



## CITY OF PORTLAND, OREGON



### Bureau of Police

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## Executive Summary Directive 0870.80, Eyewitness Identification

### Introduction

The Bureau initiated its review of Directive 0870.80, Eyewitness Identification, in November 2019. The Bureau received significant feedback for this directive from the Oregon Innocence Project during the Second Universal Review and Public Comment Period, which prompted further review and revision of the directive. The revised directive substantially adopts twelve of the thirteen Oregon Innocence Project recommendations, addresses altering suspect photos, and brings the Bureau more in line with national best practices.

### Public Comments

The Bureau received few comments during both of the universal review and public comment periods for the directive. However, several of the comments received reflected concern regarding altering suspect photos for photo line-ups. In particular, some comments questioned the ethics of that practice and called for a complete prohibition on altering suspect photos for identification procedures.

The revised directive clarifies that altered photos may only be used to reduce suggestiveness in photo line-ups, and implements a procedure for when altering suspect photos is appropriate. Importantly, the revised directive requires an evidence-based reason to alter a suspect photo and directs members to use altered filler photos instead of altered suspect photos whenever practicable. The revised directive also implements documentation requirements and mandates supervisory approval for requesting alteration services through the Forensic Evidence Division. The Bureau is committed to ensuring that identification procedures are fair to the accused while deferring to the courts as the gatekeepers for what is admissible evidence.

### *Oregon Innocence Project Recommendations*

The Oregon Innocence Project (OIP) made thirteen recommendations regarding this policy. After reviewing their recommendations, the Bureau was able to substantially adopt twelve of the thirteen recommendations. The recommendations are discussed below.

- 1) *Law enforcement officers should conduct pre-identification interviews using evidence-based procedures followed by instructions.*

This recommendation is outside the scope of the current directive, which focuses on identification procedures rather than investigatory interviews. Additionally, implementing this recommendation requires significant time and expense for training and development. While the Bureau is unable to adopt this recommendation for the current review period, the Bureau will take this issue under advisement and consider the recommendation during future review periods.

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- 2) *Lineup and show-up procedures, including pre-identification interviews, should be video recorded.*

In the revised directive, the Bureau partially adopts this recommendation by requiring members to audio and/or video record all identification procedures when practicable. The United States Department of Justice considers audio and/or video recording photo identification procedures a best practice.<sup>1</sup> This adoption brings the Bureau closer in line with national best practices and preserves the identification process for review in court.

- 3) *Copies of lineups should be as close as possible to what was shown to the witness or victim.*

The revised directive requires case files to include color copies of forms, photos, and recordings that are used in identification procedures.

- 4) *Identification procedures should always be double-blinded or blinded.*

The revised directive adopts this recommendation fully.

- 5) *All law enforcement employees present during an identification procedure should be blind or blinded.*

The revised directive adopts this recommendation fully.

- 6) *There should be documented, evidence-based reason before including any person as a suspect in a lineup.*

The revised directive adopts this recommendation fully.

- 7) *There should be an evidence-based reason to alter a suspect photo in a lineup.*

The revised directive adopts this recommendation fully.

- 8) *Repeat identification procedures with the same suspect and same witness or victim should be avoided.*

The revised directive adopts this recommendation and requires supervisory approval for departing from the procedure.

- 9) *Identifying a suspect after an identification procedure to a witness or victim should be avoided.*

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<sup>1</sup> U.S. Department of Justice Memorandum for Heads of Department Law Enforcement Components All Department Prosecutors, 2017.

The revised directive adopts this recommendation, and only makes an exception when necessary for investigations or public safety.

*10) Variables that could impact the accuracy of an identification should be recorded in all procedures.*

The revised directive adopts this recommendation fully.

*11) Showups should be avoided. 12) If a showup must be conducted, there should be procedural safeguards. 13) The timeframe during which showups can be conducted should be specified.*

The revised directive encourages members to use a photo lineup when possible, restricts the use of show-ups when there is already probable cause to arrest a suspect, requires recording show-ups when practicable, indicates that show-ups should be conducted within one (1) hour of the crime, and implements several procedural safeguards for conducting show-ups.

#### The Bureau's Revised Policy

In summary, the revised Directive 0870.80, Eyewitness Identification, elevates the Bureau's practices to be among the best in the nation. The adherence to evidence-based practices, regulation of altered suspect photos, and adoption of OIP recommendations will ensure integrity of identifications, fairness to victims and the accused, and provide the best evidence available for criminal prosecutions.

The Bureau welcomes further feedback on this policy during its next review.

This directive goes into effect on March 6, 2021.

