

# Eyewitness Identification

## 609.1 PURPOSE AND SCOPE

This policy sets forth guidelines to be used when members of this department employ eyewitness identification techniques (Penal Code § 859.7).

### 609.1.1 DEFINITIONS

Definitions related to the policy include:

- (a) **Blind administrator** – An administrator of an eye witness identification procedure who does not know the identity of the suspect.
- (b) **Blinded administrator** – An administrator of an eye witness identification procedure may know who the suspect is, but does not know where the suspect, or his/her photo, as applicable, has been placed or positioned in the identification procedure using the following:
  1. An automated computer program that prevents the administrator from seeing which photos the eyewitness is viewing until after the identification procedure is completed.
  2. The “folder shuffle method” is a process for conducting a photo lineup by placing photographs in folders, randomly numbering the folders, shuffling the folders, and then presenting the folders sequentially so that the administrator cannot see or track which photograph is being presented to the eyewitness until after the procedure is completed.
  3. Any other procedure that achieves neutral administration and prevents the lineup administrator from knowing where the suspect or his/her photos, as applicable, has been placed or positioned in the identification procedure.
- (c) **Eyewitness** – A person who has personally seen something happen and can give a first-hand description. This person’s identification of another person may be relevant in a criminal investigation.
- (d) **Field show-up** – A procedure in which a suspect is detained shortly after the commission of a crime and who, based on his/her appearance, distance from the crime scene, or other circumstantial evidence, is suspected of having just committed a crime. In these situations, the victim or an eyewitness is brought to the scene of the detention and asked if the detainee was the perpetrator.
- (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. The filler person or photograph should generally fit the description given by the eyewitness.
- (f) **Live lineup** – A procedure in which a group of persons, including the person suspected as the perpetrator of an offense and other persons not suspected of the offense, are displayed to an eyewitness for the purpose of determining whether the eyewitness is able to identify the suspect as the perpetrator.
- (g) **Photographic lineup** – Presentation of photographs to a witness for the purpose of identifying or eliminating an individual as a suspect.

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- (h) **Sequential lineup** – A procedure in which eyewitnesses are shown a series of six photographs, one containing the suspect and five fillers. The photographs are shown one at a time. All photographs will be shown even if an identification is made. If the eyewitness wishes to view the photographs again, he/she may do so one at a time, in a new random order.
- (i) **Six pack photo lineup** – A procedure in which an array of six photographs, including a photograph of the person suspected as the perpetrator of the offense, are displayed to an eyewitness for the purpose of determining whether the eyewitness is able to identify the suspect as the perpetrator.

### **609.2 POLICY**

It shall be the policy of the Citrus Heights Police Department to conduct photographic and live lineups in compliance with Penal Code 859.7, to help ensure the reliability and accuracy of suspect identification.

### **609.3 INVESTIGATIVE CONSIDERATIONS**

- (a) Prior to conducting either a sequential or six pack photo lineup, eyewitnesses shall provide the description of the suspect(s) to the officer.
- (b) The officer or detective conducting the lineup shall use either the blind administrator or blinded administrator procedure.
- (c) If applicable, officers shall state in writing why the blind administrator procedure was not used.
- (d) The officer or detective conducting the investigation, shall make the determination on which procedure to use (sequential lineup or six pack photo lineup). In either case, the procedures below shall be followed:
  - 1. When possible, eyewitnesses should read and sign the Photographic Lineup Admonishment. At minimum, an eyewitness shall be instructed of the following prior to any identification:
    - (a) The suspect may or may not be in the photographs you will view.
    - (b) The eyewitness should not feel compelled to make an identification.
    - (c) An identification or failure to make an identification will not end the investigation.
  - 2. All eyewitnesses shall be separated when viewing an identification procedure.
  - 3. Nothing shall be said to the eyewitness that might influence the eyewitness' identification of the person suspected of being the perpetrator.
  - 4. If the eyewitness identifies a person he or she believes to be the perpetrator, all the following shall apply:
    - (a) The investigator shall immediately inquire as to the eyewitness' confidence level in the accuracy of the identification and record in writing, verbatim, what the witness says.

