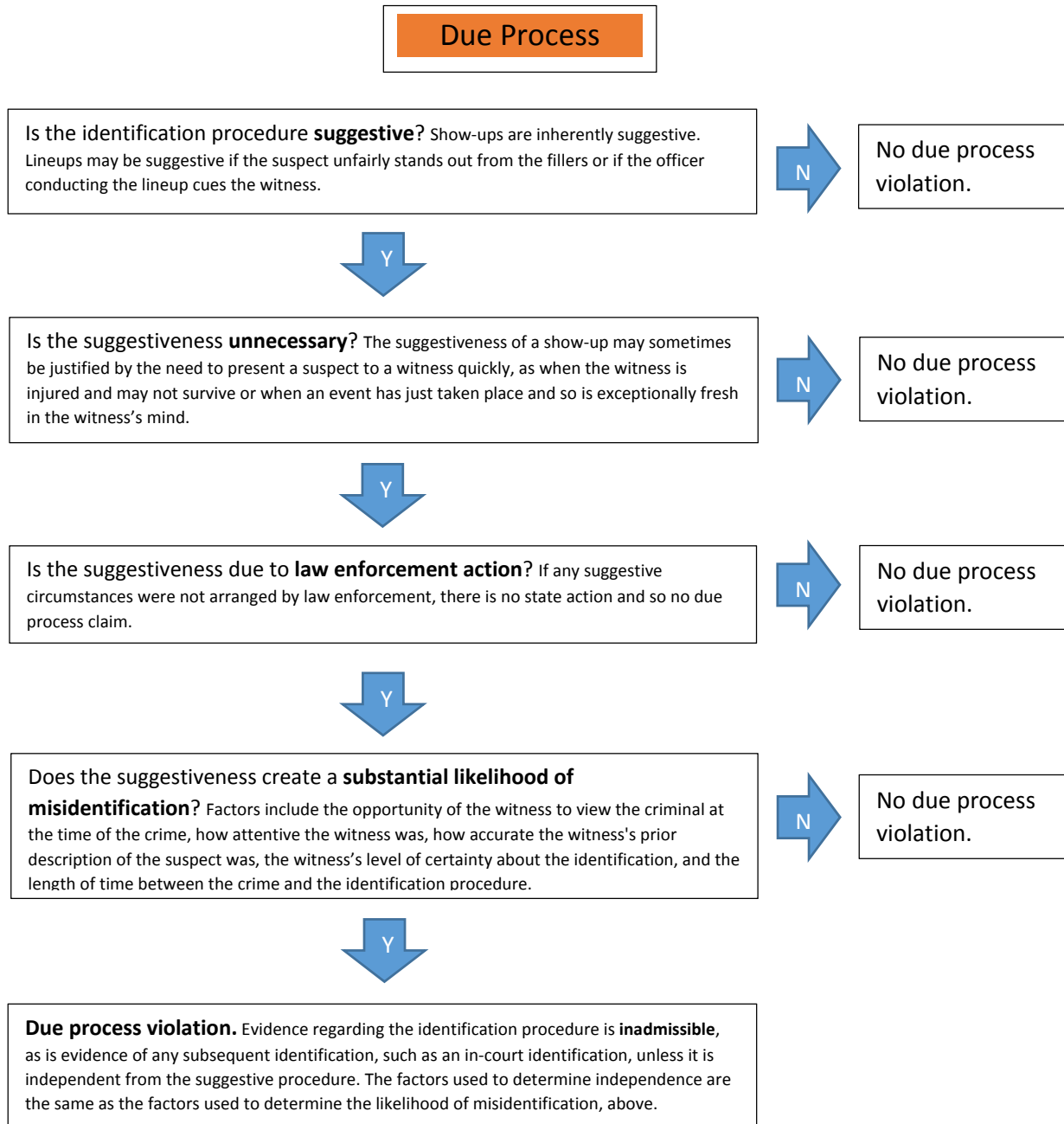


Eyewitness Identification Flow Charts



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Arrest, Search, and Investigation for Superior Court Judges
November 2015



Eyewitness ID Reform Act

Was the procedure conducted by a **North Carolina law enforcement officer**? The statute applies only to "State, county, and . . . local" officers.



No EIRA violation



Was the procedure a **type covered by the EIRA**? It applies to lineups and show-ups. A lineup is when an "array of photographs" or a "group of people" is displayed a witness for purposes of identification. A show-up is when "an eyewitness is presented with a single live suspect" for purposes of identification.



No EIRA violation

Lineup

Show-up

Was the procedure conducted by an **"independent administrator"** or using an **"alternative method"**? This requirement is designed to prevent intentional or unconscious "cuing" of the witness. An independent administrator is an officer not involved in the investigation and who does not know who the suspect is. Alternative methods include the shuffled folder method.



Do **circumstances permit** use of a showup? The statute is confusingly drafted but generally they are allowed only when "circumstances . . . require the immediate display of a suspect to an eyewitness."



Was the showup **live or photographic**? Only live show-ups are permitted.



Was the procedure conducted in accordance with all the **other statutory requirements**? These address matters such as the composition of the lineup, instructions to the witness, and the recording of information about the lineup.



No EIRA violation.



Was the showup conducted according to the **policy** developed by the **Criminal Justice Standards Commission**? When complete, the policy shall address instructions for witnesses and the taking of confidence statements by witnesses, among other matters.



No EIRA violation.



EIRA violation. The statute provides for multiple possible remedies, including suppression, the introduction of evidence about the violation, and instructions to the jury.

Right to Counsel

Has the right to counsel **attached**? It attaches upon a defendant's initial appearance before a magistrate or indictment, whichever comes first. Most show-ups precede this point, so right to counsel issues rarely arise regarding show-ups.

N

No Sixth Amendment violation

Y

Is the identification procedure being conducted in connection with **the offense** for which the right to counsel has attached? The Sixth Amendment right is offense-specific, so a defendant who has had an initial appearance for one offense does not have a right to counsel at a lineup conducted in connection with an unrelated crime.

N

No Sixth Amendment violation

Y

Is the identification procedure **live or photographic**? The right to counsel applies only to live identification procedures. Few law enforcement agencies now conduct live lineups on a regular basis.

Photo

No Sixth Amendment violation

Live

Did the defendant **waive** his or her right to counsel? The State has the burden of showing, by clear and convincing evidence, that the defendant knowingly and voluntarily waived his or her right to counsel.

Y

No Sixth Amendment violation

N

Was counsel **present**?

Y

No Sixth Amendment violation

N

Sixth Amendment violation. All evidence about the identification proceeding must be **suppressed**. So must all evidence of subsequent identification proceedings, such as in-court identifications, unless the State can show by clear and convincing evidence that the subsequent identification was independent of the unconstitutional identification procedure. Relevant factors include the opportunity of the witness to view the criminal at the time of the crime, how attentive the witness was, how accurate the witness's prior description of the suspect was, the witness's level of certainty about the identification, and the length of time between the crime and the identification procedure