

\*Please note: This is a working draft of Directive 870.80. This is proposed language and the Bureau has not implemented any changes to the current policy at this time.

## **870.80, Eyewitness Identification**

### **Refer:**

- State v. Lawson, 352 Or. 724 (2012)
- DIR 640.02, Photography and Digital Imaging
- DIR 640.36, Communication with Hearing Impaired and Limited English Proficient Persons
- Preliminary Checklist
- Eyewitness Identification Form (Photo Lineup)
- Eyewitness Identification Form (Show-Up)

### **Definitions:**

- **Blind Presentation:** The presenter does not know who the suspect is; this is also known as double-blind presentation.
- **Blinded Presentation:** The equivalent of a blind presentation; used when the presenter knows who the suspect is. To be conducted so that the presenter does not know which photograph is being presented to the victim or witness.
- **Confidence Statement:** A statement in the victim's or witness's own words taken immediately after an identification is made stating their level of certainty in the identification.
- **Photo Lineup:** A presentation of photographs of persons to a victim or witness for the purpose of identifying or eliminating suspects.
- **Presenter:** The member presenting a lineup.
- **Sequential Presentation:** A presentation of photographs in a photo lineup one at a time, retrieving one photo before presenting another.
- **Show-up:** A presentation to a victim or witness of a live person in the environment that is close in time and proximity to the incident under investigation.
- **Simultaneous Presentation:** A presentation of a series of photographs in a photo lineup arrayed together, either manually constructed or computer generated to a victim or witness all at once.

### **Policy:**

1. Science continues to study identification processes to improve the accuracy of eyewitness identification evidence. The Portland Police Bureau recognizes the importance of keeping pace with new laws and scientific standards to implement identification techniques that further investigations. PPB utilizes digital technology to assist members when conducting photo lineup presentations with victims and witnesses; however, any alterations made to photographs used in photo lineups shall be made with the intent and express purpose of

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ensuring that victims and witnesses make only the most accurate identification of alleged suspects.

2. The Portland Police Bureau strives to investigate criminal activity in a way that brings justice to victims while also being fair to alleged perpetrators. This directive establishes the guidelines for members conducting photo lineup and show-up presentations with victims and witnesses.

**Procedure:**

1. Documentation.
  - 1.1. Members shall read the instructions from the Eyewitness Identification form to victims or witnesses and use this to document their identification statements. Members shall also refer to section 2.5. on post-presentation interview and documentation.
  - 1.2. In addition to documentation in the incident report(s) and on Eyewitness Identification forms, when it is reasonable, practical and consistent with the best interests of the investigation, presenters should consider audio-recording the presentation. Presenters shall notify and seek consent from victims and or witnesses prior to audio-recording a presentation. If the victim or witness does not agree to this, the presentation will not be recorded.
  - 1.3. Lineups, forms, and recordings shall be treated as evidence, with copies of the lineups, forms and any recordings included in the case file, whether or not the victims or witnesses made identifications.
  - 1.4. If a photo lineup is developed electronically, the lineup shall be printed for documentation.
2. Photo Lineups.
  - 2.1. About Photo Lineups.
    - 2.1.1. When a photo lineup is used for suspect identification, a blind or blinded sequential presentation should be used whenever reasonably possible; consequently, the procedures that appear below are designed primarily for blind or blinded sequential presentations. If another photo lineup method is used, including a simultaneous presentation or a sequential presentation that is not blind or blinded, members shall document the reason(s) for using that method.
  - 2.2. Development of a Photo Lineup.
    - 2.2.1. Members shall obtain a thorough suspect description from each victim or witness before developing a photo lineup. Members should be aware that differing suspect descriptions among victims or witnesses may require the presentation of different photo lineups to different individuals.
    - 2.2.2. Members shall refer to the Preliminary Checklist for information to gather before any identification process.
    - 2.2.3. A photo lineup shall consist of no fewer than six (6) photographs, including one (1) of the suspect.

