

# New York State Lineup Guidelines

## 1. Introduction:

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. These guidelines are intended to allow for the individual needs of the 62 counties and 551 police departments in New York State. It is expected that the guidelines will improve with time as practical experience and knowledge is gained.

## 2. Definitions:

- a. **Lineup:** A collection of individuals, either sitting or standing in a row, who are shown to a witness to determine if the witness can recognize a person involved with the crime.
- b. **Suspect:** Person police believe to have committed the crime.
- c. **Filler:** A person who is in the lineup, but is not a suspect in the crime.
- d. **Lineup Members:** The people who make up the lineup; both the suspect and the fillers.
- e. **Lineup Room:** Room where the fillers and suspect are arranged for viewing by the witness.
- f. **Viewing Room:** Room from which the witness, the administrator, and on some occasions the defense attorney, view the lineup.
- g. **Security Officer:** The person monitoring the fillers and the suspect in the lineup room.
- h. **Administrator of the Lineup:** The person who is conducting the identification procedure. Depending on the jurisdiction and the circumstances of the case, a lineup 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:
  - i. **The Investigator Assigned to the Case:** The administrator of the lineup is often an investigator working on the case. This can often provide significant case information as the investigator has knowledge about the case and the witness, which will be helpful in evaluating the witness’ identification or lack of identification. The presence of the case investigator can also provide some assurance to a nervous or reluctant witness. It is crucial that the investigator remain neutral throughout the identification procedure.
  - ii. **A “Blind” Administrator:** A “blind” administrator is someone who does not know which person in the lineup is the suspect. An identification procedure is considered “double” blind when it is run by a “blind” administrator. A

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significant benefit of the double blind procedure is its ability to negate the defense contention that the administrator in some unspecified way guided or cued the witness into picking the suspect. However, in cases with multiple witnesses, the blind administrator may quickly learn the identity of the suspect, if the suspect is selected by one or more of the witnesses. Therefore, it is crucial that the blind administrator remain neutral throughout the identification procedure. In some instances, the blind administrator may have previously known the suspect or some of the fillers. The requirement of a “blind” administrator is a significant strain on resources as it increases the personnel requirements for investigating a case. This can be particularly burdensome in jurisdictions with staffing shortages. A blind administrator will be less likely to remember individual identification procedures and may rely solely on documentation when called to testify.

- iii. **Assistant District Attorney (ADA):** In some jurisdictions, an ADA and/or the investigator is in the viewing room with the witness and asks the witness questions. If the ADA does not know who the suspect is in the lineup, then this is the same as a “double blind” identification procedure. The protocols outlined here apply equally to the ADA.
- iv. **Supervisor:** In some jurisdictions, a supervisor participates in various stages of the identification procedure. The protocols outlined here apply equally to the supervisor.

### 3. How to Invite the Witness to Come In for a Lineup:

- a. When an investigator calls a witness to arrange for the witness to view a lineup, the officer should simply ask the witness to come in for the identification procedure and should not say anything about the suspect. For example, the officer should say to the witness: “We’d like you to come in to view a lineup in connection with the crime you witnessed on (date and location).”
  - i. **Officer Should Remain Neutral:** The officer should give no opinions about the witness’ ability to make an identification.
  - ii. **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 detective should not say: “We have caught the guy, he had your credit card, and now we want you to identify him.”

### 4. Fillers for Lineup:

- a. **Number of Fillers:** Where practicable, there should be 5 fillers, in addition to

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the suspect, but in no case should there be less than 4 fillers. There should be only one suspect per line up.

