


<b>LEESBURG POLICE DEPARTMENT REGULATIONS AND GENERAL ORDERS MANUAL</b>		
General Order Number: 305	Section: CRIMINAL INVESTIGATIONS	Effective Date: SEPTEMBER 2022
Title: <b>PHOTOGRAPHIC AND IN-PERSON LINEUPS</b>		
Accreditation Standards: OPR.02.03, OPR.02.07, OPR.02.08		
Review Date: JANUARY 2024	Total Pages: 7	Chief of Police: 

I. POLICY

The Leesburg Police Department attaches the highest priority to the protection of the citizens that we serve. Recognizing that innocent persons may occasionally get caught up in the criminal investigative process and be wrongly implicated in criminal matters, we attach equal importance to clearing innocent persons as that attached to arresting the guilty.

II. PURPOSE

To establish a policy for the preparation and presentation of photographic and in-person lineups

III. DEFINITIONS

- A. Live Lineup  
A live lineup is any procedure in which a witness to a crime or other incident is asked to identify one or more suspects from among a group of persons in order to determine or confirm the identity of the suspect(s). Such procedure involves the viewing of persons rather than photographs. Implementation of this procedure must be coordinated with the Commonwealth Attorney’s office and a member of Command staff.
- B. 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 computer for the purpose of determining whether the eyewitness identifies the suspect as the perpetrator.
- C. 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.
- D. Blind Administrator  
The person administering the line-up has no knowledge of which person in the photo/live line-up is the suspect.
- E. Blinded Administration  
This is a lineup procedure in which the administrator 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 lineup member is being viewed by the eyewitness.
- F. 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.
- G. Fillers  
Non-suspect photographs or line-up members.

H. 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 individually to the witness.

I. Show-up

A show-up procedure is an identification procedure in which an eyewitness is presented with a single suspect for the purpose of determining whether the eyewitness identifies this individual as the perpetrator.

IV. PROCEDURES - General responsibilities

- A. Leesburg Police 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.
- B. Leesburg Police Department personnel shall receive initial and refresher training annually in lineup procedures to establish uniformity and consistency of such procedures and to establish a high level of competence in carrying out this important aspect of a criminal investigation.
- C. Leesburg Police Department personnel shall report any known errors, flaws or non-conformance with established procedures 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.
- D. Leesburg Police Department personnel may confer with the Office of the Commonwealth’s Attorney in establishing lineup procedures or when providing instructions to witnesses 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. Likewise, instructions given to witnesses during a lineup procedure will be those established and approved in consultation with the Commonwealth’s Attorney.

V. PROCEDURES - Composing the Lineup

Prior to a photo or live lineup, the investigating officer should record as complete a description as possible of the perpetrator provided by the eyewitness and in the eyewitness’s own words. This statement should also 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 and any other relevant conditions. The eyewitness should also be asked if s/he needs glasses or contact lenses and whether s/he was wearing them at the time of the offense.

Show-up Procedure

- A. Show-ups should only be performed using a live suspect and only in exigent circumstances that require the immediate display of a suspect to an eyewitness.
- B. Investigators should not conduct a show-up with a single photograph; if investigators want to determine if an eyewitness can make an identification using a photo, a photo lineup should be employed.
- C. The eyewitness should be transported to a neutral, non-law enforcement location where the suspect is being detained for the purposes of a show-up.
- D. 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. The procedure requires the investigator to ask the eyewitness to state, in his or her own words, how certain s/he is of the identification s/he has 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.
- E. If there are multiple eyewitnesses, only one eyewitness at a time should participate in the show-up procedure, independent of the others. If a positive identification is made, and an arrest is justified, additional eyewitnesses should be shown live or photo lineups.
  - F. If identification is made, the investigator 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.
  - G. Investigators 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.

[Officers are encouraged to video record the show-up procedure. Officers should use their In-Car Camera (ICC) / Body Worn Camera (BWC) when practical. This assists officers in demonstrating that they conducted the show-up at a neutral location and without any additional suggestion. LPD Form #455A should be utilized.]

