

	Houston Independent School District Police Department Directives	DIRECTIVE: 450-014
		EFFECTIVE DATE: January 25, 2019
	SUBJECT: Eyewitness Identification	REVISED DATE: January 14, 2023

PURPOSE

This policy aims to establish guidelines for the identification procedures for eyewitness identification. This directive applies to all Houston Independent School District Police Department personnel.

DEFINITIONS

Blind Procedure: The person presenting the Lineup to the witness does not know which photo or person the suspect is in the Lineup.

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.

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 the procedure is completed. This method is employed when a blind procedure is not possible.

Sequential Live Line-up 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).

Show-up: In a show-up, a suspect is viewed by a victim or witness immediately following the commission of a crime (generally within one hour) to identify or eliminate the suspect as the perpetrator of the offense. This procedure normally occurs during the preliminary investigation and is commonly referred to as drive-by identification.

POLICY

Constitutional safeguards must be observed in identifying a crime's perpetrator(s). Eyewitness identification is a frequently used investigative tool. As such, officers shall strictly adhere to the procedures set forth herein to maximize the reliability of identifications, minimize unjust accusations of innocent persons, establish reliable evidence and conform to established legal procedures. Officers should consider the totality of the circumstances when employing a specific identification procedure. Factors to be considered include:

- a) The opportunity for the witness to view the perpetrator at the time of the crime;
- b) The witness's degree of attention;
- c) The accuracy of the witness's prior description of the perpetrator;

- d) The level of certainty demonstrated by the witness in the identification process;
and
- e) The length of time between the crime and the identification process.

SHOW-UP PROCEDURES

Some courts have suppressed identification evidence based on the use of show-ups. Due to this fact, it is preferable to arrest a subject if probable cause exists and then utilize a photographic lineup. However, when circumstances require show-ups, the following guidelines shall be followed. All show-ups must be captured on the in-vehicle video system (if a camera exists). If the officer cannot video or audio record the show-up, the officer must articulate the reason for not recording the show-up in the report.

Before conducting a show-up, the officer shall:

- a) Determine and document a description of the perpetrator. Show-ups shall not be conducted when the suspect is in a cell or dressed in jail clothing.
- b) Officers may handcuff or keep the suspect handcuffed during the show-up if the officer can articulate why it was necessary. This must be explained in detail in the officer's report.
- c) Transport the witness to the location of the detained suspect to limit the legal impact of the suspect's detention. The person stopped is detained for only that reasonable amount of time necessary to complete the procedure.
- d) When multiple witnesses are involved, separate the witnesses and instruct them to avoid discussing the details of the incident with one another. If identification is obtained from one witness through a show-up, use a photo lineup for the remaining witnesses.
- e) Caution the witness that the person they are viewing may or may not be the perpetrator.
- f) A suspect shall not be presented to the same witness more than once.
- g) Show-up suspects shall not be required to put on clothing worn by the perpetrator, speak words uttered by the perpetrator, or perform other actions of the perpetrator.
- h) Words or conduct of any type by officers that may suggest to the witness that the individual is or may be the perpetrator shall be avoided.
- i) Instruct the witness that a statement of certainty will be needed for identifications and non-identifications.

SHOW-UP VIEWING INSTRUCTIONS TO THE WITNESS

The officer shall read the following warning to the witness:

- a) The fact that an individual is shown to you should not cause you to believe or guess that the guilty person has been identified or arrested.
- b) This may or may not be the person who committed the crime.
- c) You are in no way obligated to identify anyone. It is as important to exclude innocent people as identifying the perpetrator.
- d) Regardless of whether you positively identify or not identify a person, the police will continue to investigate this incident.
- e) To prevent compromising the investigation, you should avoid discussing this identification process or its results.
- f) 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.

When conducting a show-up, the officer shall:

- a) Document the show-up on the Show-up Viewing Form.
- b) Read the instructions to the witness from the form.
- c) Document the time and location of the procedure.
- d) Document the distance the person fitting the description is from the crime scene when he is stopped.
- e) Record both identification and non-identification results in writing, including the witness's own words regarding their level of confidence in the identification.
- f) If the witness does not identify the person detained, the officer detaining the potential suspect should record the person's identity in the incident/offense report; if there is no report, the officer shall complete a Field Identification Card.
- g) Use of In-Car Imaging – The use of computerized images from driver's licenses or other sources may be useful in confirming the identity of a suspect personally known to the victim or witness before the commission of the crime. It should not be used in a lineup or show-up because it does not have the safeguards against misidentification built into those

procedures. An image should not be shown to the victim or witness when a subsequent lineup or show-up is likely to avoid undue influence.