Published on February 4, 2021

## **0870.80, Eyewitness Identification**

### **Refer:**

- State v. Lawson, 352 Or. 724 (2012)
- DIR 0640.02, Photography and Digital Imaging
- DIR 0640.36, Communication with Hearing Impaired and Limited English Proficient Persons
- DIR 0660.10, Property and Evidence Procedures
- DIR 0900.00, General Reporting Guidelines
- Eyewitness Identification Form (Photo Lineup)
- Eyewitness Identification Form (Show-up)

### **Definitions:**

- **Blind Presentation:** The presenter conducting an identification procedure, and the witness participating in the identification procedure, both do not know the suspect's identity; also known as a double-blind presentation.
- **Blinded Presentation:** The presenter conducting an identification procedure knows the suspect's identity, but due to procedural safeguards, does not know which person the witness is viewing at any given time during the presentation.
- **Confidence Statement:** A statement in the witness's own words, taken immediately after the witness makes an identification, stating their level of confidence in the identification.
- **Eyewitness:** A person who observes a crime by seeing it first-hand.
- **Filler:** A live person, or photo of a person, included in an identification procedure, who is not considered a suspect.
- **Photo Lineup:** A presentation of photos of persons to a witness to identify or eliminate suspects.
- **Presenter:** The Bureau member conducting an identification procedure.
- **Sequential Presentation:** A presentation of photos in a photo lineup one at a time, where the presenter retrieves one photo before presenting another.
- **Show-up:** A presentation to a witness of a live person in the environment that is close in time and proximity to the incident under investigation.
- **Witness:** A person who observes a crime. For the purpose of this directive, "witness" includes eyewitnesses and victims who are eyewitnesses.

## **Policy:**

1. Scientists and researchers continue to study identification procedures 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 ensure the integrity of identifications and further criminal investigations.
2. The Portland Police Bureau strives to investigate criminal activity in a way that brings justice to victims and is fair to alleged perpetrators. This directive establishes the guidelines for members conducting photo lineup and show-up presentations with witnesses.

## **Procedure:**

1. Identification Procedures.
  - 1.1. Members shall read the instructions from the Eyewitness Identification form to witnesses, and use that form to document the witness's identification statements.
  - 1.2. Members shall audio and/or video record all identification procedures they conduct, when practicable. Members shall document any reason for not recording an identification procedure in a police report.
  - 1.3. The presenter shall preserve as evidence the Eyewitness Identification form, any photos or recordings shown to the witness as part of an identification procedure, and any recordings of the identification procedures, regardless of whether the witness made an identification. The case file shall include color copies of said evidence when applicable.
2. Photo Lineups.
  - 2.1. Blind and Blinded Presentations.
    - 2.1.1. Whenever possible, members shall use a blind sequential presentation for photo lineups.
    - 2.1.2. When a blind sequential presentation is not feasible, members shall use a blinded sequential presentation.
    - 2.1.3. During a blind sequential presentation, no one who is aware of the suspect's identity should be present during the presentation of the photo lineup.
  - 2.2. Developing a Photo Lineup.
    - 2.2.1. Members shall have evidence-based suspicion for including any person *as a suspect, not a filler*, in a photo lineup. Evidence-based suspicion requires articulable evidence supporting why a person is a suspect.
      - 2.2.1.1. Examples of evidence-based suspicion include, but are not limited to:
        - 2.2.1.1.1. A person's self-incriminating statements;
        - 2.2.1.1.2. A person fits the general description of the suspect, and there is physical evidence connecting the person to the crime scene.
        - 2.2.1.1.3. A person uniquely fits a specific description of the suspect, such as having a blue teardrop tattoo under their left eye.

- 2.2.1.2. Members shall document evidence-based suspicion for including a person as a suspect in a photo lineup in a police report.
  - 2.2.2. Members shall obtain a thorough suspect description from each witness before developing a photo lineup. Differing suspect descriptions among witnesses may require the presentation of different photo lineups to different witnesses.
  - 2.2.3. A photo lineup shall consist of no fewer than six (6) photos, including one (1) of the suspect.
  - 2.2.4. All photos shall be similarly sized and of similar-appearing individuals. None should be obviously different from the others.
  - 2.2.5. Filler photos should be reasonably similar in age, height, weight, and general appearance and be of the same sex and race, according to the witness's description of the suspect.
  - 2.2.6. When there is a limited or insufficient suspect description, or when the witness's description of the suspect differs significantly from the available photo(s) of the suspect, the filler photos should resemble the suspect photo, not the witness's description of the suspect.
  - 2.2.7. When conducting a single lineup for multiple witnesses, the presenter shall present the photos to each witness in a different sequence.
- 2.3. Altered Photos in a Photo Lineup.
- 2.3.1. Members may use altered suspect and/or filler photos when necessary to ensure that the suspect's photo is not suggestive or conspicuous among the photos in the presentation.
  - 2.3.2. Members shall have an evidence-based reason to alter a suspect photo.
  - 2.3.3. Members shall use altered filler photos in preference to altered suspect photos, whenever practicable.
  - 2.3.4. To use altered photos, members shall discuss and receive approval from their direct supervisor before requesting alteration services through the Forensic Evidence Division (FED). Members shall document any alterations to photos, the reason for the alterations, and the supervisory approval in an appropriate report.
  - 2.3.5. Any FED member who digitally alters a photo under this section shall document in an appropriate report the alterations made and the techniques and/or software used to make the alterations.

2.4. Presenting a Photo Lineup.

2.4.1. Instructions to Witnesses.

- 2.4.1.1. Before a presentation, the presenter shall read the witness instructions from the Eyewitness Identification form, ask the witness, “Do you understand these instructions?” and document the witness’s response.

2.4.2. Blind Presentation.

- 2.4.2.1. The presenter shall present the photos in a blind and sequential presentation. After presenting each photo, the presenter will ask, “Is this the person you saw during the event in question?” The presenter shall then document the witness’s response before presenting the next photo.

