

	LANE COUNTY SHERIFF'S OFFICE POLICY	Number: G.O. 8.11
		Issue Date: December 13, 2013
		Revision Date:
CHAPTER: Investigations		
SUBJECT: Eyewitness Identification		Related Laws: (<i>Manson v. Brathwaite</i> , 432 U.S. 98, 97 S. Ct. 2243, 53 L. Ed. 2d 140 [1977])

POLICY: Employees must act reasonably and within the limits of their authority as defined by statute and judicial interpretation, insuring that the rights of both the individual and society are protected.

RULE: This procedure is established in order to implement the most reliable method for the collection of eyewitness evidence and to ensure that the highest quality evidence possible is obtained from eyewitnesses.

DEFINITIONS:

1. Independent Administrator: The administrator does not know the identity of the suspect. Inter-changeable with “Blind Presentation”
2. Blind Presentation: The administrator does not know the identity of the suspect. Inter-changeable with “Independent Administrator”
3. Functional Equivalent: The administrator does know the identity of the suspect, but cannot see and does not know the order of the photos, and the witness knows the administrator does not know the order. Inter-changeable with “Blinded Presentation”
4. Blinded Presentation: The administrator does know the identity of the suspect, but cannot see and does not know the order of the photos, and the witness knows the administrator does not know the order. Inter-changeable with “Functional Equivalent”.
5. Confidence Statement: A witness’s statement – NOT a scaled assessment – of his/her confidence that his/her selection is the suspect; taken immediately after a pick has been made.
6. Photo Lineup: A presentation of photographs of persons
7. Administrator: The person presenting a lineup to a witness

8. Showup: A presentation of a live person in the field that is close in time and proximity to the incident under investigation
9. Sequential Photo Display: A presentation of photographs one at a time, retrieving one photo before presenting another. Inter-changeable with Sequential Photo Lineup.
10. Simultaneous Photo Lineup: A presentation at the same time of photographs arrayed together, either manually constructed or computer generated – historically referred to as a “six pack” lineup

PROCEDURE:

I. Conducting a Sequential Photo Display/Photo Lineup in an Investigation

A. Development of the Photo Lineup

1. Obtain a thorough suspect description from each witness before presenting the photo lineup.
2. The photo lineup shall consist of no fewer than six photographs, including one of the suspect.
3. All photos should be similarly sized and none should be easily distinguished from the others. There should be no identifying numbers or text with any photo.
 - a. Filler photographs (photos not of a suspect) should generally fit the description of the suspect.
 - b. When there is limited or insufficient suspect description or when the suspect description differs significantly from the available photographs(s) of the suspect, the filler photographs should resemble the suspect photograph, not the description.
4. The photos shall be numbered and shall be loose or in individual folders. If using the Functional Equivalent (FE) or Blinded Presentation method (described in A. 1. Below) the photos should be placed in individual folders.
5. When conducting a single lineup for multiple witnesses, the photographs should be renumbered for each witness so that one witness cannot relay to the next which number photograph they believe was the suspect.
6. When conducting multiple lineups for multiple suspects the same filler photographs should not be used, even if they resemble multiple suspects.

- B. Presentation of the Sequential Photo Display/Photo Lineup
1. Independent Administrator / Blind Presentation of Photo Lineup
 - a. The Investigator Assigned to prepare the Photo lineup should arrange for an Independent Administrator (IA) to present/administer the photo lineup. The IA Administrator, by definition, does not know the identity of the suspect.
 - b. Prior to presentation, the Administrator shall read the witness instructions from the Witness Side of the Sequential Photo Display Form, ensuring and documenting that the witness understands the instructions.
 - c. The Administrator shall present the photos to the witness sequentially, with one photo replacing another so that no two are presented at the same time.
 - c. The Administrator shall present each photo to the witness, even if the witness identifies a previous photo as the suspect.
 - d. If the witness requests, the Administrator may present the photos again, but each photo must be presented and the photos must be presented sequentially, even if the witness only asks to see one or a few. The Administrator will note the total number of times the lineup was presented.
 - e. If the witness picks a photo, the Administrator shall ask how certain the witness is that the photo is of the suspect and ask why that photo was picked. The witness's response, referred to as a "confidence statement" shall be carefully documented on the Administrator Side of the Sequential Photo Display Form. The witness shall NOT be prompted to provide a scaled assessment of confidence.
 - f. At the conclusion of the display of the photo lineup, the witness will complete the bottom portion of the Witness Side of the Sequential Photo Display Form. This includes the witness writing a "confidence statement" in their own words.
 - g. The witness will sign and date the bottom of the Witness Side of the Sequential Photo Display Form.
 2. Functional Equivalent / Blinded Presentation of Photo Lineup

- a. In the event that an Independent Administrator is not available, the Functional Equivalent (FE) or “Blinded Presentation” method may be used. In this case, the Administrator may know the identity of the suspect, however extra measures are taken to prevent the Administrator from seeing or knowing which photo is being shown to the witness.
- b. The photos should be numbered and placed in individual folders by someone other than the Functional Equivalent Administrator.
- c. The witness will be advised that the FE Administrator cannot see the photos when the file folder is opened by the witness for viewing the photo. The witness will be advised that the FE Administrator does not know the order of the photos.
- d. The lineup presentation shall continue as in B.1.b-g above.