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- 2.2.4. All photos shall be similarly sized and be of similar-appearing individuals. None should be obviously different from the others; therefore, members may need to alter a photograph of a potential suspect or other photographs in a lineup in order to make certain that the suspect's photo is not unduly conspicuous among the photos used. In such cases, a requesting member shall discuss and receive approval from their direct supervisor prior to requesting through the Forensic Evidence Division (FED) to digitally alter a photograph for a photo lineup. Members shall document any alterations to photographs, the reason for the alterations, and the supervisory approval in an appropriate report.
    - 2.2.4.1. Filler photographs (not of a suspect) should generally match, to the extent reasonably possible, the particular victim's or witness's description of the suspect. Because filler photographs and victim or witness descriptions of the suspect may vary from each other to some degree, it is permissible for filler photographs to differ from each other and from the suspect's photo or description, so long as the differences do not make the suspect's photo or description disproportionately stand out from the others.
    - 2.2.4.2. When there is a limited or insufficient suspect description, or when the victim's or witness's description of the suspect differs significantly from the available photograph(s) of the suspect, the filler photographs should resemble the suspect photograph, not the description.
  - 2.2.5. When conducting a single lineup for multiple victims or witnesses, the presenter shall present the photographs to each victim or witness in a different sequence. Another alternative method is a random or shuffled presentation for each victim or witness. When a random or shuffled presentation is used, the presenter may record the order of presentation afterwards.
- 2.3. Presentation of Photo Lineup.
- 2.3.1. Instructions to Victims or Witnesses.
    - 2.3.1.1. Prior to a presentation, the presenter shall read the victim or witness instructions from the Eyewitness Identification form and document that they understand the instructions.
  - 2.3.2. Blind Presentation.
    - 2.3.2.1. The presenter shall present the photos to the victim or witness sequentially, with one photo replacing another so that no two are presented at the same time. After each photo is presented, the presenter will ask: "Is this the person you saw?" and document the answer before presenting the next photo.
    - 2.3.2.2. The presenter shall present each photo to the victim or witness, even if they identify a photo as the suspect.
    - 2.3.2.3. If, during the same presentation, the victim or witness asks to see one or more photos again, the presenter may conduct the same presentation a second time but must present all of the photos, using the same method and order of presentation. If the victim or witness gives a different answer as to a particular photo(s), then the presenter will ask them to explain the reason for the change.
  - 2.3.3. Blinded Presentation.

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- 2.3.3.1. Members shall follow the steps outlined in section 2.3.2.1. through 2.3.2.3. as well as the following steps:
  - 2.3.3.1.1. Since the presenter knows who the suspect is, precautions must be taken to prevent the presenter from knowing which photo is being shown to the victim or witness as the process occurs.
    - 2.3.3.1.1.1. One option is for the photos to be placed in identical folders or envelopes, with the folders or envelopes numbered inside and shuffled. Each photo shall then be presented so that only the witness can see the photo; the presenter is thus “blinded” to the process and it cannot, therefore, be suggestive.
    - 2.3.3.1.1.2. Equivalent methods may be adopted and used, so long as the presenter is blinded to the process and the process is documented.
  - 2.3.3.2. Following a blinded presentation, the presenter may record the order of presentation, using the number on the card or folder.
- 2.4. Multiple Presentations of the Same Suspect to a Victim or Witness.
  - 2.4.1. It is rare for a suspect to be presented for identification more than once in any form to a given victim or witness. There may, however, be valid reasons for multiple presentations of the same suspect to the same victim or witness. For example, when the initial photo used was outdated and did not accurately represent the suspect’s current appearance, a member may choose to obtain a more current and accurate photo of the suspect to present to the victim or witness in a second identification process. Members may consult with the Detectives Division if the need for multiple presentations occurs and shall document the reason(s) for the subsequent presentation.
- 2.5. Post-Presentation Interview and Documentation.
  - 2.5.1. After the presentation of a photo lineup, the presenter shall avoid any words or actions that might identify the suspect or hinder further investigation. The member shall not tell the victim or witness who the suspect is or whether they have picked the person whom the member believes committed the crime. There will be situations, however, when it is appropriate and necessary within the investigation for members to identify the suspect to the victim or witness to further the investigation or address public safety needs. In these cases, the member shall document the situation and reasons for disclosing the information.
  - 2.5.2. If the victim or witness picks a photo, the presenter shall ask them to explain why they selected the photo in their own words. While it is acceptable for the victim or witness to use a scale (e.g., “90% sure,” or “six out of ten”), presenters shall not encourage this. The confidence statement shall be recorded on the Eyewitness Identification Form. It is important for the presenter to ask the victim or witness questions regarding the “suspect description,” “context,” and “witness factors” or their equivalent. Presenters shall avoid asking leading questions.
  - 2.5.3. The presenter shall ask the victim or witness to affirm the confidence statement on the Eyewitness Identification form by reviewing the statement summary and, if accurate, sign the form.

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### 3. Show-Ups.