- b. **Similarities of 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.
- c. **Fillers Seated:** All members of the lineup should be seated, if necessary, to eliminate any extreme variations in height.
- d. **Suspect Picks Position:** The suspect should be allowed to pick his own position in the lineup. If there was an identification based on a photo array prior to the lineup, the suspect should not be placed in the same numerical position in the line up as he appeared in the array (unless the suspect insists on that number).
- e. **Requests from Defense Counsel:** Document requests made by the defense counsel and whether they were granted, and if not, why not. Reasonable requests from defense counsel should be honored and documented. Any defense request for a change in the lineup that is not, or cannot be, honored must also be documented.
- f. **Defense Attorney Cannot Speak in Viewing Room:** The defense attorney must be instructed not to speak in the viewing room when the witness is present.
- g. **If Asked, All Lineup Members Must Speak, Move or Change Clothing:** If any lineup member is asked to speak, move or change clothing, all members must do so. Everything the lineup members are asked to do should be documented. If a witness' request of the lineup members is not feasible and cannot be accommodated, the request should also be documented.
- h. **Fillers Must Remain Neutral:** The fillers must be instructed not to speak with each other or make any unnecessary gestures, but should remain still, hold the placard and look forward, unless instructed otherwise by the security officer in the room with the fillers.
- i. **Photo Array Fillers:** Fillers from a photo array previously viewed by the witness should not be used as fillers in the lineup.

## 5. Instructions to Witnesses:

- a. **Written Instructions for the Witness:** Consideration should be given to providing written instructions to the witness. The instructions can be in various languages. The witness can sign the instructions after reading them, or after having the administrator read the instructions to the witness.
- b. **No Comment by the Administrator Until the Identification Procedure is Completed and Documented:** Until the information about the identification

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procedure is documented, the investigator should not comment about the procedure or the next steps in the case. Stray comments that could potentially focus a witness' attention to one lineup member 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.

- c. **Give Instructions *Before* the Identification Procedure:** Instructions should be given to the witness *before* the identification procedure begins and not while the witness is in the process of viewing the lineup. This will alleviate confusion and minimize claims that the investigator somehow, even inadvertently, provided cues to the witness. Witnesses should also be told to take whatever time they will need when they view the lineup.
    - i. **Setting the Context:** The administrator should tell the witness that the witness is being asked to view the lineup to see if the witness recognizes anyone involved with the crime on (*date*) at (*location*).
    - ii. **Instructions to the Witness to Avoid Any Influence by the Administrator:** 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) I was not present at the crime, so do not assume I know who the perpetrator is.
      - (3) I want you to focus on the lineup and not to look to me or anyone else in the room for guidance during the procedure.
    - iii. **Lineup Members Speaking, Moving or Changing Clothing:** Consideration should be given to telling the witness that the lineup members can be asked to speak, move or change clothing, if necessary. However, if one lineup member is asked to do so, then all the lineup members will be asked to do the same.
6. **Questions Asked *After* an Opportunity to View the Lineup:**
    - i. Do you recognize anyone?
    - ii. If so, what is the number of the person that you recognize?
    - iii. From where do you recognize the person?

## 7. Multiple Witnesses:

- a. **Witnesses Cannot Speak to Other Witnesses About the Identification Procedures:** If there are multiple witnesses who will be viewing a lineup, they

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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 the witnesses have of talking to each other before or immediately after the identification procedure.

- i. They can be kept in separate rooms before and after the identification, or
  - ii. An officer can sit with the witnesses to ensure they do not speak about the process or the case, or
  - iii. The witnesses can be allowed to leave immediately after participating in the procedure, or
  - iv. The witnesses can be taken to separate areas after the identification procedure for further interviews with detectives.
- b. **One viewing of the Photo Array:** In those jurisdictions that regularly use lineup procedures, consideration should be given to running lineups after the first witness makes an identification from a photo array. Where practicable, the additional witnesses can view only the lineup and not the photo array.

## 8. Procedures for Viewing a Lineup:

- a. **Security:** Safety and security for all civilians, suspects and law enforcement personnel must be ensured during any lineup procedure. Where necessary, the confidentiality of the witness' identity must be protected.
- b. **Remain Neutral:** 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 lineup member to the witness. Comments that could potentially focus a witness' attention to one lineup member 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 refocus the witness on the lineup.
- c. **Administrator Standing Away from the Witness:** The administrator of the lineup should stand away from the witness during the lineup, in a neutral manner, while still being in a position to observe the witness. The key is for the administrator to stand outside the witness' line of sight while the witness is viewing the lineup. This will reduce any inclination by the witness to look at the administrator for guidance. When coupled with the type of instructions discussed above, this procedure will create a neutral environment, free of inadvertent cues

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from the administrator.

