

	ROSENBERG POLICE DEPARTMENT	
	General Order 7.42 Eyewitness Identifications	
	Effective Date: 05-13-2013	Replaces: N/A
	Approved:  Chief of Police	
Reference: TBP 7.32		

I. POLICY

Eyewitness identification is a frequently used investigative tool. This Policy is designed to maximize the reliability of identifications, minimize unjust accusations of innocent persons, and to establish evidence that is reliable and which conforms to established legal procedure.

II. PURPOSE

It is the purpose of this policy to establish department guidelines for photographic line-up identification and field identification procedures. The procedures in this policy are applicable when a person is known to an investigator and is suspected of criminal involvement in the incident under investigation.

III. DEFINITIONS

- A. Administrator.** The person charged with presenting a photographic line-up to a witness.
- B. Assigned Investigator.** The officer primarily responsible for investigating an incident.
- C. Blind Administrator.** An administrator who does not know the identity of the suspect or the suspect's position in the photographic line-up.
- D. Blind Manner.** The presentation of a photographic line-up by either a *blind administrator* or a *blinded administrator*.
- E. Blinded Administrator.** An administrator who may know the identity of the suspect, but does not know the suspect's position in the photographic line-up.

- F. *Field Identification.*** The presentation of a suspect to a witness following the commission of a crime for the purpose of identifying and/or eliminating a possible suspect.
- G. *Fillers.*** The photographs used in a photographic line-up whose race, sex, age, height, weight, hair style, and general appearance resemble the suspect.
- H. *Illiterate Person.*** An individual who speaks and understands English but cannot read and write English.
- I. *Interpreter.*** An individual with the necessary skills that enable them to communicate with an illiterate person or a person with limited English proficiency to the degree they can ensure the person clearly understands all instructions given then prior to viewing a suspect in any identification procedure.
- J. *Live Lineup.*** The presentation of individuals, including a suspect, in person to a witness, usually in a manner preventing the individuals from seeing or identifying the witness, for the purpose of identifying and/or eliminating suspects.
- K. *Person with Limited English Proficiency.*** An individual who is unable to communicate effectively in English with a level of fluency that is typical of a native English speaker. Such a person may have difficulty speaking, reading, or writing in English and includes persons who can comprehend English, but are physically unable to write.
- L. *Photographic Line-up.*** A collection of photographs including a suspect photograph and *filler* photographs that are placed in random order and shown to a witness for the purpose of identifying and eliminating suspects.
- M. *Sequential Viewing.*** An identification procedure in which photographs are shown one at a time to a witness.
- N. *Simultaneous Viewing.*** An identification procedure in which all photographs are shown at the same time to a witness.
- O. *Suspect.*** An individual who has been specifically identified by the investigation as possibly being the person who committed the crime.
- P. *Witness.*** A term referring to a complainant, victim, eyewitness, or any other form of witness to an incident.

IV. GENERAL PROCEDURES FOR LINE-UPS

- A.** Live line-ups will not normally be used due to the difficulty of administration and the difficulty in obtaining sufficient number of individuals with similar physical characteristics. Should an investigator determine a need for a live line-up, the investigator should contact the District Attorney for procedural and technical

assistance and the line-up should be carried out with the intent of this policy in mind.

- B.** Photographic Line-ups are approved for use by this department if the following procedures are followed. Photographic identification of suspects by witnesses should supplement other investigative actions and/or evidence.

V. PREPARING PHOTOGRAPHIC LINE-UPS

- A.** The Assigned Investigator is responsible for:

1. Preparing the photographic line-up, including selecting the fillers and ensuring each of the photographs are numbered or lettered for later reference.
2. Determining before any presentation if the witness is deaf, illiterate, or has limited English proficiency. If the witness is deaf, illiterate, is non-English speaking, or has limited English proficiency, the investigator will arrange for assistance to translate the Photographic Lineup Form in the language of the witness or otherwise assist the witness in understanding the instructions before proceeding. The identification of the assisting individual will be documented as well as the assistance provided.
3. Obtaining a sworn law enforcement officer who is familiar with the contents of this policy and understands the line-up presentation process to act as a blind administrator of the line-up.
4. Preserving the photo line-up, whether an identification is made or not, together with full information about the identification process for future reference, by placing the photos in their original condition, the Photographic Lineup Form, and audio OR video recording of the administration process into evidence after the procedure.
5. Preparing the photographic line-up; the Assigned Investigator should:
 - a. Include only one suspect in each identification procedure.
 - b. Select fillers that generally fit the witness' description of the perpetrator. Fillers should be selected where no person stands out from the others.
 - c. Use photographs of individuals who are reasonably similar in age, height, weight and general appearance and of the same sex and race. Avoid use of fillers that so closely resemble the suspect that a person familiar with the suspect might find it difficult to distinguish the suspect from the fillers.
 - d. If multiple photos of the suspect are reasonably available to the investigator, select a photo that resembles the suspect's description or appearance at the time of the incident.