II. Conducting a Showup in an Investigation

- A. Some circumstances require the prompt display of a suspect to a witness – for example, when a suspect is detained in the field. Showups should be conducted as follows:
 1. Consider if a photo lineup (Sequential Photo Display) can be conducted instead.
 2. Obtain a thorough description of the suspect from each witness prior to the showup, and thoroughly document each witness’s description.
 3. Ensure all officers avoid suggestive words or conduct while preparing for the presentation.
 4. If possible, avoid unnecessarily tarnishing the suspect with handcuffs or presenting him from the backseat of a patrol car.
 5. **Transport the witness, not the suspect.**
 6. Separate witnesses to avoid communication between them.
 7. Explain that the person they will view may or may not be the suspect.
 8. Document the witness’s statement upon viewing the person in the showup.

SEQUENTIAL PHOTO DISPLAY FORM

(Witness Side)

OFFENSE: _____ Lineup ID #/Evidence Item # _____

WITNESS: _____ DOB _____ ADMINISTRATOR: _____

DATE: _____ TIME: _____ INVESTIGATOR ASSIGNED: _____

READ TO WITNESS BEFORE PHOTO DISPLAY:

I am about to show you a set of photos. The person who committed the crime
[or: _____] may or may not be included.

(SELECT ONE:)

____ (IA) I do not know whether the person being investigated is included.

OR

____ (FE) I do not know the order of the photos.

Even if you identify someone during this procedure, I will continue to show you all photos in the series.

Keep in mind that a photo may be an old one. Some things, like hair styles, can be changed, and skin colors may look slightly different in photographs.

You should not feel you have to make an identification. It is just as important to clear innocent persons as it is to identify the guilty. Whether or not you identify someone, the investigation will continue.

You will see only one photo at a time. They are not in any particular order. Take as much time as you need to look at each one. You should avoid discussing this procedure or the results with any other potential witness in the case.

Please initial here if you understand these instructions. _____

TO BE COMPLETED BY WITNESS AFTER PHOTO DISPLAY:

The sequential photo lineup I was shown consisted of ____ photos.

I am unable to select any photo as being the person(s) who _____.

I have selected photo(s) # _____ as the person who _____.

(IF SELECTION MADE) How certain are you of your identification?

Witness signature Date: _____

(Have witness sign and date any photo picked and attach to this report.)

SEQUENTIAL PHOTO DISPLAY FORM (Administrator Side)

Witness: _____ **Lineup ID #** _____

Administrator does does not know identity of suspect.

Instructions to administrator (READ BEFORE SHOWING PHOTO DISPLAY):

A sequential photo lineup must either be presented by an *independent administrator* [IA](a person who does *not* know the identity of the suspect) or, if unavailable, a *functional equivalent* [FE] method must be used. Functional equivalent means (1) that the administrator cannot see and does not know the order of the photos and (2) that the witness knows the administrator does not know the order. Before beginning the photo display, determine which of these two methods is used (IA or FE), select the appropriate instruction # 2 and cross out the inapplicable # 2.

Fill out the case information on the top of the form. Read instructions on reverse side to witness and have witness initial at end. Show photos one at a time. Only one photo at a time may be visible. As each photo is displayed, ask "Is this the person who [insert crime]?" If yes, ask, "How certain are you of your identification?" Even if identification is made, continue showing remaining photos. After all photos have been displayed, repeat display ONLY if witness requests it. In any repeat, ALL photos must be displayed in the same sequence, even if the witness only requests to see a particular photo or photos again.

Ask witness to complete witness portion of the form and sign it. If any selection is made, have the witness sign and date the photo (or photos) selected. The photo display used must be preserved. (Attach copy to this form.) BE CAREFUL NOT TO PROVIDE ANY FEEDBACK TO WITNESS ON EITHER IDENTIFICATION OR NON-IDENTIFICATION.

After witness has completed witness portion of the form, complete administrator portion of the form. This includes asking the certainty question, administrator observations and number of times display was shown. Departmental policy may also require a standard supplementary report.

To be completed during and after photo display:

Comments made by the witness to any photograph during the photo display (note photo #):

(If identification made) How certain are you of your identification?

Additional observations by administrator (e.g., any physical response or other comments by witness):

Sequential lineup was shown once _____ times

_____ Date: _____ Time: _____

Administrator's signature

Have witness complete front side. Attach copy of photo display used. Have witness sign and date any photo picked.