



WRITTEN DIRECTIVE	No. PD-14-0905-(02)	Page: 1 of 9
Subject: Eyewitness Identification	Effective Date:	04-4-14
	Supersedes/ Amends:	02-28-14
	Reference:	42.2.11, 42.2.12



I. Purpose

The purpose of this directive is to establish policy and procedure regarding the preparation, presentation, and conducting of photographic and in-person lineups and showups.

II. Policy

It shall be the policy of the Lynchburg Police Department to conduct photographic or in person lineups and showups in a manner that minimizes the risk of misidentification, strengthens evidentiary value, and maximizes the reliability of identifications.

III. Procedure

A. DEFINITIONS

1. *Lineup* – Any procedure in which a victim or witness is asked to identify a suspect from among a group of persons in order to determine or confirm the identity of the suspect. Such procedures involve actually viewing persons in live line-ups or show-ups or viewing photographs in a photo line-up.
2. *Photo Lineup* – An identification procedure, in which an array of photographs, including a photograph of the suspected perpetrator of an offense and additional photographs of other persons not suspected of the offense, is displayed to an eyewitness either in hard copy form or via a computer for the purpose of determining whether the eyewitness identifies the suspect as the perpetrator.
3. *Sequential Lineup* – A method of administration where photographs are shown to the victim/witness one at a time, with an independent decision on each, before the next photo is shown.
4. *Blind Administrator* – The person administering the line-up has no knowledge of which person in the line-up is the suspect.
5. *Blinded Administrator* – The person administering the line-up may know the identity of the suspect, but by virtue of the use of procedures and/or technology to accomplish this purpose, does not know which line-up member is being viewed by the eyewitness.

6. *Confidence Statements* – A statement in the victim/witness' own words articulating their level of confidence in the identification taken at the time the identification is made.
7. *Fillers* – Non-suspect photographs or line-up members
8. *Folder Shuffle Method* – A method requiring the lineup administrator to place a photograph of the suspect and filler photographs into blank folders with one photograph per folder. The folders are then “shuffled” before being presented to the witness.
9. *Showup* – An identification procedure in which an eyewitness is physically relocated to another location and presented with a single suspect for the purpose of determining whether the eyewitness identifies this individual as the perpetrator.

B. GENERAL

1. The Department will work collaboratively with the Commonwealth's Attorney to establish lineup procedures in order to assure the best use of this type of evidence and to assure that procedures established are compatible with the prosecution of criminal cases.
 - a. Specific instructions given to witnesses during a lineup procedure will be those established and approved in consultation with the Commonwealth's Attorney.
2. Department personnel shall strictly adhere to established procedures for conducting suspect lineups in order to avoid the possibility of error or of undue suggestiveness to witnesses.
3. Assure that law enforcement and/or prosecutorial personnel present and involved in the case are knowledgeable about the procedure so that they will not interfere or influence any witness during the process.
 - a. Unnecessary personnel should be removed from the location where the process is being conducted.
4. Department personnel will receive initial and refresher training in lineup procedures to establish uniformity and consistency of such procedures and to establish a high level of competence in carrying out this aspect of criminal investigation.
 - a. Such training may be accomplished through classroom training, individual instruction, or through material distributed through the eSign system.

5. Department personnel shall report any known errors, flaws or non-conformance with established procedure in the conduct of a suspect lineup that they may observe or become aware of to their supervisor in order that corrective actions may be taken and safeguards established to protect the innocent.
6. Prior to conducting a lineup or showup, officers should record a complete a description as possible of the perpetrator provided by the eyewitness and in the eyewitness' own words.
 - a. This statement should include information regarding conditions under which the eyewitness observed the perpetrator including location, time, distance, obstructions, lighting, weather conditions and other impairments, including, but not limited to alcohol, drugs, stress, the presence of a weapon or other relevant information.
 - b. The eyewitness should be asked if he or she needs glasses or contact lenses and if so, whether or not they were being worn at the time of the offense.

42.2.11 b.

7. Audio or video equipment may be used to record a show-up, photo line-up or in-person line-up. This recording will be submitted to the LPD voucher system.

C. SHOWUPS

42.2.12 a.