- e. Include a minimum of five fillers per identification procedure.
- f. Avoid reusing fillers in lineups shown to the same witness if showing a new suspect.
- g. Ensure that no writings or information concerning previous arrest(s) will be visible to the witness. Do not mix color and black and white photos.
- h. Use photos of the same size and basic composition. Mug shots should not be mixed with other photos. If mug shots are to be used, cover any portions that provide identifying information about the subject.
- i. All individuals in the photographic line-up and/or the origin of the photos should be known to the investigator, if possible.
- j. Photos should be reasonably contemporary.
- k. Do not use more than one photo of the same suspect.
- l. If there is more than one suspect, include only one suspect in each line-up presentation.
- m. View the array, once completed, to ensure that the suspect does not unduly stand out.

B. The Administrator is responsible for:

- 1. Ensuring they are familiar with the contents of this policy and the line-up presentation process.
- 2. Ensuring the photographic line-up is presented in a manner consistent with this policy.
- 3. Documenting the conduct and results of the line-up presentation in the manner approved within this policy.
- 4. Returning all line-up materials and documentation to the assigned investigator.

VI. PRESENTING PHOTOGRAPHIC LINE-UPS

- A.** It is the intent of this department to present all photographic line-ups to witnesses in a blind manner and using a sequential presentation of the photographs.
- B.** Police personnel present at the presentation should not make any suggestive statements, or take any other actions that may influence the judgment or perception of the witness.
- C.** Prior to beginning the presentation, determine if the witness has seen the suspect at any time since the crime occurred (whether in person, or in newspaper or television reports, etc.) If so, contact the assigned investigator to determine if the

identification process should continue. Document this action in the supplement report.

- D.** Provide the witness with a Photographic Lineup Form and explain the instructions for the line-up. Instructions given the witness prior to viewing a photographic line-up can facilitate an identification or non-identification based on the witnesses' memory. **Read the instructions and admonitions verbatim from the form**, and obtain the witness' signature indicating they understand the procedure, and sign the form as Administrator. Ensure the witness understands the instructions before proceeding.
- E.** Show the witness the photographs in a random order, one at a time, sequentially, and document the order shown. Remove each photograph from the witness prior to providing a new one. Allow the witness to see only one photograph at a time.
- F.** If the witness identifies a suspect, record the number or other identification of the photograph and ask the witness for a statement of how confident they are about their identification. Show the remaining photographs even if a suspect is identified.
- G.** Complete the Statement of Witness portion of the form, including documenting the witness' confidence statement in their own words, regarding how certain they are of any identification. Have the witness complete and sign the appropriate portion of the form. Return all files, photographs and forms to the assigned investigator and complete an offense supplement on the identification procedure.
- H.** Do not provide any feedback of any kind to the witness during the procedure including whether or not they picked the suspect.

VII. DOCUMENTATION OF PHOTOGRAPHIC LINE-UPS

- A.** All photographic line-ups will be documented in the method reasonably available to the administrator at the time of presentation. Acceptable methods of documentation include:
 - 1. Video and Audio Recording
 - 2. Audio Recording
 - 3. Written documentation of the Line-up Presentation process.

In all cases, the administrator will, at a minimum, document in an offense supplement report the details of the line-up presentation process and result, and return the supplement, the Photographic Line-up Form, any video/audio recordings, and all original photographs and documents to the assigned investigator.