- d. **Security Officer with the Suspect and the Fillers:** The security officer who is monitoring the suspect and fillers in the lineup room should remain out of view of the witness. This will eliminate the potential for any claims of inadvertent suggestions by the security officer and it also removes the potential for distracting the witness as the lineup is being viewed. However, if the witness needs a lineup member to speak, move, or change clothing, then the security officer in the room with the lineup members may have to be seen.
- e. **Location of Lineup:**
  - i. **Neutral Location:** The witness should view the lineup in a room or area away from things that could influence the witness' identification, for example, other evidence in the case, wanted posters, sketches and other information about the suspect.
  - ii. **Central Location:** If identification procedures are conducted in a central location, away from the arrest precinct, a trained, neutral administrator, with no knowledge of the investigation may be available to conduct the identification procedure. A central location can be designed for a double blind identification procedure. However, the ability to construct and outfit a central location is a strain on resources and not available in the vast majority of jurisdictions.

## 9. Documenting the Lineup on the Lineup Form:

- a. **Identification Procedure Protocols and Forms:** Standard instruction sheets, questions, protocols and forms should be developed. All investigators involved in the identification procedure should be trained on the protocols.
- b. **Photographing the Lineup:** Every time a witness views a lineup, the lineup should be preserved by photograph. The witness should sign the photograph, if one is available at that time, to verify that it is the lineup that he or she viewed.
- c. **Documenting What the Suspect and Fillers Were Asked To Do:** Anything the lineup members are asked to do (e.g., speak, move, or change clothing) must be documented.
- d. **Document All People Present for the Lineup:** Document all people in the viewing room with the witness and the lineup room with the suspect.
- e. **Recording the Witness' Statement and Physical Reaction:** Comments made by the witness during the identification should be written down word for word. The documentation should not merely state: "positive" or "negative" nor "hit" or "no hit" as the results. The witness' words uttered during and after the identification procedure should be recorded, for example, "It is definitely #1.",

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“If I had to pick, it would be #2.”, “I’m not sure, but it might be #3.” or “I didn’t want to say inside the room but it was #4.” All four of these comments could be listed by an officer as a positive identification, but that could be misleading depending upon the case. The witness’ words and physical reactions should be recorded.

- i. **Record the Witness’ Statements Rather than “Confidence Statements”:** “Confidence statements” where the administrator asks a witness to provide a numeric value or a certainty level to their identification, e.g., “On a scale of 1 – 10, how sure are you?” or “Are you 100% sure?” can be problematic. Most witnesses do not spontaneously offer a numeric confidence level at the time of viewing the lineup. Forcing a witness to attach a numeric value or level to their identification, or lack of identification, could lead to an artificial assessment and may prove to be misleading. The better practice is for the administrator to memorialize each of the witness’ statements, comments or other reactions made during the identification procedure.

## 10. Speaking with the Witness After the Identification Procedure:

- a. **Record the Witness’ Statements First:** The administrator, or other appropriate person, should record the statements, comments or gestures of the witness regarding the identification procedure *before* talking with the witness about next steps.
- b. **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, *e.g.* 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.
- c. **Do Not Comment on the Identification:** The administrator should not comment or make gestures on the identification itself by saying things such as: “Great job.” or “We knew you would recognize him.” or even nodding his head 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.
- d. **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

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procedure with other witnesses, nor should the investigator discuss any other identification procedures with the witness.

## **11. Training:**

Proper training is a critical component of conducting a fair and reliable identification procedure. Investigators who will be participating in lineup procedures in any way by picking up the witnesses, standing with the lineup members or instructing the witnesses, should be trained in these procedures.