1. Showups should only be performed in exigent circumstances that require the immediate display of a suspect to an eyewitness.
 - a. Showups should be used when:
 - 1) There is an issue of officer or public safety
 - 2) There is a potential flight risk of the suspect
 - 3) A physical or photo lineup is not practical.
 - b. The length of time between the occurrence of the crime and the identification of the suspect should be reasonable
 - c. The eyewitness should be transported using a police vehicle to a neutral, non-law enforcement location where the suspect is being detained for the purposes of the show-up.
 - 1) Multiple witnesses should be transported in separate police vehicles to avoid suggestiveness or pressure to identify the suspect.
 - 2) A reasonable effort should be made to conceal the identity of the witness

42.2.12 b,c.

- d. If there are multiple eyewitnesses, only one eyewitness at a time should participate in the show-up procedure, independent of the others.
 - 1) If a positive identification is made and an arrest is justified, additional witnesses should be shown live or photo lineups.
- e. Officers should not conduct a show-up with a single photograph e.g. when displayed on an MCT, but should instead use a photo lineup.
- f. The eyewitness should be provided with the following instructions:
 - 1) The perpetrator may or may not be the person that is presented to the eyewitness;
 - 2) The eyewitness should not feel compelled to make an identification;
 - 3) The investigation will continue regardless of whether an identification is made;
 - 4) If identification is made, the witness will be asked to state, in his own words, how certain he is of any identification at the time that the identification is made; and
 - 5) The eyewitness should not discuss the identification procedure with other eyewitnesses involved in the case and should not speak to the media.
- g. No feedback or comment will be made by the officer on the selection by the witness (if a selection is made) or the outcome of the procedure.
- h. If identification is made, the officer should seek and document a clear statement from the eyewitness, at the time of the identification and in the eyewitness's own words, as to the eyewitness's confidence level that the person identified is the perpetrator.
 - 1) The documenting officer will record the witness's level of confidence statement in the police report.
- i. Officers should photograph a suspect at the time and place of the show-up to preserve a record of his or her appearance at the time of the show-up.
- j. Officers will document the outcome of the show-up process including the location, date, time, and any witnesses present at the event.

D. PHOTO LINE-UPS

- 1. When an investigating officer determines that a sequential photo line-up is warranted, the officer should utilize the *Photo Line-up Module* in the PISTOL system if a photograph exists in the system.

2. The photo array should consist of 6 photos for each suspect identification: 1 photo of the possible suspect, and 5 non-suspect or “filler” photos.
3. Filler photos should generally resemble the eyewitness’s description of the perpetrator in such a manner that the suspect does not unduly stand out from the fillers.
 - a. Create a consistent appearance between the suspect and fillers so that the photos depict individuals who are reasonably similar in age, height, weight, and general appearance, and are the same sex and race.
 - b. Avoid using fillers who so closely resemble the suspect that a person familiar with the suspect might find it difficult to distinguish the suspect from the fillers.
4. When there is a limited or inadequate description of the offender provided by the witness, or when the description of the offender differs significantly from the appearance of the suspect, fillers should resemble the suspect in significant features.
5. Select a photo that resembles the suspect’s description or appearance at the time of the incident if multiple photos are available.
6. When there are multiple suspects, each identification procedure should include only one suspect.
7. Avoid mixing color and black and white photos or mug shots with other types of snapshots.
8. Cover any portions of mug shots or other photographs that provide identifying information. If it is necessary to block-out or cover a notation, such blocking out or covering marks should be placed on all photos so that they will appear alike.
9. If there are multiple eyewitnesses, each eyewitness should view the lineup independently and separately.
10. When displaying the photos, the investigating officer will utilize the following “folder shuffle” method:
 - a. Obtain 10 file folders
 - 1) One folder will contain the suspect photograph, 5 folders will contain filler photographs, and 4 will not contain photographs.
 - b. Affix (1) filler photograph inside the first folder and label that folder #1. This will ensure that the suspect’s photograph will not be presented to the witness as the first photograph.

42.2.11 c.

- c. Affix the suspect photograph and remaining filler photographs into folders, but do not label the folders.
- d. In the remaining 4 empty folders place a page that contains the wording, "This folder intentionally left blank". This ensures the witness will not know when the last photograph has been viewed.
- e. With the exception of the #1 folder, shuffle the 9 unlabeled folders so that it is unknown which folder contains the suspect's photograph.
- f. After shuffling the 9 folders, label them as #2 through #10.
- g. Present all folders (#1 through #10) to the witness in numerical order.

