



**OFFICE OF THE DIRECTOR OF POLICE
THE UNIVERSITY OF TEXAS SYSTEM
POLICY AND PROCEDURE MANUAL**



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Eyewitness Identification			732
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TPCA: CALEA:42.2.9, 42.2.10 IACLEA: 13.2.4 Bill Blackwood Law Enforcement Management Institute of Texas model policy CCP, Chapter 38.20 HB 215, 82 nd Legislative Session, 2011 CCP 2.1386(c) amended 2017			

I. Purpose

The purpose of this policy is to outline the proper protocol for eyewitness identification procedures for photographic, show-up, and live lineup identifications which maximize the reliability of identifications, protect innocent persons, and establish evidence that is reliable and conforms to established legal requirements. As a matter of practice, this policy shall be reviewed annually and modified as appropriate consistent with the provisions of the *Texas Code of Criminal Procedure*, Chapter 28.20, Section 4(b).

II. Policy

Eyewitness identifications are a significant component of many criminal investigations. The identification process must be carefully administered to minimize the likelihood of misidentifications. Moreover, constitutional safeguards must be observed in the process. The goal of reducing erroneous convictions can be furthered in many ways. Employing the most rigorous eyewitness identification methods is one way of doing this, but there are others. The eyewitness identification process is only one step in the criminal investigation process, albeit an important one.

The pursuit of corroborative evidence, for example, is a critical undertaking that can offset the potential for a mistaken identification, reverse the investigative path should an erroneous identification be determined to have occurred or, conversely, support a stand-alone victim identification. The more credible evidence that is available in addition to any eyewitness identification, the less the risk of a prosecution or conviction based solely on erroneous eyewitness identification. Simply put, there is no substitute for a competent and thorough criminal investigation.

This policy was written to provide guidance for eyewitness identification procedures based on credible research on eyewitness memory and best practices designed not only to reduce erroneous eyewitness identification but also to enhance the reliability and objectivity of eyewitness identifications.

Evidence-based best practices surrounding the collection and preservation of eyewitness evidence are addressed as are procedures to be employed where witnesses or victims are unable to read or write, are non-English speaking, or possess limited English language proficiency.

Peace Officers performing the function of eyewitness identification, as designated by their agency, must first complete the Texas Commission on Law Enforcement Eyewitness Identification course (3286), beginning 01/01/18 (CCP 2.1386(c)).

III. Procedural Guidelines

A. Definitions

1. **Blind Procedure** – A procedure wherein the person administering the live lineup or photo array does not know who the suspect is.
2. **Blinded Photo Array Procedure** – A procedure wherein the person who administers the photo array knows who the suspect is, but each photo is presented so that the administrator cannot see or track which photograph is being presented to the witness.
3. **Folder Shuffle Method** – A method of administering a photo array such that the administrator cannot see or track which photograph is being presented to the witness until after the procedure is completed. This method is employed when a blind procedure is not possible.
4. **Fillers** – Non-suspect photographs or persons. Fillers are selected to both fit the description of the perpetrator provided by the witness and to ensure that no individual or photo is individually remarkable or stands out.
5. **Illiterate Person** – An individual who speaks and understands the English language but cannot read and write in English.
6. **Interpreter** – An interpreter is a person who is fluent in English and the language of the witness or victim and who facilitates communication between two parties in two different languages. The term includes persons who facilitate communication with persons who are deaf, hearing impaired or speaking impaired.
7. **Live lineup** – An identification procedure in which a group of persons is displayed to the witness or victim in order to identify or exclude a suspect.
8. **Person with Limited English Proficiency** – An individual who is unable to communicate effectively in English with a level of fluency that is typical of native English speakers. Such a person may have difficulty speaking, reading, or writing in English and includes persons who can comprehend English, but are physically unable to talk or write.
9. **Photo Array** – An identification procedure in which a series of photographs is displayed to the witness or victim in order to identify or exclude the suspect.

10. **Sequential Live Lineup or Photo Array** – An identification procedure in which the persons in the live lineup or the photographs in the photo array are displayed one by one (sequentially).
11. **Show-up** – An identification procedure in which a single suspect is shown to a victim or witness soon after the commission of a crime for the purpose of identifying or eliminating the suspect as the perpetrator.
12. **Witness Certification Statement** – A written statement that is read out loud to the witness or victim describing the procedures of the identification process.

B. Selecting the Best Identification Method

1. Photo arrays are preferred over other techniques because: (a) they can be better controlled, (b) nervousness can be minimized, and (c) they are easier to manage logistically.
2. Because they involve multiple persons under relatively controlled circumstances, a properly conducted live lineup, like a properly conducted photo array, is preferable to a show-up.
3. Because they are highly suggestive, show-ups are vulnerable to challenges to their validity. Consequently, a show-up should be employed only where other indicia of guilt are present (e.g., suspect located relatively close in time and place to the crime).
4. Because witnesses may be influenced, however unintentionally, by cues from the person administering the procedure, the administrator should employ the use of a blind procedure or a blinded photo array procedure (e.g. the folder shuffle method).
5. Because research shows the sequential presentation of live lineups and photo arrays is less likely to result in misidentification and carry very little risk of increasing the likelihood of failure to identify the suspect, a sequential presentation should be used.