- 2.4.2.1.1. Presenters may replace the words “during the event in question” with the facts specific to the investigation, such as asking “Is this the person you saw assault the victim?”

- 2.4.2.2. If the witness makes an identification before viewing all of the photos, the presenter will remind the witness that they must show the witness all of the photos. The presenter shall continue the procedure, documenting the witness’s response to each photo.

- 2.4.2.3. If during the same presentation, the witness asks to see one or more photos again, the presenter may conduct the same presentation a second time. The presenter must present all of the photos, using the same method and order of presentation. If the witness gives a different answer as to a particular photo(s), the presenter shall ask them to explain the reason for the change.

2.4.3. Blinded Presentation.

- 2.4.3.1. When a blind presentation is not possible, members shall follow the steps outlined in Section 2.3.2., and must take additional precautions to prevent the presenter from discovering which photo is being shown to the witness as the presentation occurs.

- 2.4.3.1.1. For example, members may place the photos in identical folders, with the folders numbered inside, and then shuffle the folders. The presenter will then present the folders to the witness as outlined in Section 2.3.2.

- 2.4.3.1.2. The presenter should take a position so that they cannot see inside the folders as the witness views the folders.

- 2.4.3.1.3. Following a blinded presentation using this method, the presenter shall record the order of presentation, using the number inside the folder.

- 2.4.3.1.4. Presenters may use any equivalent method if they document the method.

2.5. Multiple Presentations of the Same Suspect to a Witness.

- 2.5.1. Members shall not conduct multiple identification procedures where the same witness views the same suspect, in any form, more than once, without first consulting a Detective Sergeant. If a Detective Sergeant authorizes a second identification procedure, the member shall document the Detective Sergeant’s approval in a police report.

2.5.2. These requirements do not apply when a witness asks to see a photo again during the same presentation.

## 2.6. Post-Presentation Interview and Documentation.

2.6.1. After presenting a photo lineup, the presenter shall avoid any words or actions that might identify the suspect or hinder the investigation. Presenters shall not tell the witness the suspect's identity or tell the witness whether the witness identified the suspect, unless disclosure is necessary for the investigation or public safety reasons. Presenters shall document the circumstances and reasons for disclosure in a police report.

2.6.2. The presenter shall ask the witness to describe, in their own words, their reason for making or not making a selection.

2.6.3. If the witness selects a photo, the presenter shall ask them to describe, in their own words, their confidence in their selection.

2.6.3.1. Presenters shall not encourage the witness to use a scale of 1-10 or a percentage to describe their confidence, but shall document the witness's own words on the Eyewitness Identification form.

2.6.3.2. Presenters should document any variables that could affect the identification's accuracy, such as the witness's stress, focus, or attention during the crime, or the witness's physical and mental conditions.

2.6.4. The presenter shall ask the witness to review the confidence statement on the Eyewitness Identification form, and the witness shall sign the form if the witness affirms the statement is accurate. The presenter shall document any refusal to sign the form in a police report.

## 3. Show-ups.

### 3.1. Show-up Use.

3.1.1. The Bureau encourages members to use a photo lineup whenever possible; however, the Bureau acknowledges that certain circumstances require the prompt presentation of a suspect to a witness.

3.1.2. Members may conduct a show-up when they detain a suspect within a reasonably contemporaneous time after the alleged crime and within close physical proximity to the location of the alleged crime. Show-ups should usually occur within one (1) hour of the crime.

3.1.3. Members shall not use show-ups when there is already probable cause to arrest the suspect.

### 3.2. Conducting Show-ups.

3.2.1. Members shall adhere to the following guidelines regarding show-ups:

3.2.1.1. Obtain a thorough description of the suspect from each witness before the show-up.

- 3.2.1.2. During the show-up presentation, all participating members shall avoid words or conduct suggesting that the individual presented is criminally liable.
- 3.2.1.3. Avoid conducting a show-up when the suspect is in a patrol car, handcuffed, or physically restrained by members unless safety concerns make this impractical.
- 3.2.1.4. Transport the witness to the location of the suspect whenever possible, rather than bringing the suspect to the witness.
- 3.2.1.5. Do not take a suspect to the witness's residence.
- 3.2.1.6. Do not conduct the show-up with more than one witness present at a time.
- 3.2.1.7. Separate witnesses before, during, and, to the extent reasonably possible, after the show-up to avoid communication between them. If witnesses cannot be separated afterward (e.g., they are family members, friends, or co-workers), then ask them to not discuss their identifications with each other.
- 3.2.1.8. If one witness identifies the suspect during the show-up, use a photo lineup for any remaining witnesses.
- 3.2.1.9. Read the instructions from the Eyewitness Identification form and document that the witness understands the instructions.
- 3.2.1.10. Document the witness's confidence statement on the Eyewitness Identification form.

### 3.3. Post-Show-up Interview and Documentation.

3.3.1. Members shall document in their report the justification for conducting a show-up.

3.3.2. Members shall document the following circumstances of the show-up:

- 3.3.2.1. The time the show-up takes place;
- 3.3.2.2. The lighting conditions;
- 3.3.2.3. The approximate physical distance between the witness and the suspect;
- 3.3.2.4. The instruction given before the show-up;
- 3.3.2.5. Any variables that could affect the identification's accuracy, such as the witness's stress, focus, or attention during the crime, or the witness's physical and mental conditions; and
- 3.3.2.6. Any conversations the witnesses may have had with each other before or during their identification.
- 3.3.2.7. Any deviation from the show-up guidelines listed under Section 3.2.1, and reason for that deviation.