#### 3.1. About Show-Ups.

- 3.1.1. When circumstances require the prompt presentation of a suspect to a victim or witness, members should conduct a show-up within a limited time period immediately following an incident. Members shall document in their report the reasons why a photo lineup could not be used instead and articulate in detail any variables that could impact identification accuracy, which include, but are not limited to:
  - 3.1.1.1. Stress,
  - 3.1.1.2. The victim's or witness's focus of attention during the crime,
  - 3.1.1.3. The victim's or witness's physical and mental conditions (e.g., visual impairment, state of intoxication),
  - 3.1.1.4. Exposure time,
  - 3.1.1.5. Viewing conditions (e.g., distance and lighting, weather, clear line of sight),
  - 3.1.1.6. Perpetrator characteristics (e.g., distinctiveness, disguise, own-race bias).
- 3.1.2. Show-ups capture the entire head-to-toe appearance of a possible suspect shortly after the incident, including features that may not appear in stored photographs such as hair length, style and color, facial hair, tattoos, piercings, clothing, shoes, jewelry, carried items (backpacks, purses, etc.) and state of intoxication. Show-ups can be conducted much more quickly than photo lineups, and also result in a shorter retention time for possible suspects than if they were held while a photo lineup is prepared. When conducted properly, show-ups that occur immediately after a crime can provide a valid identification procedure in lieu of a lineup.

#### 3.2. Conducting Show-Ups.

- 3.2.1. Obtain a thorough description of the suspect from each victim or witness before the show-up. Members shall refer to the Preliminary Checklist for information to gather before any identification process.
- 3.2.2. Ensure that, while making the presentation, all participating officers avoid words or conduct suggesting that the individual presented is criminally liable.
- 3.2.3. To the extent reasonably possible, avoid tarnishing the suspect by, for example, presenting a suspect in handcuffs or in the back seat of a police car.
- 3.2.4. Transport the victim or witness to the suspect's location if there is no probable cause to arrest a suspect. However, if there is probable cause, members may transport the suspect to the victims or witnesses if this is more reasonable for the investigation.
- 3.2.5. Separate victims and or witnesses before, during and, to the extent reasonably possible, after the show-up to avoid communication between them. If victims or witnesses cannot be separated afterwards (e.g., they are family members, friends or co-workers), then ask them to not discuss their identifications with each other.
- 3.2.6. Read the instructions from the Eyewitness Identification form and document that the victim or witness understands the instructions.
- 3.2.7. Document the victim's or witness's statement on the Eyewitness Identification form.
- 3.2.8. Document the circumstances of the show-up:

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- 3.2.8.1. The time of the show-up.
  - 3.2.8.2. The admonishment given before the show-up.
  - 3.2.8.3. All statements made by the victim or witness during the show-up.
  - 3.2.8.4. Exactly what the victim or witness said about the identification.
  - 3.2.8.5. Document what reminded the victim or witness of the suspect (e.g., the reasons the victim or witness made the identification).
  - 3.2.8.6. Avoid using a scale of 1-10 or a percentage to describe the level of certainty, unless the victim or witness must do so; give reasons instead.
  - 3.2.8.7. Document any conversations victims or witnesses may have had with each other before or during their identification.
  - 3.2.8.8. Document the lighting at the show-up.
  - 3.2.8.9. Note the distance between the victim or witness and the suspect at the show-up.
  - 3.2.9. If a victim or witness identifies the suspect, photograph the appearance and other identifying features such as:
    - 3.2.9.1. The clothing and accessories worn upon apprehension (e.g., coat, jewelry, backpack, hat, shoes) and or
    - 3.2.9.2. Physical characteristics (e.g., teeth, hands, birthmarks, scars, tattoos and piercings).
  - 3.2.10. Clothing and other apparel may be useful in identifying a suspect. Consider seizing clothing and any accessories if it was involved in the identification.
    - 3.2.10.1. Seize all such clothing post arrest or pursuant to a search warrant as evidence of the crime (defendant's identity). If this is not practical, take photographs of the clothing worn using a Bureau-issued smartphone. Members shall transfer images to the Digital Imaging Management System (DIMS) in accordance with Directive 640.02, Photography and Digital Imaging.
    - 3.2.10.2. Do not confirm for the victim or witness whether the person they identified is the person whom the member believes committed the crime, unless there is a clearly articulable reason for doing so, which must be documented by the member in their report.
  - 3.2.11. If the victim or witness identifies the suspect, but does not sign any required forms, the member shall note the refusal to sign in an appropriate police report.
  - 3.2.12. If the victim or witness does not identify the suspect, the member shall document the circumstances and responses, and include on the Eyewitness Identification form and in their report:
    - 3.2.12.1. What the victim or witness said about the identification.
    - 3.2.12.2. How the person differed from the suspect.
    - 3.2.12.3. Photographs of the individual to document their appearance.
4. Victims and Witnesses with Limited or No English Proficiency.
- 4.1. If a victim or witness to a criminal offense has difficulty communicating (e.g., deaf or hard of hearing, limited English proficiency), then members shall arrange for an interpreter before proceeding with any eyewitness identification procedure. Members shall document the name of the company and the interpreter providing services in an appropriate police report.