C. Selecting Fillers

All persons in the photo array or live lineup should be of the same sex and race and should be reasonably similar in age, height, weight, and general appearance. Ideally, the characteristics of the filler should be consistent with the description of the perpetrator provided by the witness (es). Where there is a limited or inadequate description of the perpetrator provided by the witness (es), where the description of the perpetrator differs significantly from the appearance of the suspect, where a witness has provided a highly detailed description, or where the witness's description of the perpetrator or the suspect has a highly distinctive feature, fillers should be chosen so that no person stands out in the live lineup or photo array.

D. Explaining that the Perpetrator May or May Not Be Present

Because witnesses may be under self-induced or perceived pressure to identify a suspect, they should be informed that the suspect may or may not be present in a live lineup or photo array and that the person presented in a show-up may or may not be the perpetrator.

E. Explaining that the Investigation Will Continue

The administrator should also explain to the witness that the investigation will continue, regardless of whether an identification is made, as a reassurance that the outcome of the investigation is not exclusively dependent on the witness' ability or inability to identify a suspect.

F. Witness Contamination

Precautions must be taken to ensure that witnesses do not encounter suspects or fillers at any time before or after the identification procedure. Avoid multiple identification procedures in which the same witness views the same suspect more than once. When showing a different suspect to the same witness, do not reuse the same fillers from a previous live lineup or photo array shown to that witness. Witnesses should not be allowed to confer with each other before, during, or after the identification procedure.

Ensure that no one who knows the suspect's identity is present during live lineup or photo array procedure. However, in some live lineups, exceptions must be made to allow for the presence of defense counsel.

G. Documenting the Procedure

In order to strengthen the evidentiary value of the identification procedure, it should be documented in full. Video documentation is the preferred method. Audio recording is the preferred alternative. If neither method is employed, then the reason for not video or audio recording should be documented and the procedure should be memorialized by writing.

IV. Sample Standard Operating Procedures

The procedures which follow have been designed to: (a) reduce erroneous eyewitness identifications, (b) enhance the reliability and objectivity of eyewitness identifications, (c) collect and preserve eyewitness evidence properly, (d) respect the needs and wishes of victims and witnesses, and (d) address the needs of witnesses with limited English proficiency, where applicable.

In order to choose among the various identification methods, a brief description of each method follows in order of most preferred method to least preferred. Once the appropriate method is selected, the administrator should go directly to the Sample Standard Operating Procedures for that particular method. In any given situation only that set of Sample Standard Operating Procedures applies.

A. Descriptions of Eyewitness Identification Methods

1. Sequential, Blind Photo Array – photo arrays where the photographs are presented one at a time to the witness or victim by a person who does not know who the suspect is. This method requires a preparer who may be familiar with the case and an administrator who does not know the identity of the suspect.
2. Sequential, Blinded Photo Array – photo arrays where the photographs are presented one at a time to the witness or victim by a person who knows who the suspect is, but who takes steps (putting the photographs in folders and shuffling them) to avoid knowledge of which person the witness or victim is examining at any particular time. This method typically involves an administrator who is familiar with the case and knows the identity of the suspect.
3. Sequential Live Lineup – live lineups where the persons in the live lineup are presented one at a time to the witness or victim. This method requires a preparer who may be familiar with the case and an administrator who does not know the identity of the suspect.
4. Show-up – procedure where the witness or victim is presented with a single suspect and asked to identify whether that suspect is the perpetrator. This procedure can be carried out by any officer.

B. Sample Standard Operating Procedures for Sequential, Blind Photo Array Administrations

1. Preparation

a) Designating a Preparer

Preparing the photo array should be undertaken by someone other than the person who will administer the photo array. Ideally, the investigating officer will prepare the photo array as this ensures that others who might be involved in the case are not used as fillers. Moreover, because the investigating officer knows who the suspect is, he or she should not be conducting the actual administration of the photo array.

b) Selecting Suspect Photograph

If multiple photos of the suspect are available, choose the photo that most resembles the suspect's appearance at the time of the crime. Do not include more than one photograph of the same suspect. If you do not know what the suspect looked like at the time of the crime, choose the photo that most resembles the victim's or witness's description of the perpetrator. This may or may not be the most recent available photograph of the suspect. If there are multiple suspects, include only one suspect's photo in the array.

c) Selecting Fillers

All persons in the photo array should be of the same sex and race and should be reasonably similar in age, height, weight, and general appearance. Ideally, the characteristics of the filler should be consistent with the description of the perpetrator provided by the witness (es). Where there is a limited or inadequate description of the perpetrator provided by the witness (es), where the description of the perpetrator differs significantly from the appearance of the suspect, fillers should be chosen so that no person stands out in the photo array. Do not mix color and black and white photos, use photos of the same size and basic composition and never mix jail booking photographs with other types of photographs.

d) Choosing Number of Fillers

Wherever possible, include a minimum of five fillers. Because increasing the number of fillers tends to increase the reliability of the procedure, one may have more than the minimum number of fillers.

e) Ensuring Similarity

Assess the array to ensure that no person stands out from the rest. Cover any portions of the photographs that provide identifying information on the suspect and similarly cover other photographs used in the array.

f) Placing Subject Photographs in Order

- (1) Place a filler in the lead position.
- (2) Place the remaining photographs which will comprise the photo array in random order.
- (3) Place two blank photographs/images at the end of the array (blanks on the same type of photographic paper as the actual photographs but which will not be shown to the witness; this is intended to cause the witness to think there may still be photographs to view in order to reduce pressure to choose what the witness may presume to be the last photograph).

g) Presenting the Photo Array to the Independent Administrator

Present the ordered photo array to the independent administrator. Do not tell the independent administrator in which position the suspect is situated.

