conducting a Live Lineup or Photo Array**

1. A live lineup or photo array may only be administered to a witness and or victim as defined in this policy.
2. 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.
3. Prior to conducting a photographic line-up, a supervisor shall ensure that there is an independent basis supported by reliable evidence that the suspect, who will be presented in the line-up, committed the crime. An investigative lead generated by a search using facial recognition technology does not alone constitute an independent basis that the person selected as the lead committed the crime.
4. The photographic lineup shall not contain an image derived from facial recognition.
5. 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 witness and or victim. It also means that photographs will be presented one-by-one to the witness and or victim.
6. 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.
7. 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.
8. 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.).
9. 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.
10. If there is more than one suspect, include only one in each live lineup or photo array.
11. 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.
12. Place suspects in different positions in each live lineup or photo array.
13. Neither witnesses nor victims should be permitted to see or be shown any photos or images of the suspect prior to or during the live lineup or photo array other than the photo of the suspect included in the photo array at the time it is administered.
14. The live lineup or photo array should be shown to only one witness and or victim at a time; in order to prevent participating witnesses and or victims from being aware of the responses of other witnesses and or victims, members should separate witnesses and or victims and warn them not to communicate with each other about the lineup or images involved in the lineup until all witnesses and or victims have completed the live lineup or photo array.

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15. *Multiple identification procedures should not be conducted in which the same witness and or victim views the same suspect more than once.*
16. *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. In investigations where facial recognition technology was used prior to the lineup, members shall not inform the witness or victim that facial recognition technology was used or that it generated information contributing to the inclusion of an individual in the lineup.*
17. *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.*
18. *The administrator shall ask the witness and or victim to complete and sign a live lineup or photo array form at the time of the lineup. As part of the form, the witness and or victim shall record their degree of confidence in their identification.*
19. *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 lineups that cannot be recorded, members shall take and preserve a still photograph of each individual in the lineup.*
20. *The administrator shall document all parties present during the live lineup.*

203.11 - 4.3 Photographic Arrays

Prior to conducting a photographic lineup, a supervisor shall ensure that there is an independent basis supported by reliable evidence that the suspect, whose picture is to be presented in the course of the photo lineup, committed the crime. An investigative lead generated by a search using facial recognition technology does not alone constitute an independent basis.

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.*
 - i. *Do not use images of people 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.).*

203.11 Eyewitness Identification and Lineups

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 state bar 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. *The administrator of a live lineup must be a blind administrator who does not know the identity of the suspect;*
 - 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:*
 - 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;*
 - 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;*
 - d. *Statements of identifying witnesses and or victims while making the identification; and*
 - e. *The witness's and or victim's degree of confidence in their identification, as specified above in 203.11 – 4.2(18).*

203.11 Eyewitness Identification and Lineups

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:
 - 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 Eyewitness Identification and Lineups**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 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.*