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- 4.2. Before the interpreter is permitted to discuss any matter with the victim or witness, the investigating officer shall explain to the interpreter the process that will be used. Once the interpreter understands the process and explains it to the victim or witness, the eyewitness identification may proceed.
5. Forensic Evidence Division Responsibilities.
  - 5.1. Any FED personnel who digitally alters a photograph at the request of a member shall document in an appropriate report the alterations made and the techniques and/or software used to make the alterations.

Provide feedback [here](#).

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## 870.80, Eyewitness Identification

### Refer:

- State v. Lawson, 352 Or. 724 (2012)
- DIR 640.02, Photography and Digital Imaging
- DIR 640.36, Communication with Hearing Impaired and Limited English Proficient Persons
- Preliminary Checklist (~~Information to gather before any type of identification process~~)
- Eyewitness Identification Form (Photo Lineup)
- Eyewitness Identification Form (Show-Up)

### Definitions:

- Blind Presentation: The presenter does not know who the suspect is; this is also known as double-blind presentation.
- Blinded Presentation: The equivalent of a blind presentation; used when the presenter knows who the suspect is. To be conducted so that the presenter does not know which photograph is being presented to the victim or witness.
- Confidence Statement: A statement in the victim's or witness's own words taken immediately after an identification is made stating their level of certainty in the identification. ~~A witness's statement about the pick the witness made and of his or her confidence in that pick; taken immediately after a pick has been made.~~
- Photo Lineup: A presentation of photographs of persons to a victim or witness for the purpose of identifying or eliminating suspects.
- Presenter: The member presenting a lineup.
- Sequential Presentation: A presentation of photographs in a photo lineup ~~line-up~~ one at a time, retrieving one photo before presenting another.
- Show-up: A presentation to a victim or witness of a live person in the field environment that is close in time and proximity to the incident under investigation.
- Simultaneous Presentation: A presentation of a series at the same time of photographs in a photo lineup ~~line-up~~ arrayed together, either manually constructed or computer generated to a victim or witness all at once.

### Policy:

1. Science continues to study identification processes to improve the accuracy of eyewitness identification evidence. The Portland Police Bureau ~~strives-recognizes the importance of~~ keeping pace with new laws and scientific standards to implement identification techniques that further investigations. PPB utilizes digital technology to assist members when conducting photo lineup presentations with victims and witnesses; however, any alterations

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made to photographs used in photo lineups shall be made with the intent and express purpose of ensuring that victims and witnesses make only the most accurate identification of alleged suspects.

2. The Portland Police Bureau strives to investigate criminal activity in a way that brings justice to victims while also being fair to alleged perpetrators. This directive establishes the guidelines for members conducting photo lineup and show-up presentations with victims and witnesses.

### **Procedure:**

#### 1. Documentation:

1.1. Members shall read the instructions from the Eyewitness Identification form to victims or witnesses and use this form to document their identification statements. Members shall also refer to section 2.545. on post-presentation interview and documentation.

1.2. In addition to documentation in the incident report(s) and on Eyewitness Identification forms, when it is reasonable, practical and consistent with the best interests of the investigation, presenters should consider audio-recording the presentation. Presenters shall notify and seek consent from victims and or witnesses prior to audio-recording a presentation. If the victim or witness does not agree to this, the presentation will not be recorded.

~~When a decision is made to record, the witness must be informed of the recordation. If the witness does not agree to recordation, the presentation should not be recorded.~~

~~1.1.1.3.~~ Lineups, forms, and recordings shall be treated as evidence, with copies of the lineups, forms and any recordings included in the case file, whether or not the victims or witnesses made identifications.

~~1.2.1.4.~~ If a photo lineup is developed electronically, the lineup shall be printed for documentation.

~~1.3. See also Post-Presentation Interview and Documentation (Section 2.4).~~

#### 2. Photo Lineups:

##### 2.1. About Photo Lineups:

2.1.1. When a photo lineup is used for suspect identification, a blind or blinded sequential presentation should be used whenever reasonably possible; consequently, the procedures that appear below are designed primarily for blind or blinded sequential presentations. If another photo lineup method is used, including a simultaneous presentation or a sequential presentation that is not blind or blinded, members shall document the reason(s) for using that method.  
~~should be documented.~~

##### 2.2. Development of a Photo Lineup:

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~~2.2.1.~~ 2.2.1. Members ~~should~~ shall obtain a thorough suspect description from each victim or witness before developing a photo lineup. Members should be aware that ~~(Note that differing suspect descriptions among~~ ~~the victims or witnesses may require the presentation of different photo lineups to different~~ individuals, witnesses.)