2. Administration

The administrator of the photo array presentation should be an independent participant who does not know the identity of the suspect and the witness should be informed of this. In a blind procedure, no one should be present who knows the suspect's identity.

a) Blinded Administration

If the blind procedure described above is not followed, then the photo array administrator should document the reason why and the administrator should be blinded. That is, he or she should conduct the photo array in a manner such that he or she does not know which person in the array the witness is examining at any particular time.

There is a separate sample standard operating procedure for blinded photo array administration in this policy immediately following this sample standard operating procedure.

b) Instruct Witness

Each witness should be instructed outside the presence of the other witnesses. The independent administrator should give the witness a written copy of the following Witness Certification Statement and should read the instruction statement aloud at the beginning of each identification procedure:

“In a moment, I am going to show you a series of photographs. The person who committed the crime may or may not be included. I do not know whether the person being investigated is included. Even if you identify someone during this procedure, I will continue to show you all photos in the series. The investigation will continue whether or not you make an identification.

Keep in mind that facial features or other identifying characteristics such as hair styles, beards, and mustaches can be easily changed and that complexion colors may look slightly different in photographs.

You should not feel you have to make an identification. It is as important to us to exclude innocent persons as it is to identify the perpetrator. The photos will be shown to you one at a time. Take as much time as you need to look at each one. After each photo, I will ask you ‘Is this the person you saw [insert description of act here]?’ Take your time answering the question. If you answer ‘Yes,’ I will then ask you, ‘In your own words, can you describe how certain you are?’ Finally, because you are involved in an ongoing investigation, in order to prevent damaging the investigation, you should avoid discussing this identification procedure or its results.

Do you understand the way the photo array procedure will be conducted and the other instructions I have given you?”

c) Document Consent to Participate

Witnesses should then be asked to read a pre-prepared notice that includes the following additional paragraph and sign and date accordingly.

“I have read these instructions, or they have been read to me, and I understand the instructions. I am prepared to review the photographs, and I will follow the instructions provided on this form.”

Note: Some witnesses may decline to sign. When a witness declines to sign, it is sufficient for the investigating officer to document that the witness was appropriately instructed.

d) Presentation of Photographs

Present each photo to the witness separately (one at a time), in order. When the witness is finished viewing the photo, have the witness hand the photo back.

e) Question Witness

After the witness has looked at a photo and handed it back to you, ask: **“Is this the person you saw [insert description of act here]?”** If the witness answers "Yes," ask the witness, **“In your own words, can you describe how certain you are?”**

f) Document Witness' Responses

Document the witness' response using the witness' own words. Have the witness complete the appropriate section of a witness certification statement to reflect the outcome of the procedure.

g) Show All Photographs

Even if the witness makes an identification, show the witness each of the next photos until all have been examined. If a witness asks why he or she must view the rest of the photos, despite already making an identification, simply tell the witness that to assure objectivity and reliability, the witness is required to view all of the photographs.

h) Avoid Feedback During the Procedure

Do not give the witness any feedback regarding the individual selected or comment on the outcome of the identification procedure in any way. Be aware that witnesses may perceive such things as unintentional voice inflection or prolonged eye contact, in addition to off-hand words or phrases, as messages regarding their selection. Avoid casual conversation comments such as “very good.” Be polite but purposeful when you speak.

i) Additional Viewings

Only upon request of the witness, the witness may view the photo array again after the first photo array procedure has been completed. If the witness requests an additional viewing, the photo array administrator should present the entire photo array in the same order as the original presentation, a second time. If this occurs, it must be documented. The photo array administrator should never suggest an additional viewing to

the witness. It is recommended that the witness not be allowed to view the photo array more than two times.

j) Subsequent Use of Materials

Ensure that if the witness writes on, marks, or in any way alters identification materials, those materials are not used in subsequent procedures.

k) Multiple Identification Procedures With Same Witness

Avoid multiple identification procedures in which the same witness views the same suspect more than once.

l) Multiple Identification Procedures With Different Witness

If there is a need to show the same suspect to a new witness, have the preparer remix the photo array and renumber them accordingly.

m) Multiple Suspects

When there are multiple suspects, a separate photo array should be conducted for each suspect. There should not be more than one suspect per photo array.

n) Reuse of Fillers

When showing a different suspect to the same witness, do not reuse the same fillers from a previous array shown to that witness.

o) Contact Among Witnesses

To the extent possible, prevent witnesses from conferring with each other before, during, and after the photo array procedure.

p) Identification of Special Features

Only after an identification is made, should a follow-up interview occur regarding any relevant factors that support the identification, such as: special facial features, hair, marks, etc.

