



GENERAL ORDER

Loudoun County Sheriff's Office

Chapter: Operations

Section: 411.2

Subject: Investigations

Topic: Suspect Photo Lineup and Show Up Procedure

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I. PURPOSE

The purpose of this policy is to establish procedures for the preparation and presentation of suspect photographic lineups and show-ups.

II. POLICY

The Loudoun County Sheriff's Office attaches the highest priority to the protection of the citizens of the County. Recognizing that innocent persons may occasionally be caught up in the criminal investigative process and be wrongly implicated in criminal matters, the clearing of innocent persons is as important as arresting the guilty.

III. PROCEDURE

An identification obtained through a lineup or show-up should minimize the risk of misidentification and have stronger evidentiary value than one obtained without these procedures. Specifically, use of these procedures should maximize the reliability of identifications, reduce unjust accusations of innocent people, and establish evidence that is reliable and conforms to established legal procedures.

Agency personnel shall receive initial and annual refresher training 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. The Criminal Investigative Division shall be responsible for providing this training.

A. General Responsibilities

1. Sheriff's Office personnel shall strictly adhere to established procedures for conducting suspect photo and sequential suspect lineups to avoid the possibility of error or of undue suggestiveness to witnesses.
2. Sheriff's Office personnel shall receive training initially, and every two years, 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.

3. Sheriff's Office personnel shall report to their appropriate supervisor any known errors, flaws or non-conformance with established procedures in the conduct of a suspect lineup that they may observe or become aware so that corrective actions may be taken and safeguards established to protect the innocent.
4. Lineups that are comprised of a live suspect and live fillers are currently not used by the Loudoun County Sheriff's Office. While these types of lineups are acceptable practice in other agencies, the Sheriff's Office does not have the necessary facilities or equipment to utilize them. These types of lineups should not be confused with on-scene show-ups, which are an acceptable practice.
5. Juvenile lineups are generally not conducted by the Loudoun County Sheriff's Office due to difficulty in retrieving and utilizing juvenile non-suspect photographs as well as the exacerbation of the reliability issue when juveniles are involved either as suspects or witnesses. Requests for a juvenile lineup must be accompanied by supervisor approval and will only be composed and conducted in extreme circumstances.
6. Prior to a photo lineup, the investigating deputy should record as complete a description as possible of the perpetrator provided by the witness(es) and in the witness's/witnesses' own words.
7. All photo lineups and show-ups should be recorded with vehicle cameras, body cameras, or in a recorded interview room when possible.

B. Compiling a Lineup

1. The lineup must be compiled in such a manner that the suspect does not unduly stand out, however complete uniformity of features is not required.
2. Mixing color and black and white photographs should be avoided. Photos should be either all black and white or all color.
3. Any portion of a mug shot or another photograph that provides identifying information should be covered. Ensure that no writings or information concerning previous arrest(s) are visible to the witness. If it is necessary to block-out or cover a notation, such as a name on one photo, then similar blockings or covering marks should be placed on all photos so that they will appear alike.
4. Photographs of the same size and basic composition should be used. Never include more than one photo of the same individual or suspect.

5. If there are multiple suspects, include only one suspect in each identification procedure.
6. Select photographs of fillers who generally fit the witness' 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.
7. If multiple photos of the suspect are reasonably available to the detective, a photograph should be selected for use in the lineup that resembles the suspect's description or appearance at the time of the incident.
8. Photographs should be reasonably current/contemporary.
9. Include a minimum of five fillers per identification procedure.
10. Create a consistent appearance between the suspect and fillers so that the photograph depicts individuals who are reasonably similar in age, height, weight, and general appearance, and are of the same sex and race. 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.
11. Place the suspect's photograph in different positions within each lineup when conducting more than one lineup for a case with multiple witnesses or suspects. Each eyewitness should view the lineup independently and separately.
12. Avoid reusing fillers in lineups shown to the same witness when showing a new suspect.
13. Once completed, review the total lineup to ensure that the suspect does not unduly stand out.
14. Assign each photo/person a lineup identification number. Record the identification number on the back of each photograph. Refer to that photo/person only by that number. Place each individual photo in an envelope marked with the same number as on the photo. The identification number should be sufficiently complex so that any inadvertent glance by the witness

should not significantly hinder the identification process or alert the witness as to the identity of the actual suspect.

15. Record the presentation order of each lineup and ensure that a complete written record of the 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 people used in the identification procedure. In addition, the lineup or photographs themselves should be preserved in their original condition.
16. Ensure that no more than one witness views each lineup at a time and that they do not speak with one another during line up proceedings.
17. Ensure that the witnesses are not permitted to see nor are they shown any photographs of the accused immediately prior to the lineup.

C. Conducting the Identification Procedure

1. The appropriate 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.
2. Assure that all law enforcement and/or prosecutorial personnel present and involved in the case are knowledgeable about the procedure in advance so that they will not interfere with or influence any witness during the process. Unnecessary personnel should be removed from the location where the process is being conducted.
3. When practical, a Blind Administrator should be used to ensure impartiality and eliminate any bias. The administrator is also known as the Presenter. If a Blind Administrator is not available, the Presenter should utilize the blind administration method.
4. When presenting the lineup, the Presenter should use the approved standard instructions for witnesses prior to the lineup (e.g. that the offender might or might not be among those in the photo lineup, and therefore, the witness should not feel compelled to make identification).