~~2.2.1.2.2.2.~~ 2.2.2. Members shall refer to the See Preliminary Checklist for information “information to gather before any identification process.”

~~2.2.2.2.2.3.~~ 2.2.2.2.2.3. A photo lineup shall consist of no fewer than six (6) photographs, including one (1) of the suspect.

~~2.2.3.2.2.4.~~ 2.2.3.2.2.4. All photos ~~should~~ shall be similarly sized and ~~should~~ be of similar-appearing individuals. None should be obviously different from the others; therefore, members may need to alter a photograph of a potential suspect or other photographs in a lineup in order to make certain that the suspect’s photo is not unduly conspicuous among the photos used. In such cases, a requesting member shall discuss and receive approval from their direct supervisor prior to requesting through the Forensic Evidence Division (FED) to digitally alter a photograph for a photo lineup. Members shall document any alterations to photographs, the reason for the alterations, and the supervisory approval in an appropriate report.

~~2.2.3.1.2.2.4.1.~~ 2.2.3.1.2.2.4.1. Filler photographs (not of a suspect) should generally match, to the extent reasonably possible, the particular victim’s or witness’s description of the suspect. Because filler photographs and victim or -witness descriptions of the suspect may vary from each other to some degree, it is permissible for filler photographs to differ from each other and from the suspect’s photo or description, so long as the differences do not make the suspect’s photo or description disproportionately stand out from the others.

~~2.2.3.2.2.4.2.~~ 2.2.3.2.2.4.2. When there is a limited or insufficient suspect description, or when the victim’s or witness’s description of the suspect differs significantly from the available photograph(s) of the suspect, the filler photographs should resemble the suspect photograph, not the description.

~~2.2.4.~~ 2.2.4. ~~The photos shall be numbered and in individual folders or envelopes attached to opaque backing such as light cardboard or equivalent. The number on the photo should be placed so that the presenter cannot see it when presenting in a “blinded presentation.” (See process below, Section 2.3.3.).~~

~~2.2.5.~~ 2.2.5. When conducting a single lineup for multiple victims or witnesses, the presenter shall present the photographs ~~should be presented~~ to each victim or witness in a different sequence. Another alternative method is a random or shuffled presentation for each victim or witness. ~~When a random or shuffled presentation is used, the presenter may record the order of presentation should be recorded afterwards.~~

## 2.3. Presentation of Photo Lineup:

### 2.3.1. Instructions to Victims or Witnesses:

2.3.1.1. Prior to a presentation, the presenter shall read the victim or witness instructions from the Eyewitness Identification form, ~~ensuring~~ and document ~~documenting~~ that they understand ~~witness understands~~ the instructions.

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### 2.3.2. Blind Presentation.

~~2.3.2. In a blind presentation, the identity of the suspect is not known to the presenter.~~

~~2.3.2.2.2.3.2.1. The presenter shall present the photos to the victim or witness sequentially, with one photo replacing another so that no two are presented at the same time. After each photo is presented, the presenter will ask: "Is this the person you saw?"~~?"?"~~ and document the answer before presenting the next photo. ~~and the answer will be documented.~~~~

~~2.3.2.3.2.3.2.2. The presenter shall present each photo to the victim or witness, even if they ~~identify~~ ~~witness identifies~~ a photo as the suspect.~~

~~2.3.2.4.2.3.2.3. If, during the same presentation, the victim or witness asks to see one or more photos again, the presenter may conduct the same presentation a second time but must present all of the photos, using the same method and order of presentation. If the victim or witness gives a different answer as to a particular photo(s), then the ~~presenter~~ ~~witness~~ will ~~be asked~~ ask them to explain the reason for the change.~~

### 2.3.3. Blinded Presentation:

~~2.3.3.1. Members shall follow the steps outlined in section 2.3.2.1. through 2.3.2.3. as well as the following steps: See also the steps for presenting photos under "Blind Presentation," above. These steps should be followed as modified below.~~

~~2.3.3.1.1. If Since the presenter knows who the suspect is, precautions must, ~~an extra measure of care should~~ be taken to prevent the presenter from knowing which photo is being shown to the victim or witness as the process occurs.~~

