



California State University, Los Angeles
Department of Public Safety

NUMBER: IV- 44 APPROVED: _____
Larry Bohannon, Chief of Police

EFFECTIVE: August 13, 2020

SUPERSEDES: N/A Reviewed/Revised: _____
August 13, 2020

SUBJECT: **Eyewitness Identification**

I. PURPOSE:

The purpose of this directive is to establish guidelines to be used when members of this police department employ eyewitness identification techniques (Penal Code § 859.7).

II. POLICY:

It is the policy of this Department to conduct photographic, physical, and “show-up” type line-ups in a manner that reduces the risk of wrongful conviction and aids in the detection and apprehension of offenders. Officers will adhere to the established procedures in order to maximize the reliability of witness identifications, minimize unjust accusations of innocent persons, and to establish evidence that is reliable and conforms to established legal procedure.

As part of this policy, physical lineups are conducted by the Los Angeles County Sheriff's Department at the Los Angeles County Men's Central Jail by court order, and are only conducted if adverse judicial proceedings have been initiated.

III. DEFINITIONS:

- A. Eyewitness Identification Process: Any field, identification, live lineup or photographic identification.
- B. Photographic Lineup: An identification procedure, in which an array of photographs, including a photograph of the suspect of an offense and additional photographs or fillers of other persons not suspected of the offense, is displayed to an eyewitness in hard copy form for the purpose of determining whether the eyewitness identifies the suspect as the perpetrator.
- C. Simultaneous Lineup: The simultaneous photo lineup consists of showing a group of similar photos to a witness all at the same time.
- D. Sequential Lineup: The sequential photo lineup consists of showing similar photographs one at a time.
- E. Filler: Either a person or a photograph of a person who is not suspected of an offense and is included in an identification procedure.
- F. Show-up: An identification procedure in which an eyewitness is presented with a single suspect within a short time following the commission of a crime for the purpose of determining whether the eyewitness identifies this individual as the perpetrator.

- F. Facial Composite: A non-photographic pictorial representation such as a free hand sketch, Identi-Kit, or other computer-program generated image.
- G. Physical Lineup: A physical lineup is placing a suspect among people non-suspected of committing the crime (fillers) and asking the eyewitness if he/she can identify the perpetrator.
- H. Field Identification: A live presentation of a single individual to a witness following the commission of a criminal offense for the purpose of identifying or eliminating the person as a suspect.

IV. PROCEDURE

A. Eyewitness Identification Process and Form

1. The Investigations Division supervisor shall be responsible for the development and maintenance of an eyewitness identification process for use by members when they are conducting eyewitness identifications.
2. The process should include appropriate forms or reports that provide (Penal Code § 859.7):
 - a. The date, time and location of the eyewitness identification procedure.
 - b. The name and identifying information of the witness.
 - c. The name of the person administering the identification procedure.
 - d. If applicable, the names of all of the individuals present during the identification procedure.
 - e. An instruction to the witness that it is as important to exclude innocent persons as it is to identify a perpetrator.
 - f. An instruction to the witness that the perpetrator may or may not be among those presented and that the witness is not obligated to make an identification.
 - g. If the identification process is a photographic or live lineup, an instruction to the witness that the perpetrator may not appear exactly as he/she did on the date of the incident.
 - h. An instruction to the witness that the investigation will continue regardless of whether an identification is made by the witness.
 - i. A signature line where the witness acknowledges that he/she understands the identification procedures and instructions.
 - j. A statement from the witness in the witness's own words describing how confident he/ she is of the identification or non-identification. This statement should be taken at the time of the identification procedure.
 - k. Any other direction to meet the requirements of Penal Code § 859.7, including direction regarding blind or blinded administrations and filler selection.
3. The process and related forms should be reviewed at least annually and modified when necessary.

B. Eyewitness Identification

1. Members are cautioned not to, in any way, influence a witness as to whether any subject or photo presented in a lineup is in any way connected to the case.
2. Members should avoid mentioning that:

- a. The individual was apprehended near the crime scene.
 - b. The evidence points to the individual as the suspect.
 - c. Other witnesses have identified or failed to identify the individual as the suspect.
3. In order to avoid undue influence, witnesses should view suspects or a lineup individually and outside the presence of other witnesses. Witnesses should be instructed to avoid discussing details of the incident or of the identification process with other witnesses.
 4. Whenever feasible, the eyewitness identification procedure should be audio and video recorded and the recording should be retained according to current evidence procedures (Penal Code § 859.7).

C. Documentation

1. A thorough description of the eyewitness process and the result of any eyewitness identification should be documented in the case report.
2. If a photographic lineup is utilized, a copy of the photographic lineup presented to the witness should be included in the case report.
3. In addition, the order in which the photographs were presented to the witness should be documented in the case report.
4. If a presentation of a lineup is not conducted using blind administration, the handling member shall document the reason (Penal Code § 859.7).