#### Folder Shuffle Method

The "Folder System" was devised to address concerns surrounding limited personnel resources while allowing for blind administration. Should the investigating officer of a particular case be the only law enforcement personnel available to conduct a photo lineup, the following instructions are recommended:

- A. Obtain one suspect photograph that resembles the description of the perpetrator provided by the witness, five filler photographs that match the description but do not cause the suspect photograph to unduly stand out, and ten folders [four of the folders will not contain any photos and will serve as 'dummy folders'].
- B. Number the outside of each folder #1 through #10
- C. Affix one filler photo to Folder #1 and number the folder.
- D. The individual administering the lineup should place the suspect photograph and the other four filler photographs into Folders #2-6 and shuffle the photographs so that he is unaware of which folder the suspect is in, and then number the remaining folders, including Folders #7-10, which will contain a page with the following text: "THIS FOLDER INTENTIONALLY LEFT BLANK". [This is done so that the witness does not know when he has seen the last photo].
- E. The administrator should provide instructions to the witness. The witness should be informed that the perpetrator may or may not be contained in the photos he is about to see and that the administrator does not know which folder contains the suspect.
- F. Without looking at the photo in the folder, the administrator is to hand each folder to the witness individually. The witness must view the photo in the folder and then return it to the administrator before being presented with the next folder. The order of the photos should be preserved, in a facedown position, in order to document in Step 7. (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.)
- G. Instruct the witness that the procedure – only if identification is made - requires the investigator to ask the witness to state, in his/her own words, how certain he/she is of any identification at the time that the identification is made.

- H. The administrator should then document and record the results of the procedure. This should include: the date, time and location of the lineup procedure; the name of the administrator; the names of all of the individuals present during the lineup; the number of photos shown; copies of the photographs themselves; the order in which the folders were presented; the sources of all of the photos that were used; a statement of confidence in the witness's own words as to the certainty of his identification, taken immediately upon reaction to viewing; and any additional information the administrator deems pertinent to the procedure. (It is important for the administrator to not ask the witness for a numerical rating of their confidence level).

Lineup Procedures (both photo and live)

- A. The investigator in charge should select an individual to serve as the blind administrator. The blind administrator must not know which member of the lineup is the "true" suspect to conduct any lineups in order to avoid inadvertent signs or body language that may lead or cause a witness to make an incorrect identification. The blind administrator should be thoroughly familiar with this procedure. [Alternatively a 'blinded' administrator may be used, namely an individual who knows the suspect's identity but is not in a position to see which members of the line-up are being viewed by the eyewitness. This can be accomplished, for instance, through the use of the folder shuffle method or via laptop technology.]

[Blind administration is preferable to the folder shuffle method, but it is also a perfectly acceptable alternative when blind administration is not feasible, i.e. there was not an officer available to act as an administrator. It is important to document why blind administration was not feasible.]

- B. 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. Unnecessary personnel should be removed from the location where the process is being conducted.
- C. A photo or live lineup should be composed so the fillers generally resemble the eyewitness's description of the perpetrator, while ensuring that the lineup is comprised in such a manner that the suspect does not unduly stand out from the fillers. However, complete uniformity of features is not required. Avoid reusing filler photos/ live lineup members. If the eyewitness has previously viewed a photo or live lineup in connection with the identification of another person suspected of involvement in the offense, the fillers in the lineup should be different from the fillers used in prior lineups.
- D. When there are multiple suspects, each identification procedure should include only one suspect.
- E. Avoid mixing color and black and white photos. Photos should be either all black and white or all color.
- F. Cover any portions of mugshots or other photographs that provide identifying information. Ensure that no writings or information concerning previous arrest(s) will be visible to the witness. If it is necessary to block-out or cover a notation, such as a name on one photo, then similar blocking-out or covering marks should be placed on all photos so that they will appear alike.
- G. Use photos of the same size and basic composition, and never mix mugshots with other snapshots or include more than one photo of the same suspect.
- H. Select fillers (non-suspects) who generally fit the witnesses' description of the offender. 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.
- I. Select a photo that resembles the suspect's description or appearance at the time of the incident, if multiple photos of the suspect are reasonably available to the investigator.

- J. Ensure that the photos are reasonably contemporary.
- K. Include a minimum of five fillers (non-suspects) per photo identification procedure and a minimum of four fillers per live lineup.
- L. 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 of the same sex and race. However, 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.
- M. If there are multiple eyewitnesses, each eyewitness should view the lineup independently and separately and the suspect should be placed in a different position in the photo or live lineup for each eyewitness.
- N. Review the array, once completed, to ensure that the suspect does not unduly stand out.
- O. Assign each photo/person a lineup identification number. Record the identification number on the back of each photo. Refer to that photo/person only by that number. The nature of the identification number should be purposely complex to the witness, so that any inadvertent glance should not significantly hinder the identification process or alert the witness as to the identity of the actual suspect.
- P. After each photo/person has been assigned an identification number, record the number along with all other pertinent information on the Lineup Identification Form #455.
- Q. Record the presentation order of each lineup and ensure that a complete written record of the identification proceeding is made and retained. The record should include: all identification and non-identification results obtained during the procedure and signed by the eyewitness, including the eyewitness's confidence statement; the names of all of the persons present at the identification procedure, the date and time of the identification procedure, and the sources of all photos or persons used in the identification procedure. In addition, the photos themselves should be preserved in their original condition. For live lineups, a group photo should be taken of all persons in the lineup together to illustrate size differences among the lineup participants. This photo must not be shown to the witness, but will be included with the completed case file.
- R. There is a right to have counsel present at a live line-up, where the defendant-suspect has been charged.
- S. Advise the accused that he may take any position in the live lineup that he prefers and may change positions prior to summoning a new witness.
- T. Ensure that witnesses are not permitted to see nor are they shown any photographs of the accused immediately prior to the live lineup.
- U. Ensure that no more than one witness views each live lineup at a time and that they are not permitted to speak with one another during live lineup proceedings.