~~2.3.3.1.1.1. One option is for the photos to be placed in identical folders or envelopes, with the folders or envelopes numbered inside and shuffled. Each photo shall then be presented so that only the witness can see the photo; the presenter is thus "blinded" to the process and it cannot, therefore, be suggestive.~~

~~2.3.3.1.1.2. A second option for "blinded" presentation is for the photos to be adhered to equally sized and shaped pieces of opaque material (such as light cardboard) to create "cards," with each card containing one photograph. The cards shall be numbered on front, so that the presenter cannot see the number. These cards will then be shuffled, face down, and presented so that only the witness can see the photo.~~

~~2.3.3.1.1.3.2.3.3.1.1.2. Equivalent methods ~~to the first two~~ may be adopted and used, so long as the presenter is blinded to the process and the process is documented.~~

~~2.3.3.2. Following When a blinded presentation, ~~is used~~, the presenter may record the order of presentation ~~shall be recorded afterward~~, using the number on the card or folder.~~

## 2.4. Multiple Presentations of the Same Suspect to a Victim or Witness.

2.4.1. It is rare for a suspect to be presented for identification more than once in any form to a given victim or witness. There may, however, be valid reasons for

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multiple presentations of the same suspect to the same victim or witness. For example, when the initial photo used was outdated and did not accurately represent the suspect's current appearance, a member may choose to obtain a more current and accurate photo of the suspect to present to the victim or witness in a second identification process. Members may consult with the Detectives Division if the need for multiple presentations occurs and shall document the reason(s) for the subsequent presentation.

~~.- If an alternative presentation method is used, then the order must also be recorded.~~

~~2.3.4.— In addition to documentation in the incident report(s) and on Eyewitness Identification forms, when it is reasonable, practical and consistent with the best interests of the investigation, presenters should consider audio recording the presentation. When a decision is made to record, the witness must be informed of the recordation. If the witness does not agree to recordation, the presentation should not be recorded.~~

#### 2.4.2.5. Post-Presentation Interview and Documentation.:

2.4.1.2.5.1. After the presentation of a photo lineup, the presenter shall avoid any words or actions that might identify the suspect or hinder further investigation. The ~~member~~investigator shall not tell the victim or witness who the suspect is or whether they ~~have~~witness ~~has~~ picked the person whom the ~~member~~investigator believes committed the crime. There will be situations, however, when it is appropriate and necessary within the investigation for members to identify the suspect to the victim or witness to further the investigation or address public safety needs. ~~In f-these cases~~so, the member shall document then the situation and reasons formust be clearly documented disclosing the information.

2.4.2.2.5.2. If the victim or witness picks a photo, the presenter shall ask them ~~m~~-witness to ~~describe explain~~ why ~~they the photo was~~ selected. ~~The presenter shall obtain a description of reasons for the witness' selection~~ the photo in their ~~witness'~~ own words. While it is acceptable for the victim or witness to use a scale (e.g., "90% sure," or "six out of ten"), presenters shall not encourage this. The confidence statement shall be recorded on the Eyewitness Identification Form. It ~~Because it is best to avoid scales. Tthe~~ victim's or witness's responses to questions about their reasons for their selection and their confidence, which is commonly referred to together as a "confidence statement," shall ~~beis~~ documented on the Eyewitness Identification form (attached) and in the investigator's report. ~~To do this, it~~ is important for the presenter to ask the victim or witness ~~the~~ questions regarding the "suspect description," "context," and "witness factors" ~~found at the end of this document,~~ or their equivalent. ~~and to document the answers. Presenters shall avoid asking leading~~ Leading questions. ~~are to be avoided.~~

2.4.3.2.5.3. The presenter shall ask the victim or witness to affirm the confidence statement on the Eyewitness Identification form by reviewing the statement summary and, if accurate, sign the form.

### 3. Show-Ups.:

#### 3.1. About Show-Ups.:

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3.1.1. ~~Members are to be aware that this section is more restrictive than the law. Show-ups are a valuable tool for quickly identifying or excluding suspects shortly after an incident. Show-ups in general should not be conducted more than one (1) hour after the incident. In rare circumstances it may be necessary to conduct a show-up up to three (3) hours after the incident.~~ When circumstances require the prompt presentation of a suspect to a victim or witness, members should conduct a show-up within a limited time period immediately following an incident. Members shall document but it must be articulated in detail in their report the as to why reasons why a photo lineup could not be used instead and articulate in detail . In all circumstances any variables that could impact identification accuracy should be documented, which generally include, but are not limited to:

3.1.1.1. Stress, stress

3.1.1.2. The victim's or witness's focus of attention during the crime,

3.1.1.3. The victim's or witness's physical and mental conditions (e.g., visual impairment, state of intoxication),

3.1.1.4. Exposure weapon focus, violence, exposure time,

3.1.1.5. Viewing conditions (e.g., distance and lighting, weather, clear line of sight),

3.1.1.1-3.1.1.6. Perpetrator characteristics (e.g., distinctiveness, disguise, own-race bias) and cross race bias.