3.3.3. Members shall document the suspect's appearance:

- 3.3.3.1. When feasible, members shall photograph the suspect, regardless of whether the witness made a positive identification.
  - 3.3.3.1.1. Photos should capture the clothing and accessories worn upon apprehension, and any physical characteristics relevant to the identification.
- 3.3.3.2. Consider seizing clothing and accessories relevant to the identification,

pursuant to an arrest warrant or as evidence of the crime, if applicable.

- 3.3.4. Members shall document the witness's response, including the following:
    - 3.3.4.1. All statements made by the witness during the show-up;
    - 3.3.4.2. Exactly what the witness said about the identification;
    - 3.3.4.3. The reason the witness did, or did not, identify the suspect; and
    - 3.3.4.4. The witness's confidence in their selection.
      - 3.3.4.4.1. Members shall not encourage the witness to use a scale of 1-10 or a percentage to describe their confidence, but shall document the witness's own words on the Eyewitness Identification form.
  - 3.3.5. After the show-up, members shall avoid any words or actions that might identify the suspect or hinder the investigation. Members shall not tell the witness the suspect's identity or tell the witness whether the witness identified the suspect, unless disclosure is necessary for the investigation or public safety reasons. Members shall document the circumstances and reasons for disclosure in a police report.
  - 3.3.6. Members shall ask the witness to review the confidence statement on the Eyewitness Identification form, and the witness shall sign the form if the witness affirms the statement is accurate. Members shall document any refusal to sign the form in a police report.
4. Interpreter Services Required.
    - 4.1. If a witness to a criminal offense has difficulty communicating (e.g., d/Deaf or hard of hearing, or 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.
    - 4.2. Before the interpreter discusses any matter with the witness, the investigating officer shall explain the procedure to the interpreter. Once the interpreter understands the procedure and explains it to the witness, the eyewitness identification may proceed.
5. Training.
    - 5.1. All sworn personnel shall receive training on this directive and the presentation of lineups and show-ups.

## **0870.80, Eyewitness Identification**

### **Refer:**

- State v. Lawson, 352 Or. 724 (2012)
- ~~Preliminary Checklist (Information to gather before any type of identification process)~~
- DIR 0640.02, Photography and Digital Imaging
- DIR 0640.36, Communication with Hearing Impaired and Limited English Proficient Persons
- DIR 0660.10, Property and Evidence Procedures
- DIR 0900.00, General Reporting Guidelines
- Eyewitness Identification Form (Photo Lineup)
- Eyewitness Identification Form (Show-Up)

### **Definitions:**

- Blind Presentation: The presenter ~~does~~conducting an identification procedure, and the witness participating in the identification procedure, both do not know ~~who the suspect is; this is~~the suspect's identity; also known as a double-blind presentation.
- Blinded Presentation: The ~~equivalent of a blind presentation; used when the presenter conducting an identification procedure~~ knows ~~who the suspect is. To be conducted so that the presenter~~ the suspect's identity, but due to procedural safeguards, does not know which ~~photograph is being presented to person~~ the witness. is viewing at any given time during the presentation.
- Confidence Statement: A ~~witness's statement about the pick the witness made and of his or her confidence in that pick;~~in the witness's own words, taken immediately after ~~a pick has been made. the witness makes an identification, stating their level of confidence in the identification.~~
- Eyewitness: A person who observes a crime by seeing it first-hand.
- Filler: A live person, or photo of a person, included in an identification procedure, who is not considered a suspect.
- Photo Lineup: A presentation of ~~photographs~~photos of persons to a witness to identify or eliminate suspects.
- Presenter: The Bureau member ~~presenting a lineup~~conducting an identification procedure.
- Sequential Presentation: A presentation of ~~photographs~~photos in a photo ~~line-up~~lineup one at a time, ~~retrieving where the presenter retrieves~~ one photo before presenting another.
- Show-up: A presentation to a witness of a live person in the ~~field~~environment that is close in time and proximity to the incident under investigation.

- ~~Simultaneous: A presentation at the same time of photographs in a photo line-up arrayed together, either manually constructed or computer generated.~~
- Witness: A person who observes a crime. For the purpose of this directive, "witness" includes eyewitnesses and victims who are eyewitnesses.

## **Policy:**

### ~~Science continues~~

1. Scientists and researchers continue to study identification processes/procedures to improve the accuracy of eyewitness identification evidence. The Portland Police Bureau strives to keep/recognizes the importance of keeping pace with new laws and scientific standards to implement identification techniques that ensure the integrity of identifications and further criminal investigations.

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

## **Procedure:**

### ~~1. Documentation:~~

#### ~~Instructions to witnesses~~

#### 1. Identification Procedures.

1.1. Members shall be read the instructions from the Eyewitness Identification form. This to witnesses, and use that form will also be used to document the witness' witness's identification statements.

