

	<b>PALACIOS POLICE DEPARTMENT</b>	
	<b>Policy 7.42 Eyewitness Identification</b>	
	<b>Effective Date:1/04/2021</b>	<b>Replaces:02/07/2006</b>
	<b>Approved:</b> <i>Milton Rivera</i> <b>Milton Rivera, Chief of Police</b>	
	<b>Reference: 7.32</b>	

## I. POLICY

This policy is designed to maximize the reliability of identifications and to minimize unjust accusations of innocent persons.

## II. PURPOSE

The purpose of this policy is to establish department guidelines for a live line-up, a photographic line-up, 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 an incident under investigation.

## III. DEFINITIONS

- A. Administrator: The person charged with presenting a photographic line-up or a live 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 a photographic line-up or a live line-up.
- D. 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 or the live line-up.
- E. Blind Manner: The presentation of a photographic line-up by either a blind administrator or a blinded administrator.
- 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 of persons used in a photographic line-up whose race, sex, age, height, weight, hair style, and general appearance resemble the suspect.

- H. Folder Method: A photographic line-up that places the photographs in separate folders or envelopes that are randomly shuffled prior to presentation so that the assigned investigator does not know which photograph the witness is viewing.
- I. Illiterate Person: An individual who speaks and understands English but cannot read and write English.
- J. Interpreters: Individuals with the skills necessary to enable them to communicate with an illiterate person or a person with limited English proficiency to the degree that ensures the person clearly understands all instructions given them that pertain to viewing a suspect in any identification procedure. These instructions are given prior to the line-up.
- K. Live Line-up: 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 or eliminating suspects.
- L. Person with Limited English Proficiency: An individual who is unable to communicate effectively in English with a level of fluency expected of a native English speaker. Such a person may have difficulty speaking, reading, or writing in English. The definition includes persons who can comprehend English but are physically unable to write.
- M. Photographic Line-up: A collection of photographs that includes one of the suspect and filler photographs. The photographs are placed in random order and shown to a witness for the purpose of identifying and eliminating suspects.
- N. Sequential Viewing: An identification procedure in which photographs are shown one at a time to a witness.
- O. Simultaneous Viewing: An identification procedure in which all photographs are shown at the same time to a witness.
- P. Suspect: An individual who has been specifically identified by the investigation as possibly being the person who committed the crime.
- Q. Witness: An individual who has witnessed an incident or some part of an incident who might be a complainant, a victim, an 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 administering them and the difficulty of obtaining a sufficient number of individuals with similar physical characteristics. An investigator who determines that a live line-up is needed should contact the district attorney for procedural and technical assistance, and the line-up should be carried out with the principles of this policy in mind.

- B. Photographic line-ups are approved for use by this department if the procedures listed below 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 the following:
1. Preparing the photographic line-up, including the selection of fillers, and ensuring each of the photographs is 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, or non-English speaking, or has limited English proficiency, the investigator will arrange for assistance to translate the photographic line-up 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 for future reference, whether an identification is made or not. For future reference, the photos in their original condition, full information about the identification process, the photographic line-up form, and the audio/video recording of the administration process are placed into evidence after the procedure.
  5. The assigned investigator should prepare the photographic line-up according to the following guidelines:
    - a. Include only one suspect in each identification procedure.
    - b. Select fillers that generally fit the witness's 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 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 line-ups 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.
    - h. Do not mix color and black and white photos.

- i. Use photos of the same size and basic composition.
- j. Mug shots should not be mixed with other photos.
- k. If mug shots are to be used, cover any portions that provide identifying information about the subject.
- l. All individuals in the photographic line-up and/or the origin of the photos should be known to the investigator, if possible.
- m. Photos should be reasonably contemporary.
- n. Do not use more than one photo of the same suspect.
- o. View the array, once completed, to ensure that the suspect does not unduly stand out.

B. The administrator is responsible for the following:

1. Ensuring that everyone connected with the line-up is 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. If a sworn member of the department is not available to conduct the line-up, a blind administrator or a sworn member of another local agency may be used. The assigned investigator preparing the line-up should ensure the assisting officer is aware of the procedures prior to presenting a line-up to a witness.
- C. If another sworn officer is not available within a reasonable period of time the assigned investigator may present the line-up to a witness using the folder method. The witness is shown only one folder at a time. The photographic line-up form is changed to indicate the procedure used and the same presentation procedures are used (see below) and the process used thoroughly documented. The investigator should also document the reasons for not being able to use a blind administrator.
- D. Police personnel attending the line-up presentation should not make any suggestive statements or take any other action that may influence the judgment or perception of the witness.
- E. Prior to beginning the presentation, the person conducting the line-up must 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, he/she must contact the assigned investigator to determine if the identification process should continue, and document this action in the supplement report.