3. Special Procedures are Required for Illiterate Persons or Persons Who Possess Limited English Proficiency

a) Be Alert to People Who do not Speak English or Possess Limited English Proficiency.

Given the diversity of communities, police officers may encounter persons who do not speak English or who possess limited English proficiency in the course of a criminal investigation. When presented with this situation, officers should carefully consider the ethical and legal ramifications of how to handle the case when there is a language barrier.

b) Using an Interpreter

Unless the administrator speaks the victim's or witness' language fluently, an interpreter should be used for persons who do not speak English. The interpreter shall sign a witness instruction statement on obtaining consent of a non- English speaking person to assist in the eyewitness identification process. Law enforcement personnel should consider arranging for an interpreter if a person interviewed:

- (1) Is unable to communicate in English
- (2) Has a limited understanding of English
- (3) Is deaf, hearing impaired, or speaking impaired
- (4) Is otherwise physically challenged to communicate in English

c) Review and Explain Forms

If the person is unable to read, the administrator, in the presence of the witness, will give the explanation, read any forms, and obtain consent and acknowledge the consent on the witness certification statement, stating why the person was unable to sign the form.

4. Documentation

In order to strengthen the evidentiary value of the administration it should be documented in full. Video documentation (with audio) is the preferred method. Audio recording is the preferred alternative. If neither method is employed, then the reason for not video or audio recording should be documented. Preserve the photo array, together with all information about the identification process and memorialize the process in written report form.

C. Sample Standard Operating Procedures for Sequential, Blinded Photo Array Administrations

1. Preparation

a) Select Suspect Photograph

If multiple photos of the suspect are available, choose the photo that most resembles the suspect's appearance at the time of the crime. Do not include more than one photograph of the same suspect. If the appearance of the suspect at the time of the offense is not known, choose the photo that most resembles the victim's or witness' description of the perpetrator. This may not be the most recent photograph of the suspect on file. If there are multiple suspects, include only one suspect's photo in the array.

b) Selecting Fillers

All persons in the photo array should be of the same sex and race and should be reasonably similar in age, height, weight, and general appearance. Ideally, the characteristics of the filler should be consistent with the description of the perpetrator provided by the witness(es). Where there is a limited or inadequate description of the perpetrator provided by the witness(es) or where the

description of the perpetrator differs significantly from the appearance of the suspect, fillers should be chosen so that no person stands out in the photo array. Do not mix color and black and white photos. Use photos of the same size and basic composition. Never mix jail booking photographs with other types of photographs.

c) Choosing Number of Fillers

Whenever possible, include a minimum of five fillers. Because increasing the number of fillers tends to increase the reliability of the procedure, one may have more than the minimum number of fillers.

d) Ensuring Similarity

Assess the array to ensure that no person stands out from the rest. Cover any portions of the photographs that provide identifying information on the suspect and similarly cover other photographs used in the array.

e) Placing Subject Photographs in Order

- (1) Place a filler in a folder and set it aside for placement in the lead position.
- (2) Place the remaining photographs which will comprise the photo array in separate folders and place them in random order so the placement of a particular photograph in a particular folder is not known.
- (3) Take the folder set aside in step 1), above and place it in the lead position.
- (4) Place two empty folders at the end.
- (5) Number the folders.

2. Administration

a) Blinded Administration

The purpose of a blinded administration is to conduct the photo array in a manner such that the administrator does not know which person in the array the witness is looking at.

b) Instruct Witness

Each witness should be instructed outside the presence of the other witnesses. The blinded administrator should give the witness a written copy of the following Witness Instruction Statement and should read the instruction statement aloud at the beginning of each identification procedure:

“The folders in front of you contain photos. In a moment, I am going to ask you to look at the photos. The person who committed the crime may or may not be included in the photos. I do not know whether the person being investigated is included. Although I placed the photos into the folders, I have shuffled the folders so that right now I do not know which folder contains a particular

photo. Even if you identify someone during this procedure, I will continue to show you all photos in the series. The investigation will continue whether or not you make an identification."

"Keep in mind that facial features and other characteristics such as hair styles, beards, and mustaches can be easily changed and that complexion colors may look slightly different in photographs.

"You should not feel you have to make an identification. It is as important to us exclude innocent persons as it is to identify the perpetrator. You will look at the photos one at a time. When you open a folder, please open it in a manner that does not allow me to see the photo inside the folder. Take as much time as you need to look at each one. When you have finished looking at a photo, close the folder and hand it to me. I will then ask you, 'Is this the person you saw [insert description of act here]?' Take your time answering the question. If you answer Yes, I will then ask you, 'In your own words, can you describe how certain you are?'"

"Because you are involved in an ongoing investigation, in order to prevent compromising the investigation, you should avoid discussing this identification procedure or its results. Do you understand the way the photo array procedure will be conducted and the other instructions I have given you?"

c) Document Consent to Participate

Witnesses should then be asked to sign and date a pre-prepared notice which includes the following additional paragraph:

I have read these instructions, or they have been read to me, and I understand the instructions. I am prepared to review the photographs, and I will follow the instructions provided on this form.

