

TEXARKANA, TEXAS POLICE DEPARTMENT
GENERAL ORDERS MANUAL

<i>Effective Date</i> January 31, 2012		<i>Amended Date</i>		<i>Directive</i> 7.32.1	
<i>Subject</i> Eyewitness Identification					
<i>Reference</i> CCP 38.20					
<i>Distribution</i> All Personnel City Manager City Attorney		<i>TPCA Best Practices Recognition Program Reference</i> 7.32.1 Eyewitness Identification		<i>Review Date</i> January 1, 2017	
				<i>Pages</i> 13	

This Operations Directive is for internal use only and does not enhance an officer's civil or criminal liability in any way. It should not be construed as a creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of this Operations Directive, if proven, may only form the basis for a complaint by this Department, and only in a non-judicial administrative setting.

SECTION 1 PURPOSE

The purpose of this policy is to outline the proper protocol for eyewitness identification procedures for photographic, show-up and live line-up identifications in order to maximize the reliability of identification, protect innocent persons and establish evidence that is reliable and conforms to established legal requirements.

SECTION 2 POLICY

It is the policy of the Department to use procedures in eyewitness identification that are designed to reduce erroneous eyewitness identification while enhancing the reliability and objectivity of identifications. To this end, the department has adopted a protocol referred to as a sequential, blind photo array/line-up that is defined in detail through this policy.

SECTION 3 DEFINITIONS

Blind Procedure – A procedure wherein the person administering the live lineup or photo array does not know who the suspect is.

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 stands out.

Illiterate Person – An individual who speaks and understands English but cannot read and write in English.

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.

Live lineup – An identification procedure in which a group of persons is displayed to the witness or victim in order to identify or exclude the suspect.

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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.

Photo Array/Photo Line-up – An identification procedure in which a series of photographs is displayed to the witness or victim in order to identify or exclude the suspect.

Sequential Live Line-up or Photo Array/Photo Line-up – An identification procedure in which the persons in the live lineup or the photographs in the photo array are displayed one by one (sequentially).

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.

Witness Certification Statement – A written statement that is read out loud to the witness or victim describing the procedures of the identification process.

SECTION 4 PROCEDURES

A. Standard Operating Procedures for Sequential, Blind Photo Array/Photo Line-up

1. Preparation

- a. 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 should not be conducting the actual administration of the photo array.
- b. 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. If there are multiple suspects, include only one suspect's photo in the array.
- c. 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 mug shots with other types of photographs.

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- d. 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. 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 filler in the lead position.
 - 2) Place the remaining photographs which will comprise the photo array in random order.
 - 3) Place two blank photographs at the end (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. Present the ordered photo array to the independent administrator. Do not tell the independent administrator which position the suspect is in.
2. Administration

The administrator of the photo array presentation should be an independent administrator 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. Each witness should be instructed outside the presence of the other witnesses. The independent administrator should give the witness a written copy of the Witness Certification Statement form and should read the instruction statement aloud at the beginning of each identification procedure.
- b. Witnesses should then be asked to read, sign and date the Consent to Participate Form. 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. 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.
- d. After the witness has looked at a photo and handed it back to you, ask: "**Is this the person you saw commit the crime?**" If the witness answers "Yes", to the extent possible, the witness will document their identification in the appropriate section of

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the Witness Certification Form. Absent their ability to document their identification, the officer should summarize their sentiments, including why the witness could not write a statement.

- e. Even if the witness makes an identification, show the witness the next photo until you have gone through all the photographs. 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.
- f. 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.
- g. 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 a second time in the same order as the original presentation. 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.
- h. Ensure that if the witness writes on, marks, or in any way alters identification materials, those materials are not used in subsequent procedures.
- i. Avoid multiple identification procedures in which the same witness views the same suspect more than once.
- j. If you need to show the same suspect to a new witness, have the preparer remix the photo array and renumber them accordingly.
- k. 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.
- l. When showing a different suspect to the same witness, do not reuse the same fillers from a previous array shown to that witness.
- m. To the extent possible, prevent witnesses from conferring with each other before, during, and after the photo array procedure.