3.1.2. Show-ups are particularly valuable because they capture the entire head-to-toe appearance of a possible suspect shortly after the incident in question, including features that may not appear in stored photographs such as hair length, style and color, facial hair, tattoos, piercings, clothing, shoes, jewelry, carried items (backpacks, purses, etc.) and state of intoxication. Show-ups can be conducted much more quickly than photo lineups, and line-ups, and many investigations benefit from the prompt display of a suspect to a witness. Show-ups also result in a shorter retention time for possible suspects than if they were held while a photo lineup is prepared. These reasons, and the fact that they capture the entire, current appearance of the individual, make show-ups an important and valid identification procedure. When conducted properly, show-ups that occur immediately after a crime can provide a valid identification procedure in lieu of a lineup.

### 3.2. Conducting Show-Ups.:

3.2.1. Obtain a thorough description of the suspect from each victim or witness before the show-up. Members shall refer to the See-Preliminary Checklist for "information to gather before any identification process."

3.2.2. Ensure that, while making the presentation, all participating officers avoid words or conduct suggesting that the individual presented is criminally liable.

3.2.3. To the extent reasonably possible, avoid tarnishing the suspect by, for example, presenting a suspect in handcuffs or in the back seat of a police car.

3.2.4. Transport the victim or witness to the suspect's location if there is no probable cause to arrest a suspect. However, if there is probable cause, members may transport the suspect to the victims or witnesses if this is more reasonable for the investigation, not the suspect to the witness.

\*Please note: This is a working draft of Directive 870.80. This is proposed language and the Bureau has not implemented any changes to the current policy at this time.

- 3.2.5. Separate victims and or witnesses before, during and, to the extent reasonably possible, after the show-up to avoid communication between them. If victims or witnesses cannot be separated afterwards (e.g., they are family members, friends or co-workers), then ask them ~~to discuss their identifications with each other.~~
- 3.2.6. Read the instructions from the Eyewitness Identification form, ~~ensuring~~ and ~~document~~documenting that the victim or witness understands the instructions.
- 3.2.7. Document the victim's or witness's statement on the Eyewitness Identification form.
- 3.2.8. Document the circumstances of the show-up:
  - 3.2.8.1. The time of the show-up.
  - 3.2.8.2. The admonishment given before the show-up.
  - 3.2.8.3. All statements made by the victim or witness during the show-up.
  - 3.2.8.4. Exactly what the victim or witness said about the identification.
  - 3.2.8.5. Document what reminded the victim or witness of the suspect; (e.g., the reasons the victim or witness made the identification).
  - 3.2.8.6. ~~Avoid using~~It is best not to use a scale of 1-10 or a percentage to describe the level of certainty, unless the victim or witness must do so; give reasons instead.
  - 3.2.8.7. Document any conversations victims or witnesses may have had with each other before or during their identification.
  - 3.2.8.8. Document the lighting at the show-up.
  - 3.2.8.9. Note the distance between the victim or witness and the suspect at the show-up.
- 3.2.9. If a victim or witness identifies the suspect, photograph the ~~clothing appearance~~ and ~~other~~ identifying features such as:
  - 3.2.9.1. ~~The~~Photograph the suspect in the clothing and accessories worn upon apprehension ~~including (e.g., coat, jewelry, backpack, hat, and shoes) and~~ or:
  - 3.2.9.2. ~~Physical~~If the witness includes these characteristics (e.g., ~~in the identification, also photo the~~ teeth, hands, ~~(including jewelry),~~ birthmarks, scars, tattoos and piercings).

~~—————Clothing and other apparel may be useful in identifying a suspect. Consider seizing clothing and any accessories if it was involved in the identification.~~
- 3.2.10. Consider seizing clothing ~~Seize the clothing, shoes, hat, jewelry, etc~~ and any accessories if it was involved in the identification.
  - 3.2.10.1. Seize all such clothing ~~post incident to~~ arrest or pursuant to a search warrant as evidence of the crime (defendant's identity). If this is not practical, take photographs of the clothing worn using a Bureau-issued smartphone. Members shall transfer images to the Digital Imaging Management System (DIMS) in accordance with Directive 640.02, Photography and Digital Imaging. as directed by your local prosecuting authority.
  - ~~3.2.10.2.1.1.1. Clothing and other apparel may be useful in identifying a suspect.~~
  - ~~3.2.10.3.3.2.10.2.~~ Do not confirm for the victim or witness whether the person that the witness they identified is the a person whom the member investigator believes committed the crime ~~in question~~, unless there is a clearly

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articulable significant reason for doing so this, which must be documented by the member in their report.