42.2.11 d.**11. Presenting the folders to the witness**

- a. Each witness should be given the following instructions prior to viewing the photo line-up folders:
 - 1) this is an investigative procedure and that the perpetrator may or may not be in the photo line-up
 - 2) The investigating officer does not know which folder may contain the suspect's photograph
 - 3) The witness should not be compelled or obligated to make an identification
 - 4) Regardless of whether identification is made, the police will continue to investigate the incident.
 - 5) If identification is made, the witness will be asked to state, in his own words, how certain he is of any identification at the time that the identification is made.

42.2.11 e.**42.2.11 f.**

- a) No feedback or comment will be made by the officer on the selection by the witness (if a selection is made) or on the outcome of the procedure.
- b. Without looking at the photo in the folder, the investigating officer will hand each folder to the witness individually
 - 1) The witness must view the photo in the folder and then return it to the officer before being presented with the next folder.
 - 2) The order of the photos should be preserved, in a facedown position, in order to properly document the process.

- 3) If identification is made, the officer will note the photo number (in a manner that is not apparent to the witness) and continue showing the rest of the photos.
- 4) The witness may be permitted to review the folders a second time, but it is imperative that all folders are provided in the same order as the original presentation.

42.2.11 g.

c. Documenting the photo line-up results

- 1) The investigating officer will document the following in an IBR or follow up report:
 - a) Date, time, and location of the line-up procedure
 - b) Name of the officer administering the photo line-up
 - c) Names of the individuals present during the line-up
 - d) The number of photos shown
 - e) The order in which the folders were presented
 - f) A statement of confidence *in the witnesses own words* as to the certainty of his identification, taken immediately upon reaction to viewing
 - g) Any additional information deemed pertinent to the procedure
- 2) The photo line-up folders will be entered into the LPD voucher system.

E. IN-PERSON LINEUPS

1. All in-person line-ups should be conducted at the Lynchburg Police Department's West Building located at 805 Court St.
2. When an investigating officer determines that an in-person line up is warranted, the investigating officer will notify a Criminal Investigations Division Lieutenant, who will coordinate the line-up process.
3. The in-person line-up should consist of a total of six subjects (one possible suspect and five non-suspect or "filler" subjects).
4. The non-suspect or "filler" subjects need to resemble the suspect in significant features such as race, sex, age, height, and weight; but not look so much like one another as to be indistinguishable.

42.2.11 A

5. All non-suspect or “filler” subjects should be volunteers and their whereabouts known during the time the offense occurred.
6. All subjects in the physical lineup need to wear similar type clothing
7. The physical lineup will be videotaped and audio taped.
8. The Commonwealth’s Attorney’s Office will be notified prior to the physical lineup and may assist in the lineup process.
9. The possible suspect in the physical lineup will have the right to have an attorney present during the lineup. The possible suspect’s attorney will be allowed to observe the physical lineup only and will not be allowed to question any witnesses during the lineup.
10. When there are multiple witnesses, each witness will be given the identification procedure instructions without the presence of other witnesses. Witnesses should be told not to discuss the physical line-up until all witnesses have viewed the line-up.
11. Each witness will be given the following instructions prior to viewing the in-person lineup:
 - a. this is an investigative procedure and that the perpetrator may or may not be in the lineup.
 - b. the administering officer does not know which person in the lineup may be the suspect
 - c. the witness should not be compelled or obligated to make an identification
 - d. regardless of whether an identification is made, the police will continue to investigate the incident
 - e. if identification is made, the witness will be asked to state in his own words, how certain he is of any identification at the time that the identification is made.
 - 1) No feedback or comment will be made by the officer on the selection by the witness (if a selection is made) or on the outcome of the procedure.

42.2.11 E

- 12. The in-person lineup administrator will document the following in an IBR or follow up report:
 - a. Date, time, and location of the lineup procedure
 - b. Names of the individuals present during the lineup
 - c. The number and names of persons used in the lineup
 - d. The order in which the subjects were lined up
 - e. A statement of confidence in the witnesses' own words as to the certainty of his identification, taken immediately upon reaction to viewing
 - f. Any additional information deemed pertinent to the procedure

Original Signed

Parks H. Snead
Chief of Police

April 4, 2014

Date