Note: Some witnesses may decline to sign. When a witness declines to sign, it is sufficient for the investigating officer to document that the witness was appropriately instructed.

d) Present Folders

Present each folder to the witness separately (one at a time), in order. The blinded administrator should not be in a position to view the photographs while the witness is viewing the photographs. The eyewitness should be the only person viewing the photographs. When the witness is finished viewing the photo, have the witness hand the folder back.

e) Question Witness

After the witness has looked at a photo and handed it back to you, ask: **"Is this the person you saw [insert description of act here]?"** If the witness answer is "Yes," ask the witness, **"In your own words, can you describe how certain you are?"**

f) Document Witness' Responses

Document the witness' response using the witness' own words. Have the witness complete the appropriate section of the witness certification statement to reflect the outcome of the procedure.

g) Show All Folders with Photos

Show all folders containing photos to the witness. Even if the witness makes an identification, show the witness the next photo until all the photographs have been examined. If a witness asks why he or she must view the rest of the photos, despite already making an identification, simply tell the witness that to assure objectivity and reliability, the witness is required to view all of the photographs.

h) Avoid Feedback During the Procedure

Do not give the witness any feedback regarding the individual selected or comment on the outcome of the identification procedure. Be aware that witnesses may perceive such things as unintentional voice inflection or prolonged eye contact, in addition to off-hand words or phrases, as messages regarding their selection. Avoid casual conversation comments such as "very good." Be polite but purposeful when you speak.

i) Additional Viewings

Only upon request of the witness, the witness may view the photo array again after the first photo array procedure has been completed. If the witness requests an additional viewing, the photo array administrator should present the entire photo array in the same order as the original presentation, a second time. If this occurs, it must be documented. The photo array administrator should never suggest an additional viewing to the witness. It is recommended that the witness not be allowed to view the photo array more than two times.

j) Subsequent Use of Materials

Ensure that if the witness writes on, marks, or in any way alters identification materials, those materials are not used in subsequent procedures.

k) Multiple Identification Procedures with Same Witness

Avoid multiple identification procedures in which the same witness views the same suspect more than once.

l) Multiple Identification Procedures with Different Witness

If you need to show the same suspect to a new witness, remix the photo array as before and renumber them accordingly.

m) Multiple Suspects

When there are multiple suspects, a separate photo array should be conducted for each suspect. There should not be more than one suspect per photo array.

n) Reuse of Fillers

When showing a different suspect to the same witness, do not reuse the same fillers from a previous array shown to that witness.

o) Contact Among Witnesses

To the extent possible, prevent witnesses from conferring with each other before, during, and after the photo array procedure.

p) Identification of Special Features

Only after an identification is made, a follow-up interview should assess any relevant factors that support the identification, such as: special facial features, hair, marks, etc.

3. Special Procedures are Required for Illiterate Persons or Persons Who Possess Limited English Proficiency

a) Be Alert to People Who do not Speak English or Possess Limited English Proficiency

Given the diversity of communities, police officers may encounter persons who do not speak English or who possess limited English proficiency in the course of a criminal investigation. Where presented with this situation, officers should carefully consider the ethical and legal ramifications of how to handle the case when there is a language barrier.

b) Using an Interpreter

Unless the administrator speaks the victim's or witness' language fluently, an interpreter should be used for persons who do not speak English. The interpreter shall sign the witness certification statement on obtaining consent of a non-English speaking person to assist in the eyewitness identification process. Law enforcement personnel should consider arranging for an interpreter if a person interviewed:

- (1) Is unable to communicate in English
- (2) Has a limited understanding of English
- (3) Is deaf, hearing impaired, or speaking impaired
- (4) Is otherwise physically challenged to communicate in English

c) Review and Explain Forms

If the person is unable to read, the administrator, in the presence of the witness, will give the explanation, read any forms, and obtain consent and acknowledge the consent on the witness instruction statement, stating why the person was unable to sign the form.

4. Documentation

In order to strengthen the evidentiary value of the administration it should be documented in full. Video documentation (with audio) is the preferred method. Audio recording is the preferred alternative. If neither method is employed, then the reason for not video or audio recording should be documented. Preserve the photo array, together with all information about the identification process and memorialize the identification process in report form.

D. Sample Standard Operating Procedures for Sequential, Blind Live lineups

1. Preparation

a) Designating a Preparer

Preparing the live lineup should be undertaken by someone other than the person who will administer the live lineup. Ideally, the investigating officer will prepare the live lineup as this ensures that others who might be involved in the case are not used as fillers. Moreover, because the investigating officer knows who the suspect is, he or she should not conduct the actual administration of the live lineup.

b) Selecting Fillers

All persons in the live lineup should be of the same sex and race and should be reasonably similar in age, height, weight, and general appearance. Ideally, the characteristics of the filler should be consistent with the description of the perpetrator provided by the witness(es). Where there is a limited or inadequate description of the perpetrator provided by the witness(es) or where the description of the perpetrator differs significantly from the appearance of the suspect, fillers should be chosen so that no person stands out in the live lineup.

c) Choosing Number of Fillers

Whenever possible, include a minimum of five fillers. Because increasing the number of fillers tends to increase the reliability of the procedure, one may have more than the minimum number of fillers.

d) Ensuring Similarity

Assess the lineup to ensure that no person stands out from the rest.

e) Placing the Subjects in Order

Place a filler in the lead position and place the remaining persons who will comprise the live lineup in random order.

f) Presenting the Live lineup to Administrator

Present the ordered live lineup to the administrator. Do not tell the administrator which position the suspect is in.