1.2. In addition to documentation Members shall audio and/or video record all identification procedures they conduct, when practicable. Members shall document any reason for not recording an identification procedure in the incidenta police report(s) and on.

1.3. The presenter shall preserve as evidence the Eyewitness Identification forms, when it is reasonable, practical and consistent with the best interests form, any photos or recordings shown to the witness as part of the investigation, presenters should consider audio-recording the presentation. When a decision is made to record, an identification procedure, and any recordings of the identification procedures, regardless of whether the witness made an identification. The case file shall include color copies of said evidence when applicable.

#### 2. Photo must be informed Lineups.

##### 2.1. Blind and Blinded Presentations.

2.1.1. Whenever possible, members shall use a blind sequential presentation for photo lineups.

2.1.2. When a blind sequential presentation is not feasible, members shall use a blinded sequential presentation.

2.1.3. During a blind sequential presentation, no one who is aware of the recordation. If suspect's identity should be present during the witness does not agree to recordation, presentation of the presentation should not be

~~recorded~~photo lineup.

## ~~2.2. Lineups, forms, and recordings~~ Developing a Photo Lineup.

~~1.2. Members shall be treated as have evidence, with copies of the lineups, forms and based suspicion for including any recordings included in the case file, whether or person as a suspect, not the witnesses made identifications.~~

~~1.2.1.2.2.1. If a filler, in a photo lineup is developed electronically, the lineup shall be printed for documentation.~~ Evidence-based suspicion requires articulable evidence supporting why a person is a suspect.

~~2.2.1.1. See also Post-Presentation Interview and Documentation (Section 2.4).~~ Examples of evidence-based suspicion include, but are not limited to:

~~2.2.1.1.1. A person's self-incriminating statements;~~

~~2.2.1.1.2. A person fits the general description of the suspect, and there is physical evidence connecting the person to the crime scene.~~

~~2.2.1.1.3. A person uniquely fits a specific description of the suspect, such as having a blue teardrop tattoo under their left eye.~~

~~2.2.1.2. Members shall document evidence-based suspicion for including a person as a suspect in a photo lineup in a police report.~~

~~1.3.1.1. Members shall~~

## ~~2. Photo Lineup:~~

### ~~2.1. About Photo Lineup:~~

~~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, the reason(s) for using that method should be documented.~~

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

~~2.2.1.2.2.2. Members should obtain a thorough suspect description from each witness before developing a photo lineup. (Note that differing Differing suspect descriptions among the witnesses may require the presentation of different photo lineups to different witnesses.) See Preliminary Checklist "information to gather before any identification process."~~

~~2.2.3. A photo lineup shall consist of no fewer than six (6) photographsphotos, including one (1) of the suspect.~~

~~2.2.2.2.2.4. All photos shouldshall be similarly sized and should be of similar-appearing individuals. None should be obviously different from the others.~~

~~2.2.2.1. Filler photographs (not of a suspect) should generally match, to the extent~~

~~reasonably possible, the particular witness' description of the suspect. Because filler photographs and 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.~~

2.2.5. Filler photos should be reasonably similar in age, height, weight, and general appearance and be of the same sex and race, according to the witness's description of the suspect.

~~2.2.3.~~2.2.6. When there is a limited or insufficient suspect description, or when the ~~witness'~~witness's description of the suspect differs significantly from the available ~~photograph~~photo(s) of the suspect, the filler ~~photographs~~photos should resemble the suspect ~~photograph~~photo, not the witness's description. ~~of the suspect.~~

~~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.~~2.2.7. When conducting a single lineup for multiple witnesses, the ~~photographs~~ presenter shall present the photos to each witness in a different sequence. ~~Another alternative is a random or shuffled presentation for each witness. When a random or shuffled presentation is used, the order of presentation should be recorded afterwards.~~

### 2.3. Presentation of Altered Photos in a Photo Lineup:

2.3.1. Members may use altered suspect and/or filler photos when necessary to ensure that the suspect's photo is not suggestive or conspicuous among the photos in the presentation.

2.3.2. Members shall have an evidence-based reason to alter a suspect photo.

2.3.3. Members shall use altered filler photos in preference to altered suspect photos, whenever practicable.

2.3.4. To use altered photos, members shall discuss and receive approval from their direct supervisor before requesting alteration services through the Forensic Evidence Division (FED). Members shall document any alterations to photos, the reason for the alterations, and the supervisory approval in an appropriate report.

2.3.5. Any FED member who digitally alters a photo under this section shall document in an appropriate report the alterations made and the techniques and/or software used to make the alterations.

2.3.2.4. Presenting a Photo Lineup.

2.3.1.2.4.1. Instructions to Witnesses:

2.3.1.1.2.4.1.1. ~~Prior to~~Before a presentation, the presenter shall read the witness instructions from the Eyewitness Identification form, ~~ensuring and documenting that~~ask the witness ~~understands the~~, “Do you understand these instructions?” and document the witness’s response.

2.3.2.2.4.2. Blind Presentation:

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

2.4.2.1. The presenter shall present the photos ~~to the witness sequentially, with one photo replacing another so that no two are presented at the same time in a blind and sequential presentation.~~ After ~~presenting~~ each photo ~~is presented~~, the presenter will ask, “Is this the person you saw?” during the event in question?” The presenter shall then document the witness’s response before presenting the next photo and the answer.