VIII. FIELD IDENTIFICATION PROCEDURES

The use of field identification should be avoided whenever possible in preference for the use of a photographic or live lineup. If there is some question regarding whether an individual stopped in the field may be the right suspect, an attempt at field identification may prevent the arrest of an innocent person. Therefore, when circumstances require the use of field identification the following guidelines should be followed:

A. Procedures to Using Field Identifications

1. The officer is responsible for ensuring the witness is able to understand the instructions given by officers. If the witness is deaf, illiterate, or has limited English proficiency, the officer will provide for an interpreter or other assistance, or not continue with the field identification.
2. Single suspect field identification shall not be used if there is adequate probable cause to arrest the suspect.
3. A complete description of the suspect should be obtained from the witness prior to conducting a field identification. If the witness indicates they are unsure if they can identify the individual, a field identification will not be done.
4. Whenever possible, the witness should be transported to the location of the suspect rather than bringing the suspect to the witness.
5. Field identifications should not be attempted more than two hours after the commission of a crime.
6. Field identification should not be conducted when the suspect is in a patrol car, handcuffed, or physically restrained by police officers, unless such protective measures are necessary to ensure safety.
7. Field identification should only be conducted with one witness present at a time. If the field identification is conducted for more than one witness it should be done separately. If one witness positively identifies the individual, consider making an arrest and using the above photographic lineup procedures for other witnesses.
8. The same suspect should not be presented to the same witness more than once in either field or photographic line-ups.
9. Field identification suspects should not be required to put on clothing worn by the perpetrator, to speak words uttered by the perpetrator or to perform other actions of the perpetrator.

10. Words or conduct of any type by officers that may suggest to the witness that the individual is or may be the perpetrator will be avoided.

B. Documentation of Field Identifications

1. The officer conducting a field identification should use the Field Identification Form to inform the witness of the procedure and obtain evidence of their understanding of the procedure.
2. The Officer will video/audio tape the witnesses viewing using the squad car video and audio recording system and document the witness' comments regarding suspect about the suspect on the Field Identification Form. The Form will be given to the assigned Investigating Officer who will include the Form in the original Case Report. The Video/Audio recording will be pulled and placed in evidence and the evidence number included in the offense or supplement report.

ROSENBERG POLICE DEPARTMENT Photographic Lineup Form

Case Number: _____

Admonition: Read the following to the witness:

1. You will be shown a number of photographs.
2. I have been asked to show these photographs to you, but I do not know the identity of the perpetrator.
3. These photographs are numbered, and I will show them one at a time, in a random order. Please take as much time as you need before moving to the next photograph.
4. All of the photographs will be shown even if you make an identification.
5. The person who committed the crime *may or may not* be in this lineup and you should not feel compelled to choose anyone.
6. Regardless of whether you make identification, we will continue to investigate this incident.
7. If you recognize anyone, please tell me which photograph you recognize and how or why you recognize the individual.
8. You should not discuss the identification procedure or its results with other eyewitnesses involved in the case and should not speak with the media regarding any identification you may make.
9. If you make an identification, I am required to ask you to state in your own words, how certain you are if you make an identification.

I, _____ understand the above information.

Lineup Administrator: _____

Order of Photographs shown: _____

Statement of Victim/Witness:

On the ____ day of _____, 20____, at ____ o'clock ____m), I viewed a Photo lineup. This lineup contained photographs of _____persons.

I did identify the person with the number ____.

Identification comments / Level of certainty: _____

Viewer's Signature: _____

I was unable to positively identify any of the persons in the lineup.

Viewer's Signature: _____

Other persons in attendance during lineup-including any translator if used:

Name and Address: _____

Name and Address: _____

ROSENBERG POLICE DEPARTMENT Field Identification Form

Case Number: _____

Read the following to the witness:

1. You will be advised of the procedures for viewing the field identification.
2. The fact that an individual is being shown to you, should not cause you to believe or guess that the guilty person(s) has been identified or arrested.
3. This *may or may not* be the person who committed the crime.
4. You are in no way obligated to identify anyone. It is as important to clear the innocent as it is to identify the guilty.
5. Regardless of whether you make an identification, the police will continue to investigate this incident.
6. If you recognize anyone, please tell me how you recognize the individual. We are required to ask you to state in your own words, how certain you are of any identification.

I, _____ understand the above information.

I understand the need to describe my level of certainty regarding identification and after viewing the person(s) shown have identified them as _____

Viewer's Signature: _____

Officer's printed name: _____

Officer's signature: _____

Other persons in attendance during field identification.

Name and Address: _____

Name and Address: _____