D. Field Identification Considerations

1. Field identifications, also known as field elimination show-ups or one-on-one identifications, may be helpful in certain cases, where exigent circumstances make it impracticable to conduct a photo or live lineup identifications. A field elimination show-up or one-on-one identification should not be used when independent probable cause exists to arrest a suspect. In such cases a live or photo lineup is the preferred course of action if eyewitness identification is contemplated.
2. When initiating a field identification, the member should observe the following guidelines:
 - a. Obtain a complete description of the suspect from the witness.
 - b. Assess whether a witness should be included in a field identification process by considering:
 1. The length of time the witness observed the suspect.
 2. The distance between the witness and the suspect.
 3. Whether the witness could view the suspect's face.
 4. The quality of the lighting when the suspect was observed by the witness.
 5. Whether there were distracting noises or activity during the observation.

6. Any other circumstances affecting the witness's opportunity to observe the suspect.
 7. The length of time that has elapsed since the witness observed the suspect.
- c. If safe and practicable, the person who is the subject of the show-up should not be handcuffed or in a patrol vehicle.
 - d. When feasible, members should bring the witness to the location of the subject of the show-up, rather than bring the subject of the show-up to the witness.
 - e. The person who is the subject of the show-up should not be shown to the same witness more than once.
 - f. In cases involving multiple suspects, witnesses should only be permitted to view the subjects of the show-up one at a time.
 - g. The person who is the subject of the show-up should not be required to put on clothing worn by the suspect, to speak words uttered by the suspect or to perform other actions mimicking those of the suspect.
 - h. If a witness positively identifies a subject of the show-up as the suspect, members should not conduct any further field identifications with other witnesses for that suspect. In such instances members should document the contact information for any additional witnesses for follow up, if necessary.

B. Photographic Lineup Considerations

1. When practicable, the member presenting the lineup should not be involved in the investigation of the case or know the identity of the suspect. In no case should the member presenting a lineup to a witness know which photograph or person in the lineup is being viewed by the witness (Penal Code § 859.7). Techniques to achieve this include randomly numbering photographs, shuffling folders, or using a computer program to order the persons in the lineup.
2. Individuals in the lineup should reasonably match the description of the perpetrator provided by the witness and should bear similar characteristics to avoid causing any person to unreasonably stand out. In cases involving multiple suspects, a separate lineup should be conducted for each suspect. The suspects should be placed in a different order within each lineup (Penal Code § 859.7).
3. The member presenting the lineup should do so sequentially (i.e., show the witness one person at a time) and not simultaneously. The witness should view all persons in the lineup.
4. A live lineup should only be used before criminal proceedings have been initiated against the suspect. If there is any question as to whether any criminal proceedings have begun, the investigating member should contact the appropriate prosecuting attorney before proceeding.

C. Other Safeguards

1. Witnesses should be asked for suspect descriptions as close in time to the incident as possible and before conducting an eyewitness identification.

2. No information concerning a suspect should be given prior to obtaining a statement from the witness describing how certain he/she is of the identification or non-identification.
3. Members should not say anything to a witness that that may validate or invalidate an eyewitness' identification.
4. In photographic lineups, writings or information concerning any previous arrest of a suspect shall not be visible to the witness (Penal Code § 859.7).

D. Interpretive Services

1. Members should make a reasonable effort to arrange for an interpreter before proceeding with eyewitness identification if communication with a witness is impeded due to language or hearing barriers.
2. Before the interpreter is permitted to discuss any matter with the witness, the investigating member should explain the identification process to the interpreter. Once it is determined that the interpreter comprehends the process and can explain it to the witness, the eyewitness identification may proceed as provided for within this policy.

E. Video and/or Audio Recording and Documentation

1. Officers shall video and/or audio record any witness identification procedure from start to finish. Video and audio recordings may be downloaded onto a media storage device based on the size of the video file, and the media used for the original recording.
2. The handling member shall document the reason that a video recording or any other recording of an identification was not obtained (Penal Code § 859.7)
3. Refer to DO IV-36 for guidelines and procedures regarding the use of personal digital recorders.

F. Facial and Composite and Sketches

1. When there is no suspect, and the use of a photo lineup has been or is likely to be unsuccessful, a non-photographic pictorial representation such as a free hand sketch, Identi-kit composite, or other computer-program generated composite image may be used.
2. Care must be taken not to unintentionally influence the description provided by a witness while developing such a composite image or sketch, and only those officers trained in the use of such techniques shall use them.

V. Appendices:

A. Photo Identification Report & Admonition Form

Appendix A



California State University, Los Angeles
Department of Public Safety

Eyewitness Identification

Case Number: _____ Law

Enforcement Official Name: _____

Date and Time of Presentation: _____

Witness Name: _____

Attorney Name & P-Number, if present: _____

Instructions (read by law enforcement official to witness)

In a moment I'm going to show you some photographs. A photograph of the person who is involved in the crime may or may not be among them. You will be shown all of the photographs and you may take your time looking at them.

If you see the person who committed the crime or was present at the scene of the crime, pick that photograph. If not, don't pick any photograph.

If you pick a photograph, I'm going to ask you to explain why you picked that photograph and to describe how confident you are in your selection.

Do you understand these instructions?

Witness Statement (written by law enforcement official)

Witness picked photograph number:

I, _____ affirm that I read or was read the instructions above, I understood the instructions, and the statement written by the law enforcement official accurately reflects what I said.

Finally, I understand that I should not talk to other people about the photos or tell them which photo I picked, if any.

Signature of Witness _____

(Commentary for Writers: Depending on context, questions may need to be altered to cover the circumstances.)