2.4.2.1.1. Presenters may replace the words “during the event in question” with the facts specific to the investigation, such as asking “Is this the person you saw assault the victim?”

2.3.2.2.2.4.2.2. If the witness makes an identification before viewing all of the photos, the presenter will be documented. ~~remind the witness that they must show the witness all of the photos. The presenter shall continue the procedure, documenting the witness’s response to each photo.~~

2.3.2.3. The presenter shall present each photo to the witness, even if the witness identifies a photo as the suspect.

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

2.3.3.2.4.3. Blinded Presentation:

2.3.3.1. See also ~~When a blind presentation is not possible, members shall follow the steps for presenting photos under “Blind Presentation,” above. These steps should be followed as modified below.~~

2.3.3.2.2.4.3.1. If the presenter knows who the suspect is, an extra measure of care should be taken ~~outlined in Section 2.3.2., and must take additional precautions~~ to prevent the presenter from ~~knowing~~discovering which photo is being shown to the witness as the ~~process~~presentation occurs.

2.4.3.1.1. ~~One option is for~~For example, members may place 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, and then shuffle the folders. The presenter will then present the folders to the witness as outlined in Section 2.3.2.~~

~~2.4.3.1.2. The presenter should take a position so that only the witness can they cannot see inside the photo; the presenter is thus “folders as the witness views the folders.~~

~~2.3.3.2.1.2.4.3.1.3. Following a blinded” to the process and it cannot, therefore, be suggestive presentation using this method, the presenter shall record the order of presentation, using the number inside the folder.~~

~~2.3.3.2.1.1. ——— 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.~~

~~2.3.3.2.1.2. ——— 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.~~

~~2.3.3.2.1.3. ——— When a blinded presentation is used, the order of presentation shall be recorded afterward, using the number on the card or folder. If an alternative presentation method is used, then the order must also be recorded.~~

~~2.3.3.2.1.4. ——— 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.~~

~~2.4.3.1.4. Presenters may use any equivalent method if they document the method.~~

## 2.5. Multiple Presentations of the Same Suspect to a Witness.

2.5.1. Members shall not conduct multiple identification procedures where the same witness views the same suspect, in any form, more than once, without first consulting a Detective Sergeant. If a Detective Sergeant authorizes a second identification procedure, the member shall document the Detective Sergeant’s approval in a police report.

2.5.2. These requirements do not apply when a witness asks to see a photo again during the same presentation.

## 2.4.2.6. Post-Presentation Interview and Documentation:

2.4.1.2.6.1. After ~~the presentation of~~presenting a photo lineup, the presenter shall

avoid any words or actions that might identify the suspect or hinder ~~further~~the investigation. ~~The investigator~~Presenters shall not tell the witness ~~who~~ the suspect is ~~the suspect's identity~~ or ~~tell the witness~~ whether the witness ~~has picked the person whom the investigator believes committed the crime.~~ There will be situations, however, when it is appropriate and identified the suspect, unless disclosure is necessary within the investigation to identify the suspect to the witness to further for the investigation or ~~address public safety needs.~~ If so, then the situation and reasons must be clearly documented.—. Presenters shall document the circumstances and reasons for disclosure in a police report.

2.6.2. The presenter shall ask the witness to describe, in their own words, their reason for making or not making a selection.

2.6.3. If the witness ~~pick~~selects a photo, the presenter shall ask ~~the witness to describe why the photo was selected.~~ The presenter shall obtain a description of reasons for the witness' selection in the witness' own words. While it is acceptable ~~for them to describe, in their own words, their confidence in their selection.~~

2.6.3.1. Presenters shall not encourage the witness to use a scale (e.g. "90% sure," or "six out of ten"), it is best to avoid scales. The witness' responses of 1-10 or a percentage to questions about their reasons for their selection and their confidence, which is commonly referred to together as a "describe their confidence statement," but shall be documented document the witness's own words on the Eyewitness Identification form (attached) and in the investigator's report. To do this, it is important to ask the witness the questions regarding the "suspect description," "context," and "witness factors" found at the end of this document, or their equivalent, and to

2.4.1.1.2.6.3.2. Presenters should document the answers. Leading questions are to be avoided. any variables that could affect the identification's accuracy, such as the witness's stress, focus, or attention during the crime, or the witness's physical and mental conditions.

2.4.2.2.6.4. The presenter shall ask the witness to ~~affirm~~review the confidence statement on the Eyewitness Identification form ~~by reviewing the statement summary and, if accurate, sign the form,~~ and the witness shall sign the form if the witness affirms the statement is accurate. The presenter shall document any refusal to sign the form in a police report.

### ~~3. Show-Ups:~~

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

~~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, but it must be articulated in detail as to why a photo lineup could not be used instead. In all circumstances variables that could impact identification accuracy should be documented, which generally include, but are not~~

limited to: stress, weapon focus, violence, exposure time, 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 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.~~

### 3. Show-ups.

#### 3.1. Show-up Use.

3.1.1. The Bureau encourages members to use a photo lineup whenever possible; however, the Bureau acknowledges that certain circumstances require the prompt presentation of a suspect to a witness.

3.1.2. Members may conduct a show-up when they detain a suspect within a reasonably contemporaneous time after the alleged crime and within close physical proximity to the location of the alleged crime. Show-ups should usually occur within one (1) hour of the crime.