2. Administration

The administrator of the live lineup should be an independent participant who does not know the identity of the suspect and the witness should be informed of this. In a blind procedure, no one should be present who knows the suspect's identity. In some live lineups, exceptions must be made to allow for the presence of defense counsel. Once the live lineup commences, defense counsel's role is limited to that of observer.

a) Instruct Witness

Each witness should be instructed outside the presence of the other witnesses. The live lineup administrator should give the witness a written copy of the following witness certification statement and should read the instruction statement aloud at the beginning of each identification procedure:

"In a moment, I am going to show you a series of individuals. The person who committed the crime may or may not be included. I do not know whether the person being investigated is included. The investigation will continue whether or not you make an identification. Even if you identify someone during this procedure, I will continue to show you all individuals in the series. Keep in mind that facial features and other characteristics like hair styles, beards, and mustaches can be easily changed. You should not feel you have to make an identification. It is as important to us to exclude innocent persons as it is to identify the perpetrator.

The individuals will be shown to you one at a time. Take as much time as you need to look at each one. After each individual, I will ask you 'Is this the person you saw [Insert description of act]?' Take your time answering the question. If you answer 'Yes,' I will then ask you, "In your own words, can you describe how certain you are?" Because you are involved in an ongoing investigation, in order to prevent damaging the investigation, you should avoid discussing this identification procedure or its results.

Do you understand the way the lineup procedure will be conducted and the other instructions I have given you?"

b) Document Consent to Participate

Witnesses should then be asked to read, sign and date a pre-prepared document containing the following paragraph.

I have read these instructions, or they have been read to me, and I understand the instructions. I am prepared to view the individuals who will be presented to me, and I will follow the instructions provided on this form.

Note: Some witnesses may decline to sign. When a witness declines to sign, it is sufficient for the investigating officer to document that the witness was appropriately instructed.

c) Presentation of Subjects

Begin with all live lineup participants out of the view of the witness. Present each subject one at a time in the order presented to the administrator by the preparer. Present each individual to the witness separately, removing those previously shown from the field of view.

d) Question Witness

After each individual is shown, ask the witness: "**Is this the person you saw [insert description of act]?**" If the witness answers "Yes," ask the witness, "**In your own words, can you describe how certain you are?**" Document the witness's response using the witness's own words.

e) Document Witness's Responses

Document the witness's response using the witness' own words. Have the witness complete the appropriate section of the witness certification statement to reflect the outcome of the procedure.

f) Show Every Subject

Even if the witness makes an identification, show the witness the next subject until all subjects have been shown. If a witness asks why he or she must view the rest of the subjects despite already making an identification, simply tell the witness that to assure objectivity and reliability, the witness is required to view all of the subjects.

g) Consistency of Actions

Ensure that any identification actions (e.g., speaking, moving) are performed by all members of the live lineup.

h) Avoid Feedback During the Procedure

Do not give the witness any feedback regarding the individual selected or comment on the outcome of the identification procedure in any way. Be aware that witnesses may perceive such things as unintentional voice inflection or prolonged eye contact, in addition to off-hand words or phrases, as messages regarding their selection. Avoid casual comments such as "very good." Be polite but purposeful when you speak.

i) Additional Viewings

Only upon request of the witness, the witness may view the lineup again after the first live lineup has been completed. If the witness requests an additional viewing, the independent administrator should present the entire live lineup a second time. If this occurs, it must be documented. The live lineup administrator should never suggest additional viewing. It is recommended that the witness not be allowed to view the live lineup more than two times.

- j) Multiple Identification Procedures With Same Witness
Avoid multiple identification procedures in which the same witness views the same suspect more than once.
- k) Multiple Identification Procedures With Different Witness
If there is a need to show the same suspect to a new witness, have the preparer change the order of the subjects in the lineup.
- l) Multiple Suspects
When there are multiple suspects, a separate live lineup should be conducted for each suspect. There should not be more than one suspect per lineup.
- m) Reuse of Fillers
When showing a different suspect to the same witness, do not reuse the same fillers from a previous lineup shown to that witness.
- n) Contact Among Witnesses
To the extent possible, prevent witnesses from conferring with each other before, during, and after the live lineup procedure.
- o) Contact between Witnesses, Suspects, and Fillers
Take precautions to ensure that witnesses do not encounter suspects or fillers at any time before or after the identification procedure.
- p) Identification of Special Features
Only after an identification is made, should there be a follow-up interview regarding any relevant factors that support the identification, such as: special facial features, hair, marks, etc.