VI. PROCEDURES - Conducting the Identification Procedure

- A. The identification procedure should be conducted in a manner that promotes the accuracy, reliability, fairness and objectivity of the witness' identification. These steps are designed to ensure the accuracy of identification or non-identification decisions.
- B. Assure that all 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. Unnecessary personnel should be removed from the location where the process is being conducted.

- C. When presenting the lineup, the person administering the lineup should use the approved standard instructions for witnesses prior to the lineup that the offender might or might not be among those in the photo array or live lineup, and therefore, the witness should not feel compelled to make identification.
- D. Assure the witness prior to the lineup that regardless of whether identification is made, the police will continue to investigate the incident.
- E. Instruct the witness that if the offender is seen in the lineup, he/she might not appear exactly the same as on the date of the incident because features such as clothing, head or facial hair can change. Additionally, photos do not always depict the true complexion of a person, which might be lighter or darker than shown in the photo. Be careful not to imply or lead the witness to believe that the suspect's appearance has actually changed in any way.
- F. Provide the following additional viewing instructions to the witness:
  - 1. Individual photos/persons will be viewed one at a time.
  - 2. Photos/persons are in random order.
  - 3. Take as much time as needed in making a decision about each photo/person.
  - 4. All photos will be shown, even if identification is made prior to viewing all photos.
  - 5. The administrator does not know who the perpetrator is.
- G. Confirm that the witness understands the nature of the sequential procedure.
- H. Instruct the witness that the procedure – only if identification is made – requires the investigator to ask the witness to state, in his/her own words, how certain he/she is of any identification.
- I. Present each photo to the witness separately, in a previously determined order, as documented on the lineup worksheet, removing those previously shown.
- J. Care should be taken to avoid the witness turning over the photo and reading the identification number recorded on the back.
- K. Avoid saying anything to the witness that may influence the witness' selection.
- L. If identification is made, avoid reporting or confirming to the witness any information regarding the individual he or she has selected, until the entire process (including obtaining a confidence statement and obtaining required signatures and paperwork) has been completed.
- M. If the witness requests to view the photo/person sequence again, (or specific photos/persons again), they may be shown a second time, but must be shown again in the same sequence in its entirety even if the witness makes an identification during this second showing.
- N. Instruct the witness not to discuss the identification procedure or its results with other witnesses involved in the case and discourage contact with the media.

#### VII. PROCEDURES - Recording Identification Results

- A. When conducting an identification procedure, the person administering the lineup shall preserve the outcome of the procedure by documenting any identification or non-identification results obtained from the witness. A complete and accurate record of the outcome of the identification procedure is crucial. This record can be a critical document in the investigation and any subsequent court proceedings.
- B. When documenting the identification procedure, the person administering the lineup should record both identification and non-identification results, including a statement of confidence, in the eyewitness's own words. [The results should not be ranked]
- C. If the eyewitness makes an identification, the administrator shall 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 in a given identification procedure. (It is important for the administrator to not ask the witness for a numerical rating of their confidence level).

- D. If the eyewitness identifies a person as the perpetrator, the eyewitness shall not be provided any information concerning such person before the administrator obtains the eyewitness's confidence statement about the selection. After the eyewitness' confidence statement is obtained, the administrator shall not tell the eyewitness information about how accurate they were in their identification or provide additional information about the defendant.
- E. Document in writing the photo lineup procedures, including identification information and sources of all photos used, names of all persons present at the lineup, and date and time of the identification procedure.
- F. Ensure that the results are signed and dated by the witness and the person administering the lineup.
- G. Ensure that no materials indicating previous identification results are visible to the witness.
- H. Ensure that the witness does not write on or mark any materials that will be used in other identification procedures.

[Officers are encouraged to video record the identification/confidence statement procedure. Audio recording is an acceptable alternative if video recording is not practical.]