3.1.3. Members shall not use show-ups when there is already probable cause to arrest the suspect.

#### 3.2. Conducting Show-Ups: ups.

3.2.1. Members shall adhere to the following guidelines regarding show-ups:

3.2.1.1. Obtain a thorough description of the suspect from each witness before the show-up. ~~See Preliminary Checklist "information to gather before any identification process."~~

Ensure that, while making

3.2.1.2. During the show-up presentation, all participating ~~officers~~members shall avoid words or conduct suggesting that the individual presented is criminally liable.

3.2.1.3. ~~To the extent reasonably possible, avoid tarnishing~~Avoid conducting a show-up when the suspect ~~by, for example, presenting a suspect in handcuffs or in the back seat of a police patrol car-, handcuffed, or physically restrained by members unless safety concerns make this impractical.~~

3.2.1.4. Transport the witness to the ~~suspect's~~ location, ~~not of the suspect whenever possible, rather than bringing~~ the suspect to the witness.

3.2.1.5. Do not take a suspect to the witness's residence.

3.2.1.6. Do not conduct the show-up with more than one witness present at a time.

~~3.2.1.5-3.2.1.7.~~ Separate witnesses before, during, and, to the extent reasonably possible, after the show-up to avoid communication between them. If

witnesses cannot be separated afterward (e.g., they are family members, friends, or co-workers), then ask ~~the witnesses~~ them to not ~~to~~ discuss their identifications with each other.

3.2.1.8. If one witness identifies the suspect during the show-up, use a photo lineup for any remaining witnesses.

3.2.1.6.3.2.1.9. Read the instructions from the Eyewitness Identification form, ensuring and documenting document that the witness understands the instructions.

3.2.1.7.3.2.1.10. Document the witness's confidence statement on the Eyewitness Identification form.

## Document the

### 3.3. Post-Show-up Interview and Documentation.

3.3.1. Members shall document in their report the justification for conducting a show-up.

3.2.2.3.3.2. Members shall document the following circumstances of the show-up:

3.2.2.1.3.3.2.1. The time of the show-up takes place;

3.3.2.2. The admonishment lighting conditions;

3.3.2.3. The approximate physical distance between the witness and the suspect;

3.2.2.2.3.3.2.4. The instruction given before the show-up;

3.3.2.5. Any variables that could affect the identification's accuracy, such as the witness's stress, focus, or attention during the crime, or the witness's physical and mental conditions; and

3.3.2.6. Any conversations the witnesses may have had with each other before or during their identification.

3.3.2.7. Any deviation from the show-up guidelines listed under Section 3.2.1, and reason for that deviation.

3.3.3. Members shall document the suspect's appearance:

3.3.3.1. When feasible, members shall photograph the suspect, regardless of whether the witness made a positive identification.

3.3.3.1.1. Photos should capture the clothing and accessories worn upon apprehension, and any physical characteristics relevant to the identification.

3.3.3.2. Consider seizing clothing and accessories relevant to the identification, pursuant to an arrest warrant or as evidence of the crime, if applicable.

3.3.4. Members shall document the witness's response, including the following:

3.2.2.3.3.3.4.1. All statements made by the witness during the show-up;

3.2.2.4.3.3.4.2. Exactly what the witness said about the identification;

3.2.2.5. Document what reminded the witness of the suspect; (e.g. the reasons the witness made the identification).

3.3.4.3. It is best The reason the witness did, or did not, identify the suspect; and

3.3.4.4. The witness's confidence in their selection.

3.2.2.5.1.3.3.4.4.1. Members shall not encourage the witness to use a scale of 1-10 or a percentage to describe level of certainty, unless the witness

~~must do so; give reasons instead.~~ their confidence, but shall document the witness's own words on the Eyewitness Identification form.

~~3.2.2.6.— Document any conversations witnesses may have had with each other before or during their identification.~~

~~Document the lighting at~~

~~3.2.2.7.— After the show-up.~~

~~3.2.2.8.— Note up, members shall avoid any words or actions that might identify the suspect or hinder the distance between investigation. Members shall not tell the witness and the suspect at suspect's identity or tell the show-up.~~

~~3.2.3.— If a witness identifies the suspect, photograph the clothing and identifying features:~~

~~3.2.3.1.— Photograph the suspect in the clothing worn upon apprehension including coat, backpack, hat and shoes.~~

~~3.2.3.2.— If the witness includes these characteristics in the identification, also photo the teeth, hands (including jewelry), birthmarks, scars, tattoos and piercings.~~

~~3.2.4.— Seize the clothing, shoes, hat, jewelry, etc. if it was involved in the identification.~~

~~3.2.4.1.— Seize all such clothing incident to arrest or pursuant to a search warrant as evidence of the crime (defendant's identity) as directed by your local prosecuting authority.~~

~~3.2.4.2.— Clothing and other apparel may be useful in identifying a suspect.~~

~~3.2.5.3.3.5.— Do not confirm for the witness that whether the witness identified a person whom the investigator believes committed the crime in question, unless there is a significant reason for doing this, which must be documented the suspect, unless disclosure is necessary for the investigation or public safety reasons. Members shall document the circumstances and reasons for disclosure in a police report.~~