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- n. 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. 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. Unless the administrator speaks the victim's or witness's language fluently, an interpreter should be used for persons who do not speak English. The interpreter shall sign the 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. 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 using video or audio recording should be documented. Preserve the photo array, together with all information about the identification process.

B. Standard Operating Procedures for Sequential, Blind, Live lineups

1. Preparation

- a. 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

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- b. 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), 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. 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. Assess the lineup to ensure that no person stands out from the rest.
- e. Place a filler in the lead position and place the remaining persons who will comprise the live lineup in random order.
- f. 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 administrator 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. 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 Witness Certification Statement Form (for Live Line-up) and should read the instruction statement aloud at the beginning of each identification procedure:
- b. Witnesses should then be asked to read, sign and date the Consent to Participate Form. 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. 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. After each individual is shown, ask the witness: "**Is this the person you saw commit the crime?**" If the witness answers "Yes," to the extent possible, the witness will document their identification in the appropriate section of the Witness Certification Form. Absent their ability to document their identification, the officer should summarize their sentiments, including why the witness could

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not write a statement.

- e. 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.
- f. Ensure that any identification actions (e.g., speaking, moving) are performed by all members of the live lineup.
- g. 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.
- h. 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.
- i. Avoid multiple identification procedures in which the same witness views the same suspect more than once.
- j. If you need to show the same suspect to a new witness, have the preparer change the order of the subjects in the lineup.
- k. 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.
- l. When showing a different suspect to the same witness, do not reuse the same fillers from a previous lineup shown to that witness.
- m. To the extent possible, prevent witnesses from conferring with each other before, during, and after the live lineup procedure.
- n. Take precautions to ensure that witnesses do not encounter suspects or fillers at any time before or after the identification procedure.
- o. 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.

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3. Special Procedures are Required for Illiterate Persons or Persons Who Possess Limited English Proficiency
 - a. 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. Unless the administrator speaks the victim's or witness's 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. 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. 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.

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

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- b. Document the witness's description of the perpetrator prior to conducting the show-up.
 - c. 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 it. 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 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. Suspects should not be taken to the scene of the crime.
 - f. DO NOT take a suspect to the home of a witness or suspect.
 - g. 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. If one witness identifies the suspect, you are strongly urged to use a photo array or a live lineup with any remaining witnesses.
2. Administration
- a. 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 Witness Certification Statement Form and should read the instruction statement aloud at the beginning of the show-up identification procedure. The witness should sign and date the form, showing their consent to participate.

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.
 - b. Present the suspect to the witness and ask the witness whether the person they are looking at is the person they saw commit the crime. If the witness answers "Yes," ask the witness to describe, in their own words, how certain they are.
 - c. Document the witness's response using the witness's own words.
 - d. Avoid multiple identification procedures in which the same witness views the same suspect more than once.
 - e. Do not require show-up suspects to put on clothing worn by, speak words uttered by, or perform other actions of the perpetrator.
 - f. Officers should avoid words or conduct that may suggest to the witness that the individual is or may be the perpetrator.

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- g. 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. 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. Unless the show-up administrator speaks the victim's or witness's 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. 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.

D. Other Forms of Eyewitness Identification

This policy does not prohibit the use of the mugshot system or school yearbooks as a way of determining the identity of an individual suspected in committing a criminal offense. The uses of such methods are a necessary tool in the investigative process and should be utilized when necessary.

If a witness makes an identification based upon an alternate method it should be documented on the Witness Participation Form with the method of identification noted.

E. RESPONSIBILITY

- 1. All members of the Department shall know and comply with all aspects of this directive.
- 2. All Division Commanders and supervisory personnel are responsible for ensuring compliance with the provisions and intent of this directive.