PHOTO LINEUP PROCEDURES

A photo lineup is the structured presentation of six photographs, one of which is a photograph of the suspect. The remaining photos are of people of similar appearance. The Lineup will be shown to a victim or witness to identify or eliminate the suspect as the perpetrator. For logistical reasons, a photo lineup is preferred to conduct an eyewitness lineup for suspect identification or elimination.

The preferable method of presenting photo lineups is through a blind procedure using the folder shuffle method and a sequential photo array; the officer presenting the Lineup to the witness does not know who the suspect is.

During the lineup viewing, the officer who knows the suspect is not in the room. Preferably, photo lineups will be conducted at a department facility where the process can be video recorded. When circumstances prevent a witness from coming to a department facility or the video equipment is out of service, an audio recording of the lineup proceeding will be made. Officers will document the method of recording in their report.

PREPARING THE LINEUP

Select Suspect Photograph

If multiple photos of the suspect are available, choose the photograph 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 photo in the library.

Selecting Fillers

All persons in the photo array should be of the same sex and race and 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. Where there is a limited or inadequate description of the perpetrator provided by the witness, where the perpetrator's description differs significantly from the suspect's appearance, 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.

Choosing the Number of Fillers

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

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.

Place Photographs in Order

Place a filler in a folder and set it aside for placement in the lead position.

Place the remaining photographs that comprise the photo array in separate folders and place them in random order (mix them up) so you do not know which photograph is in which folder.

Take the folder you set aside in step (i) above and place it in the lead position.

Place two empty folders at the end.

Number the folders.

ADMINISTRATION OF LINEUP

This department intends to present all photographic lineups to witness blindly and use the folder shuffle method and a sequential presentation of the photographs.

If a department sworn member is not available to conduct the Lineup, a blind administrator or another local agency's sworn member may be used. The assigned investigator preparing the Lineup should ensure the assisting officer knows the procedures before presenting a lineup to a witness.

If another sworn officer is unavailable within a reasonable period, the assigned investigator may present the Lineup to a witness using the Blinded Photo Array Folder Shuffle Method. The Photographic Line-up Form is changed to indicate the procedure used, the same presentation procedures are used below, and the process is thoroughly documented. The investigator should also document the reasons for not using a blind administrator.

When multiple witnesses are involved, they should be separated as soon as possible to preserve the integrity of their memories; instruct all witnesses to avoid discussing the details of the incident with one another. Show the Lineup to only one witness at a time.

LINE-UP VIEWING INSTRUCTIONS TO THE WITNESS

Read aloud the Lineup containing the following:

- a) The fact that these photographs are being shown to you should not cause you to believe or guess that the guilty person has not been identified or arrested.
- b) The person who committed the crime may or may not be in this lineup.
- c) I do not know the identity of the perpetrator.
- d) You are in no way obligated to identify anyone. It is as important to exclude innocent people as identifying the perpetrator.
- e) Regardless of whether you identify, the police will investigate this incident.
- f) You will be shown several photographs. All photographs will be shown, even if an identification is made. Please tell me which photograph you recognize and how you recognize the individual whenever you recognize anyone.
- g) To prevent compromising the investigation, you should avoid discussing this identification process or its results.
- h) Confirm that the witness understands the nature of the lineup procedure.

LINE-UP PRESENTATION AND DOCUMENTATION

Avoid any behavior in front of the witness that may influence the witness's selection. Present each folder to the witness separately (one at a time) in order. The blinded administrator should not 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.

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. This statement should be documented on the Lineup Viewing Form. Even if a suspect has been identified, when employing sequential viewing, show the remaining photographs.

Record any identification results and have the witness sign the photo and the witness's statement of certainty.

Document the photo lineup procedures in writing, including:

- a) Identification information and sources of all photos used;
- b) Names of all persons present at the photo lineup,
- c) Date and time of the identification procedures,

- d) Instruct the witness not to discuss the identification procedures or results with other witnesses involved in the case and discourage contact with the media.

When documenting an identification procedure, the officer shall:

- a) Record both identification and non-identification results in writing, including the witness's own words regarding the level of confidence in the identification.
- b) Ensure that the results are signed and dated by the witness.
- c) Ensure that no materials indicating previous identification results are visible to the witness.
- d) Ensure the witness does not write on or mark the materials used in other identification procedures.

LIVE LINEUPS

Live lineups may necessitate the presence of the suspect's attorney and require the procurement of at least four persons similar in appearance to the suspect. Therefore, they are discouraged as a suspect identification technique. If a live lineup is necessary in a particular case, the procedure must be coordinated with the prosecutor's office, with a commander's approval or above.

TRAINING

All sworn personnel will receive show-ups and lineups during initial recruit training. New detectives and supervisors will receive training on show-ups and lineups during orientation.

Approved By


Pedro Lopez Jr., Chief of Police