~~If~~

~~3.2.6.— Members shall ask the witness to review the confidence statement on the Eyewitness Identification form, and the witness shall sign the form if the witness identifies the suspect, but does not sign affirms the statement is accurate. Members shall document any required forms, note the refusal to sign the form in an appropriate a police report.~~

~~3.2.7.3.3.6.— If the witness does not identify the suspect, the circumstances and responses shall also be documented on the Eyewitness Identification form and in the report including:~~

~~3.2.7.1.— Exactly what the witness said about the identification.~~

~~3.2.7.2.— Ask the witness how the person differed from the suspect and document the answer.~~

~~3.2.7.3.— Photograph the individual to document his or her appearance.~~

~~4.— Witness with Limited or No English Proficiency:~~

#### 4. Interpreter Services Required.

4.1. If a witness to a criminal offense has difficulty communicating (e.g. ~~deaf,~~ d/Deaf or hard of hearing, or 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~~discusses any matter with the witness, the investigating officer shall explain the ~~process that will be used~~procedure to the interpreter. Once ~~it is clear that the interpreter can communicate effectively with the witness, and that~~ the interpreter understands the ~~process~~procedure and ~~can explain~~explains it to the 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.~~

~~6.5. Training:-.~~

~~6.1.5.1. All sworn personnel shall receive training on this ~~Directive~~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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Page 1

**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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#1

**COMPLETE**

**Collector:** Web Link 1 (Web Link)  
**Started:** Monday, February 17, 2020 5:51:23 AM  
**Last Modified:** Monday, February 17, 2020 5:56:04 AM  
**Time Spent:** 00:04:40

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Page 1

**Q1** Please provide feedback for this directive

Consider giving direction as to the disposition of the signed admonishment form after it is completed (ie: make a copy and submit as an orphan document to records and place original into property as evidence)

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**Q2** Contact Information (optional)

Name **Robert Searle**  
Email Address  
Phone Number

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#2

COMPLETE

**Collector:** Web Link 1 (Web Link)  
**Started:** Thursday, March 05, 2020 5:56:29 PM  
**Last Modified:** Thursday, March 05, 2020 5:57:15 PM  
**Time Spent:** 00:00:45

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Page 1

## Directive 870.80 Feedback

### Q1 Please provide feedback for this directive

#### COMMENTS ON SERT AND EYEWITNESS IDENTIFICATION DIRECTIVES, MARCH 2020

To Chief Resch, Capt. Parman, Lieutenant Morgan, PPB Policy Analysts, Compliance Officer/Community Liaison Team, Community Oversight Advisory Board staff, US Dept. of Justice, Citizen Review Committee and the Portland Police Bureau:

Below are Portland Copwatch's comments on the Special Emergency Reaction Team/SERT (720.00) and Eyewitness Identification (870.80) Directives posted for review in February/March at (<http://www.portlandoregon.gov/police/59757>).

Our comments below are following up the comments we made in April 2016/December 2019 and November 2019 on these policies, respectively. Though we have said it repeatedly, we still ask that the Bureau extend the public comment period to 45 days to make it easier for the general public as well as advisory groups like the Portland Committee on Community Engaged Policing, Citizen Review Committee, and Training Advisory Council (which only meet once every month or every two months) to weigh in.

Unless otherwise noted, sections referenced below are in the "Procedure" part of the Directive. We also have repeatedly suggested assigning each large area of the Directive a number or letter (i.e., A=Definitions, B=Policy, C=Procedures) and numbering the Definitions for quick reference.

#### DIRECTIVE 870.80 EYEWITNESS IDENTIFICATION (November 2019)

There are times when Portland Copwatch has to wonder whether the Bureau is deliberately changing these Directives in direct opposition to our comments. Our recommendation in November around the Eyewitness Identification Directive was to prohibit photoshopping (or other manual or digital manipulation) to remove or add identifying characteristics including but not limited to tattoos. We referenced the case covered in the Oregonian in August 2019 where someone's tattoos were removed from photos before being used in a "lineup." The Forensics Division's excuse for manipulating the photo was that there was no policy against doing so.

The Bureau's proposed edited policy does address the question of using Photoshop to manipulate images being shown to people to identify suspects. However, rather than ban the practice, it outlines reasons officers are allowed to do so, as long as they say how and why they changed the images (Policy 1, Procedure 2.2.4).

There are a lot of other changes in the policy, which in its redline form is eight pages long, but PCW is primarily concerned about the ethics and legality of manipulating suspect photographs for purposes of identification.

#### CONCLUSION

As in the past, PCW is thankful for the ability to comment on Directives but would still like to see other changes to the process. Improvements should include some kind of public discussion around important policies, extended timelines for commenting and more clarity in formatting. The two Directives under review this cycle are both in the "Second Universal Review" of 30 days and were released with public comments attached, showing that PCW was only one of four entities reviewing 720.00 and one of two reviewing 870.80. Simply posting items to the website is not the same as engaging the community to ask for feedback. With issues such as identifying suspects, the PPB should actively seek input from entities such as the ACLU, public defenders and legal aid groups, for example.

Thank you

--dan handelman and other members of  
--Portland Copwatch

**Q2 Contact Information (optional)**

Name

**Portland Copwatch**

Email Address

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