3. Special Procedures are Required for Illiterate Persons or Persons Who Possess Limited English Proficiency

- a) Be Alert to People Who do not Speak English or Possess Limited English Proficiency
Given the diversity of communities, police officers may encounter persons who do not speak English or who possess limited English proficiency in the course of a criminal investigation. Where presented with this situation, officers should carefully consider the ethical and legal ramifications of how to handle the case when there is a language barrier.
- b) Using an Interpreter
Unless the administrator speaks the victim's or witness' language fluently, an interpreter should be used for persons who do not speak English. The interpreter shall sign the Witness Certification Statement on

obtaining consent of a non- English speaking person to assist in the eyewitness identification process. Law enforcement personnel should consider arranging for an interpreter if a person interviewed:

- (1) Is unable to communicate in English
- (2) Has a limited understanding of English
- (3) Is deaf, hearing impaired or speaking impaired
- (4) Is otherwise physically challenged to communicate in English

c) Review and Explain Forms

If the person is unable to read or write, the administrator, in the presence of the witness, will give the explanation, read any forms, and obtain consent and acknowledge the consent on the Witness Certification Statement, stating why the person was unable to sign the form.

4. Documentation

In order to strengthen the evidentiary value of the administration, it should be documented in full. Video documentation (with audio) is the preferred method. Audio recording is the preferred alternative. If neither method is employed, then the reason for not video or audio recording should be documented. A still photograph of each individual in the live lineup should be taken and details of all persons present during the live lineup should be documented. The entire process should be memorialized in report form.

E. Sample Standard Operating Procedures for Show-ups

Show-ups should be avoided whenever possible because of their suggestiveness. Photo arrays and live lineups are preferred. However, where circumstances require the prompt display of a suspect to a witness, the following procedures should be followed to minimize potential suggestiveness.

1. Preparation

a) Contact Among Witnesses

Separate witnesses and do not allow communication between them before or after conducting a show-up.

b) Document Witness' Description of Perpetrator

Document the witness's description of the perpetrator prior to conducting the show-up.

c) Temporal and Spatial Proximity to the Offense

Use show-ups only where the suspect is detained within a reasonably short time frame following the offense and is found in relatively close proximity to the scene of the offense. Although this is dependent on the individual circumstances of each case, courts have generally held that a two-hour time lapse is acceptable.

d) Transport Witness to Suspect

Transport the witness to the location of the suspect whenever practical, rather than bringing the suspect to the witness. The suspect may be taken to a location where the witness can view the suspect for possible identification.

e) Do Not Return Suspect to Crime Scene

Suspects should not be taken to the scene of the crime.

f) Disclosure of Location of Witness's Home

Consider carefully whether to take the suspect to the witness' or victim's home.

g) Avoid Appearance of Guilt

Do not conduct show-ups when the suspect is in a patrol car, handcuffed, or physically restrained by police officers unless such protective measures are necessary to ensure safety.

h) Minimize Reliance on Show-ups

If one witness identifies the suspect, it is strongly recommended that a photo array or a live lineup be used with any remaining witnesses.

2. Administration

a) Instruct Witness

Each witness should be instructed outside the presence of the other witnesses. The show-up administrator should give the witness a written copy of the following witness certification statement and should read the instruction statement aloud at the beginning of the show-up identification procedure:

“In a moment, I am going to show you a person who may or may not be the person who committed the crime. You should not feel you have to make an identification. It is as important to us to exclude innocent persons as it is to identify the perpetrator. The investigation will continue whether or not you make an identification. Because you are involved in an ongoing investigation, in order to prevent damaging the investigation, you should avoid discussing this identification procedure or its results. Do you understand the procedure and the instructions I have given you?”

- b) Presentation of Suspect and Questioning of Witness
Present the suspect to the witness and ask the witness whether the person they are looking at is the person he/she saw commit the crime. If the witness answers "Yes," ask the witness to describe, in their own words, how certain they are.
- c) Document Witness's Response
Document the witness's response using the witness's own words.
- d) Multiple Identification Procedures With Same Witness
Avoid multiple identification procedures in which the same witness views the same suspect more than once.
- e) Avoid Requirement of Performance by the Suspect
Do not require show-up suspects to put on clothing worn by, speak words uttered by, or perform other actions of the perpetrator.
- f) Avoid Conduct Suggestive of the Suspect's Guilt
Officers should avoid words or conduct that may suggest to the witness that the individual is or may be the perpetrator.
- g) Contact Among Witnesses
Remind the witness not to talk about the show-up to other witnesses until police or prosecutors deem it permissible.

3. Special Procedures are Required for Illiterate Persons or Persons Who Possess Limited English Proficiency

- a) Be Alert to People Who do not Speak English or Possess Limited English Proficiency
Given the diversity of communities, police officers may encounter persons who do not speak English or who possess limited English proficiency in the course of a criminal investigation. Where presented with this situation, officers should carefully consider the ethical and legal ramifications of how to handle the case when there is a language barrier.
- b) Using an Interpreter
Unless the show-up administrator speaks the victim's or witness' language fluently, an interpreter should be used for persons who do not speak English. Law enforcement personnel should consider arranging for an interpreter if a person interviewed:

- (1) Is unable to communicate in English
- (2) Has a limited understanding of English
- (3) Is deaf, hearing impaired, or speaking impaired
- (4) Is otherwise physically challenged to communicate in English

4. Documentation

In order to strengthen the evidentiary value of the administration it should be documented in full including the time, date, and location of the procedure, identities of persons present, and the outcome of the procedure. Video documentation (with audio) is the preferred method. Audio recording is the preferred alternative. If neither method is employed, then the reason for not video or audio recording should be documented. The entire identification process should be memorialized in report form.