- F. The administrator arranging the line-up must provide the witness with a photographic line-up 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 witness's memory. The officer conducting the line-up should (1) read the instructions and admonitions verbatim from the form, (2) ensure that the witness understands the instructions before proceeding, (3) obtain the witness's signature indicating he/she understands the procedure, and (4) sign the form as "administrator." Any instruction given to the witness prior to the procedure shall include a statement that the person who committed the offense may or may not be present in the procedure.
- G. The administrator must show the witness the photographs in a random order, one at a time, 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.
- H. If the witness identifies a suspect, the administrator must record the number or other identification of the photograph. A witness who makes an identification based on a photograph or live lineup identification procedure shall be asked immediately after the procedure to state, in the witness's own words, how confident the witness is in making the identification. No person shall suggest wording of any kind to the witness. If the witness seeks clarification an officer shall only reply that the statute requires the statement of confidence to be in the witness's own words.
- I. All photographs must be shown.
- J. The administrator must complete the statement-of-witness portion of the form, including documenting the witness's confidence statement in his/her own words, regarding the relative certainty of any identification. The witness must complete and sign the appropriate portion of the form. The administrator must return all files, photographs, and forms to the assigned investigator and complete an offense supplement on the identification procedure.
- K. The administrator shall not provide any feedback of any kind to the witness during the procedure, including whether or not the suspect was picked.

## **VII. DOCUMENTATION OF PHOTOGRAPHIC LINE-UPS**

- A. All presentations of photographic line-ups to witnesses will be video and audio recorded unless the issues described below prevail. Upon completion of the presentation process, the video/audio recording will be (Options) (copied electronically into the case file) (copied onto DVD and placed into evidence) (placed into evidence). The administrator will also complete a detailed supplement report that describes the line-up presentation process and the results. The recording, supplement report, the original of all photographs, and the photographic line-up form will be returned to the assigned investigator.

1. If the witness is afraid or refuses to be recorded, or if the identification process might put the witness in danger if subsequently identified, a detailed written report in an offense supplement outlining the line-up presentation process and result will substitute for the video and audio taping.
2. Information should be included in the report as to why the recording process was not used.
3. The recording device will be turned on prior to entering the room and all parties will be identified.

## **VIII. FIELD IDENTIFICATION PROCEDURES**

The use of field identification should be avoided whenever possible in preference for the use of a photographic or live line-up. 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 guidelines listed below should be followed.

### **A. Procedures for 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 either 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 field identification.
4. No field identification will be done if the witness is unsure of his/her ability to identify the suspected individual.
5. Whenever possible, the witness should be transported to the location of the suspect rather than bringing the suspect to the witness.
6. Field identifications should not be attempted more than two hours after the commission of a crime.
7. 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.
8. Field identification should be conducted with only one witness present at a time. If there is more than one witness a separate field identification should be conducted for each one. If one witness positively identifies the individual, the field administrator should consider making an arrest and using the above photographic line-up procedures for other witnesses.
9. The same suspect should not be presented to the same witness more than once in either field or photographic line-ups.

10. 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.
11. 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.
12. These restrictions apply not only to civilian field identifications, but to field identifications in which an officer is the witness.

#### B. Documentation of Field Identifications

1. The officer conducting field identification should use the field identification form to inform the witness of the procedure and obtain evidence that he/she understands the procedure.
2. The officer will video/audio tape the witness viewing the suspect using the squad car video and audio recording system and will document on the field-identification form the witness's comments regarding the suspect. 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.

**PALACIOS POLICE DEPARTMENT**

**Photographic Line-up 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 line-up and you should not feel compelled to choose anyone.
6. Regardless of whether you make an 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 of the identification.

I, \_\_\_\_\_, understand the above information.

Line-up administrator: \_\_\_\_\_ Order of photographs shown: \_\_\_\_\_

**Statement of Victim/Witness:**

On the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at \_\_ o'clock \_\_m), I viewed a photo line-up. This line-up 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 line-up.

Viewer's signature: \_\_\_\_\_

Other persons in attendance during line-up, including any translator if used:

Name and address: \_\_\_\_\_

Name and address: \_\_\_\_\_



**PALACIOS POLICE DEPARTMENT**  
**Field Identification Form**

Case Number: \_\_\_\_\_

**Read the following to the witness:**

1. You will be advised of the procedures for viewing in a 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.
7. 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 him/her/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: \_\_\_\_\_