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- (b) Information concerning the identified person shall not be given to the eyewitness prior to obtaining the eyewitness's statement of confidence level and documenting the exact words of the eyewitness.
- (c) The officer shall not validate or invalidate the eyewitness' identification.
- 5. An audio recording shall be made of the identification procedures.
- 6. When it is not feasible to make an audio recording, the investigator shall state in writing the reason that recoding was not feasible.
- 7. The original lineup shown to each eyewitness shall be booked into evidence.
- 8. In the event a lineup was shown on the Mobile Data Computer (MDC), the lineup shall be forwarded to a department email. The lineup shall then be printed and booked into evidence.

### 609.3.1 SEQUENTIAL LINEUP

- (a) Six individual photographs are needed; one containing the suspect and five fillers. Each photograph will be assigned a number 1 through 6 and placed on the back of the photograph.
- (b) All six photographs will be placed in a random order which will be recorded in the RIMS report.
- (c) Eyewitnesses will then be handed the series of six individual photographs. Eyewitnesses will be under no time constraint and may arrange or place the photos in any manner they choose.
- (d) All photographs will be shown regardless of an identification being made.
- (e) If the eyewitnesses wish to view the photographs again, he or she may do so, in a new random order that shall be recorded in the RIMS report.
- (f) If the eyewitness makes a selection, the eyewitness shall be asked as to their confidence level in the accuracy of the identification. This response shall be documented verbatim in the appropriate report.

### 609.3.2 SIX PACK PHOTO LINEUP

- (a) Six individual photographs are needed; one containing the suspect and five fillers. The suspect photograph should be randomly placed within the lineup.
- (b) After the Photographic Lineup Admonishment has been read and signed, the eyewitness will be given the photo lineup.
- (c) If the eyewitness makes a selection, the eyewitness shall be asked as to their confidence level in the accuracy of the identification. This response shall be documented verbatim in the appropriate report.

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### **609.4 INTERPRETIVE SERVICES**

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.

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.

### **609.5 EYEWITNESS IDENTIFICATION PROCESS AND FORM**

The General Investigations Unit supervisor shall be responsible for the development and maintenance of an eyewitness identification process for use by members when they are conducting eyewitness identifications.

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 certain 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.

The process and related forms should be reviewed at least annually and modified when necessary.

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### **609.6 EYEWITNESS IDENTIFICATION**

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.

Members should avoid mentioning that:

- The individual was apprehended near the crime scene.
- The evidence points to the individual as the suspect.
- Other witnesses have identified or failed to identify the individual as the suspect.

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.

The eyewitness identification procedure should be audio and video recorded and the recording should be retained according to current evidence procedures. When it is not feasible to make a recording with both audio and visual representations, an audio recording should be made (Penal Code § 859.7).

### **609.7 DOCUMENTATION**

A thorough description of the eyewitness process and the result of any eyewitness identification should be documented in the case report.

If a photographic lineup is utilized, a copy of the photographic lineup presented to the witness should be included in the case report. In addition, the order in which the photographs were presented to the witness should be documented in the case report.

#### **609.7.1 DOCUMENTATION RELATED TO RECORDINGS**

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).

#### **609.7.2 DOCUMENTATION RELATED TO BLIND ADMINISTRATION**

If a presentation of a lineup is not conducted using blind administration, the handling member shall document the reason (Penal Code § 859.7).

### **609.8 FIELD IDENTIFICATION CONSIDERATIONS**

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.

When initiating a field identification, the member should observe the following guidelines:

- (a) Obtain a complete description of the suspect from the witness.

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- (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.

### **609.9 PHOTOGRAPHIC LINEUP AND LIVE LINEUP CONSIDERATIONS**

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.

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).

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.

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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.

### 609.9.1 OTHER SAFEGUARDS

Witnesses should be asked for suspect descriptions as close in time to the incident as possible and before conducting an eyewitness identification. 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. Members should not say anything to a witness that may validate or invalidate an eyewitness' identification. In photographic lineups, writings or information concerning any previous arrest of a suspect shall not be visible to the witness (Penal Code § 859.7).