Michael J. Heidingsfield
Director of Police

Changes/Amendments Since Last Publication

Addition of language to Section II requiring completion of CCP mandated training for any peace officer performing the task of eyewitness identification. May 8, 2019

Addition of language to Paragraph I to require that this policy shall be reviewed annually and modified as appropriate. September 1, 2014

UNIVERSITY OF TEXAS SYSTEM POLICE
Model Photo Array Line-up *Instructions to Witness* Form

Case Number: _____ Date of Offense: _____ Offense: _____

Time, date and place of photo array Line-up: _____

Read the following instructions to the witness prior to presenting the photo array:

“You will be asked to view a series of photos. I don't know whether the person being investigated is included in this series. Individuals present in the series may not appear exactly as they did on the date of the incident, because features such as head hair and facial hair are subject to change. You should not feel that you have to make an identification. It is just as important to clear innocent persons from suspicion as to identify the guilty parties. If you do identify someone, I will ask you to describe in your own words how certain you are. The photos will be shown to you one at a time and are not in any particular order. Take as much time as you need to examine each photo. If you make identification, I will continue to show you the remaining photos in the series. Regardless of whether you make identification, we will continue to investigate the incident. Since this is an ongoing investigation, you should not discuss the identification procedures or results”.

I certify that the above instructions have been read to me

Signed: _____

Witness: _____

I certify that I have translated and read the instructions to the witness

Signed (interpreter): _____

Signed: Line-up Administrator: _____

I have picked photo number: _____ Initials: _____

I did not pick anyone from the photo array Initials: _____

Witness confidence statement:

The photo that was picked from the photo array by the above-named witness has been identified

As:		DOB:	
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Signed: Line-up administrator: _____

UNIVERSITY OF TEXAS SYSTEM POLICE
Model Live Line-up *Instructions to Witness* Form

Case Number: _____ Date of Offense: _____ Offense: _____

Time, date and place of photo array Line-up: _____

Read the following instructions to the witness prior to administering the live line-up:

“You will be asked to view a series of people one at a time. Please look at all of them. I am required to show you the entire series. They are in random order. Please make a decision about each person before moving on to the next one. The person who committed the crime may or may not be one of the people you are about to view. You should remember that it is just as important to clear innocent persons from suspicion as to identify the guilty. As the administrator I do not know whether any of the people were involved in the crime. The individuals you view may not appear exactly as they did on the date of the crime because features such as head and facial hair are subject to change. Regardless of whether or not you select a person, the crime will continue to be investigated. If you select a person you will be asked to state, in your own words, how certain you are of the identification. If you select a person, please do not ask questions about the person you have selected, as no information can be shared with you at this stage of the investigation. Regardless of whether you select a person, please do not discuss the procedure with any other witnesses in the case. Do you have any questions before we begin?”

Witness question(s) and responses:

I certify that the above instructions have been read to me

Signed: _____

Witness: _____

I certify that I have translated and read the instructions to the witness

Signed (interpreter): _____ Date: _____ Time: _____

Live Line-up Administrator: _____

I have picked person number: _____ Initials: _____

I did not pick anyone from the live line-up Initials: _____

Witness confidence statement:

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The person that was picked from the live line-up by the above-named witness has been identified

As:		DOB:	
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Signed: Line-up administrator: _____

UNIVERSITY OF TEXAS SYSTEM POLICE
 Model Live Show-up *Instructions to Witness* Form

Case Number: _____ Date of Offense: _____ Offense: _____

Time, date and place of photo array Line-up: _____

Read the following instructions to the witness prior to administering the live line-up:
"You will be asked to view an individual. Please look closely at the individual. The person you are about to view may or may not be the individual who committed the crime. You should remember that it is just as important to clear innocent persons from suspicion as to identify the guilty. As the administrator I do not know whether this person was involved in the crime. Regardless of whether or not you identify this individual, the crime will continue to be investigated. If you select this person you will be asked to state, in your own words, how certain you are of the identification. If you select this individual, please do not ask questions about the person you have selected, as no information can be shared with you at this stage of the investigation. Regardless of whether you select a person, please do not discuss the procedure with any other witnesses in the case. Do you have any questions before we begin?"

Witness question(s) and responses:

I certify that the above instructions have been read to me

Signed: _____

Witness: _____

I certify that I have translated and read the instructions to the witness

Signed (interpreter): _____ Date: _____ Time: _____

Show-up Administrator: _____

I have picked person at the location of: _____ Initials: _____

I did not pick the person at the location of: _____ Initials: _____

Witness confidence statement:

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The person that was picked from the live show-up by the above-named witness has been identified

As:		DOB:	
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Signed: Line-up administrator: _____