

LINEUPS, SHOW-UPS, AND PHOTOGRAPHIC IDENTIFICATION

- c. Take as much time as you need to look at each person and let me know if you see the suspect.
 - d. Remember that features such as head and facial hair can change.
 - e. The person who committed the crime may or may not be present; therefore you do not have to identify anyone.
 - f. Remember that the investigation will continue whether you do or do not identify someone.
 - g. Do you have any questions?
2. It is important to follow several general guidelines in order to maximize the reliability of identifications.
 - a. Only one suspect should be included in each lineup even if there are multiple suspects in the case.
 - b. The lineup should consist of at least five persons.
 - c. If at all possible, officers should not be used as fill-ins for the lineup.
 - d. Lineups may be conducted sequentially (where the witness only sees one member of the lineup at a time) or simultaneously.
 - e. "Blank" lineups may be conducted, where witnesses are shown more than one lineup. In this case the suspect would only be present in one of the lineups.
 3. The primary investigating officer should be responsible for the following:
 - a. Scheduling the lineup on a date and at a time that is convenient for all concerned parties.
 - b. Arranging for the suspect to be available for the lineup, including, if necessary, transportation from a detention center.
 - c. Including only one suspect in each identification procedure.
 - d. Making arrangements to have four or more persons act as "fill-ins" during the lineup who are the same sex and approximate height, weight, age and physical appearance. They should also appear to be the same race and be similarly clothed.
 - e. Avoiding use of other persons in the lineup who so closely resemble the suspect that a person familiar with the suspect might find it difficult to distinguish the suspect from the fillers.
 - f. Creating a consistent appearance between the suspect and the fillers with respect to any unique or unusual feature (e.g. scars, tattoos, and facial hair) used to describe the perpetrator by artificially adding or concealing that feature.
 - g. Placing suspects in different positions sequentially in each lineup. This holds true for both different cases and with multiple witnesses in the same case.
 4. The officer in charge of conducting the lineup shall be responsible for the following:
 - a. In a case where the suspect is a prisoner and has been formally charged in the case, ensure that they are informed of their right to counsel. Any waiver should

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- be documented in writing or by electronic recording. Suspects who have not been formally charged have no right to counsel at a lineup.
- b. Document any waiver of counsel either in writing or via electronic recording.
 - c. If defense counsel is present allow them sufficient time to confer with their client prior to the lineup and observe the manner in which the lineup is conducted.
 - d. Advise the suspect that they may take any position in the lineup and may change positions prior to summoning a new witness.
 - e. Ensure that all persons in the lineup are numbered consecutively and are referred to only by number.
 - f. Ensure that witnesses are not permitted to see nor are they shown any photographs of the suspect immediately prior to the lineup.
 - g. In the case of multiple witnesses, ensure that only one witness views the lineup at a time and that they are not permitted to speak with one another either before or after the lineup proceedings regarding the identification of the suspect.
 - h. Avoid using statements, clues, casual comments or providing unnecessary or irrelevant information that in any manner may influence the witnesses' decision-making process or perception.
 - i. Do not praise or congratulate witnesses for picking the suspect out of the lineup. This may serve to convince a witness that they have picked out the actual perpetrator when they actually have doubt. This increases the chances of a miscarriage of justice and could lead to suppression of later in-court identification of the suspect.
 - j. Following the lineup, officers should ask the witness how confident they are in their identification and document the witness level of confidence on a scale of one (1) to ten (10) with one being not at all confident and ten being very confident. Officers should advise the witness NOT to discuss the case with other witnesses and NOT to indicate in any way that they have identified or not identified someone.
 - k. Complete the attached Lineup, Show-up, and Photographic Identification Form and ensure that an electronic recording (videotape preferably) of the lineup proceeding is made and retained. Any deviation from this must be documented. All recordings should be handled in accordance with *OPR:17 Evidence/Property Handling*.

NOTE: The Courts have held that requiring a suspect participating in a lineup to speak, wear certain clothes or carry out other actions such as standing, walking, or gesturing are not violations of their Fifth Amendment right against self-incrimination.

B. PHOTOGRAPHIC IDENTIFICATION

1. If possible, photographic identifications should be administered by an individual who does not know which photograph indicates the suspect. This will prevent any inadvertent or unintentional suggestions from occurring. Prior to viewing the photographs, witnesses shall be given specific instructions. The instructions can be found on the Lineup, Show-up, and Photographic Identification Form. This will help the individual make an identification or non-identification based on their memory. The instructions include the following:

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- a. I understand that you saw the person who committed this crime.
 - b. You are going to view a group of pictures.
 - c. Take as much time as you need to look at each picture and let me know if you see a picture of the suspect.
 - d. Remember that features such as head and facial hair can change.
 - e. The person who committed the crime may or may not be present in the group of pictures; therefore you do not have to select one of these pictures.
 - f. Remember that the investigation will continue whether you do or do not select a picture.
 - g. Do you have any questions?
2. Photographic identifications must use multiple photographs. Officers shall show the witness the photographs simultaneously by using the standardized departmental photo array. When the photo array is not available, the photographs shall be shown individually to a witness.
3. The general rules discussed in the section for lineups also apply to photographic identifications. Specific procedures for photographic identification include the following:
- a. At least six photographs of individuals will be used.
 - b. Individuals must be the same sex as well as reasonably similar in age, height, weight and general appearance. They should also appear to be the same race.
 - c. Use similar types of photographs. Do not mix color with black and white photos, use photos of the same basic size and composition, and do not mix mug shots with other photos.
 - d. Include only one photo of the suspect.
 - e. Cover any information on the photograph, which provides identifying information on the subject.
 - f. When possible have an officer who does not know the identity of the suspect conduct the photographic identification with the witness.
 - g. Show photographs to one witness at a time.
 - h. Do not make suggestive statements that may influence the judgment or perception of the witness.
 - i. Do not praise or congratulate witnesses for picking the suspect out of the lineup. This may serve to convince a witness that they have picked out the actual perpetrator when they actually have doubt. This increases the chances of a miscarriage of justice and could lead to suppression of later in-court identification of the suspect.
 - j. Following the photographic identification, officers should ask the witness how confident they are in their identification and document the witness level of confidence on a scale of one (1) to ten (10) with one being not at all confident and ten being very confident. Officers should advise the witness NOT to discuss the case with other witnesses and NOT to indicate in any way that they have identified or not identified someone.

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- k. In the case of a photo array, officers should have the witness circle the photograph they identified as well as put their initials, the date, and time next to it.
- l. Ensure that positive identifying information exists for all individuals.
- m. Complete the attached Lineup, Show-up, and Photographic Identification Form and ensure that an electronic recording of the photographic identification proceeding is made and retained. Any deviation from this must be documented. All recordings should be handled in accordance with *OPR:17 Evidence/Property Handling*.
- n. All photo arrays used in investigations should be maintained by the primary investigating officer. Once the photo array has been used, it should be sealed with evidence tape and handled pursuant to *OPR:17 Evidence/Property Handling*.

C. SHOW-UPS

- 1. Show-ups are a highly scrutinized law enforcement action, and many courts have suppressed identification evidence based on their use because of the inherent suggestiveness of the practice. Therefore, show-ups should be avoided when possible, especially in situations where lineups or photographic identification may be used.
- 2. The Department of Public Safety acknowledges that a show-up may provide sufficient probable cause early in an investigation to help avoid the escape of a prime suspect or help in the release of an innocent person. This may potentially refocus the investigation to more productive areas. For this reason, show-ups may be reasonable and appropriate in some situations.

Show-ups should NOT be used when independent probable cause exists to arrest a suspect.

- 3. Prior to the show-up, witnesses shall be given specific instructions, which can be found on the Lineup, Show-up, and Photographic Identification Form. This will help in an identification or non-identification based on their memory. They include the following:
 - a. I understand that you saw the person who committed this crime.
 - b. You are going to view a person or persons.
 - c. Take as much time as you need to look at the person(s) and let me know if you see the suspect.
 - d. The person who committed the crime may or may not be present; therefore you do not have to identify anyone.
 - f. Remember that the investigation will continue whether you do or do not identify someone..
 - g. Do you have any questions?
- 4. When show-ups are used the following procedures should be followed:
 - a. Prior to a show-up, the witness should provide officers with as complete a description of the suspect as possible. The description shall be documented on the Lineup, Show-up, and Photographic Identification Form.

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- b. The witness should be taken to the suspect's location rather than bringing the suspect to the witness.
- c. The witness should be transported in a departmental vehicle.
- d. Show-ups should not be conducted when the suspect is in a cell, handcuffed or in jail clothing.
- e. Show-ups should not be conducted with more than one witness present at a time. In instances where a show-up is conducted separately for more than one witness, the witnesses should not be permitted to communicate before or after the show-up regarding the identification of the suspect.
- f. The same suspect should not be shown to the same witness more than one time.
- g. Suspects in a show-up 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.
- h. Officers should avoid any words or actions, which may suggest to the witness that the individual is or may be the perpetrator.
- i. Officers should not praise or congratulate the witness for picking out the suspect. This may serve to convince a witness that they have picked out the actual perpetrator when they actually have doubt. This increases the chances of a miscarriage of justice and could lead to suppression of later in-court identification of the suspect.
- j. Following the show-up, officers should ask the witness how confident they are in their identification and document the witness level of confidence. Officers should advise the witness NOT to discuss the case with other witnesses and NOT to indicate in any way that they have identified or not identified someone.
- k. When a show-up is conducted it shall be documented, *at a minimum*, in an offense incident report. The *Lineups, Show-ups, and Photographic Identification Form* can be used and submitted in addition to the offense incident report. Officers shall ensure that an electronic recording of the show-up is made and retained. Any deviation from this must be documented. All recordings should be handled in accordance with *OPR:17 Evidence/Property Handling*.

7.0 ATTACHMENTS

A. Lineups, Show-ups, and Photographic Identification Form

8.0 APPROVAL

APPROVED BY: s/Gregory J. Fouratt DATE: June 27, 2014
DPS Cabinet Secretary