- 3.2.11. If the victim or witness identifies the suspect, but does not sign any required forms, the member shall note the refusal to sign in an appropriate police report.
- 3.2.12. If the victim or witness does not identify the suspect, the member shall document the circumstances and responses, and include shall also be documented on the Eyewitness Identification form and in their report ~~including~~:
  - 3.2.12.1. ~~What~~Exactly what the victim or witness said about the identification.
  - 3.2.12.2. ~~How~~Ask the witness how the person differed from the suspect ~~and document the answer~~.
  - 3.2.12.3. Photographs of the individual to document their~~his or her~~ appearance.

#### 4. Victims and Witnesses with Limited or No English Proficiency.:

- 4.1. If a victim or witness to a criminal offense has difficulty communicating (e.g., deaf or hard of hearing, limited English proficiency), then ~~investigators-members~~ shall arrange for an interpreter before proceeding with any eyewitness identification procedure. ~~Investigators-Members~~ shall document the name of the company and the interpreter providing services in an appropriate police report.
- 4.2. Before the interpreter is permitted to discuss any matter with the victim or witness, the investigating officer shall explain to the interpreter the process that will be used. ~~to the interpreter~~. Once ~~it is clear that the interpreter can communicate effectively with the witness, and that~~ the interpreter understands the process and ~~can~~ explains it to the victim or witness, the eyewitness identification may proceed.

#### ~~5. Multiple Presentations of the Same Suspect to a Witness:~~

- ~~5.1. It is rare for a suspect to be presented for identification more than once in any form to a given witness. There may, however, be valid reasons for multiple presentations of the same suspect to the same witness. For example, when the earlier photo used was outdated and did not accurately represent the suspect's current appearance, it may be appropriate to obtain a more current and accurate photo and present the same suspect in a second identification procedure to the witness. Members should consult with the Detectives Division if the need for multiple presentations occurs and the reason(s) for the subsequent presentation shall be documented.~~

#### 5. Forensic Evidence Division Responsibilities.

- 5.1. Any FED personnel who digitally alters a photograph at the request of a member shall document in an appropriate report the alterations made and the techniques and/or software used to make the alterations.

#### ~~6. Training:~~

- ~~6.1. All sworn personnel shall receive training on this Directive and the presentation of lineups and show-ups.~~

## Directive 870.80 Feedback

1st Universal Review: 11/15/19-11/30/19

# #1

**COMPLETE**

**Collector:** Web Link 1 (Web Link)  
**Started:** Friday, November 15, 2019 9:08:55 AM  
**Last Modified:** Friday, November 15, 2019 9:10:09 AM  
**Time Spent:** 00:01:14  
**IP Address:**

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**Q1** Please provide feedback for this directive

Are there any new rules restricting or requiring the documentation of a police manipulation of a suspect's photo shown in a lineup?

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**Q2** Contact Information (optional)

Name

Email Address

Phone Number

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#2

COMPLETE

**Collector:** Web Link 1 (Web Link)  
**Started:** Wednesday, November 27, 2019 5:54:57 PM  
**Last Modified:** Wednesday, November 27, 2019 5:55:29 PM  
**Time Spent:** 00:00:31  
**IP Address:**

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Page 1

**Q1** Please provide feedback for this directive

To the Portland Police Bureau:

We meant to include in our introductory comments on Directive 835.20 that we were not making comments on most of the other Directives up for review this month, except that we do have one comment on Directive 870.80 Eyewitness Identification.

The PPB should include in the policy that there can be no photoshopping (or other manual or digital manipulation) done to remove or add identifying characteristics including but not limited to tattoos. This in reference to the case that broke in August:

<https://www.oregonlive.com/crime/2019/08/the-case-of-the-missing-tattoos-altered-photo-lineup-by-portland-police-draws-objection.html>

The fact that the Forensics Division's only excuse for manipulating the photo was that there is no policy against doing so is rather disturbing.

Our other ongoing concerns about formatting and the timelines for review also apply to 870.80.

portland copwatch

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**Q2** Contact Information (optional)

Name

Email Address

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