5. Prior to the lineup, the Presenter shall assure the witness that regardless of whether identification is made, the Sheriff's Office will continue to investigate the incident.
6. The Presenter will instruct the witness that if the offender is seen in the lineup, he/she might not appear the same as on the date of the incident because features such as clothing, head or facial hair can change. Additionally, photographs do not always depict the true complexion of a person, which may 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 changed in any way.

[Note: For example, saying to a witness that the suspect's appearance could be different, for example if he/she has gotten a tattoo, may imply to the witness that the police know the suspect got a tattoo. If there is uncertainty about a suspect's identity, this could lead the witness to pick out someone in the lineup with a tattoo simply for that reason.]

7. The Presenter shall provide the following additional viewing instructions to the witness and confirm the witness understands the nature of the sequential procedure:
 - a. Individual photos/persons will be viewed one at a time.
 - b. Photographs/persons are in random order; and
 - c. Take as much time as needed in deciding about each photo/person.
 - d. The presenter does not know who the perpetrator is.
 - e. All photos will be shown, even if identification is made prior to viewing all photos.
8. Advise the witness that the procedure, only if identification is made, requires the deputy to have the witness state, in his/her own words, how certain he/she is of any identification.
9. Present each photo to the witness separately, in a previously determined order that is documented, and remove those previously shown.

10. Care should be taken to avoid the witness turning over the photo and reading the identification number recorded on the back.
11. If the witness requests to view the photo sequence again (or specific photos), he/she may be shown a second time, but the photos must be shown again in the same sequence in its entirety even if the witness makes an identification during the second showing.
12. Avoid saying anything to the witness that may influence his or her selection.
13. If identification is made, avoid reporting or confirming to the witness any information regarding the individual he/she has selected, until the entire process (including all required signatures and paperwork) has been completed.

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 as it may hinder the investigation.

D. Folder Shuffle Method

The "Folder Shuffle System" was devised to address concerns surrounding limited personnel resources while allowing for blind administration. The Folder Shuffle Method should be used when the investigating deputy of a particular case is the only law enforcement officer available to conduct a photo lineup.

1. The following instructions should be followed:
 - a. Obtain one (1) suspect photograph that resembles the description of the perpetrator provided by the witness.
 - b. Obtain five (5) filler photographs that match the description of the perpetrator, but do not cause the suspect photograph to unduly stand out.
 - c. Obtain ten (10) file folders. [four of the folders will not contain any photos and will serve as 'dummy folders'].
2. The deputy administering the lineup should:
 - a. Affix one (1) filler photograph to the inside of the first folder and label it "#1".

- b. Affix the suspect photograph to the inside of the next folder. *It is imperative that this folder is not yet numbered.*
 - c. Affix four (4) filler photographs (one each) into the next empty folders. *It is imperative that these folders are not yet numbered.*
 - d. Shuffle the folders (except for folder #1) so that the administrator is unaware of which folder the suspect is in.
 - e. Label the shuffled folders #2 through #6.
3. The remaining folders will not contain photos and should be labeled #7 through #10. These folders will only contain a page with the following text: "THIS FOLDER IS INTENTIONALLY LEFT BLANK".
 4. Place all folders in numerical order (#1 through #10) for presentation of the lineup.
 5. The deputy administering should provide instructions to the witness. The witness should be informed that a photograph of the perpetrator may or may not be contained in the photos he/she is about to see, and that the administrator does not know which folder contains the suspect.
 6. 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. If the witness needs to review the folders a second time, it is imperative that the folders are presented in the same order as the first time.
 7. If the witness makes an identification, he/she should be instructed that the procedure requires the detective 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.
 8. 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/her identification, taken immediately upon his/her reaction to viewing the photograph; 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 his/her confidence level.

E. Recording Identification Results

1. When conducting an identification procedure, the person administering the lineup shall preserve the outcome of the procedure by documenting, in standard IBR format, 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.
2. When documenting the identification procedure, the person administering the lineup should record both identification and non-identification results, including the witness' own words. The photo Lineup Documentation Worksheet can be used to record processes. This document is located on SharePoint in Documents > Forms and Links > FSS Forms ([Photo Lineup Documentation.pdf](#))
3. If the eyewitness makes an identification, the administrator shall seek and document a clear statement from him/her, at the time of the identification and in the witness' own words, as to the witness' confidence level in the person identified in each identification procedure.
4. 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.
5. 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.
6. Ensure that the results are signed and dated by the witness and the person administering the lineup.

7. Ensure that no materials indicating previous identification results are visible to the witness.
 8. Ensure that the witness does not write on or mark any materials that will be used in other identification procedures.
- F. Show-ups
1. When circumstances require the prompt display of a single live suspect to a witness or victim, a show-up may be required.
 2. Deputies should not conduct a show-up with a single photograph; if detective want to determine if an eyewitness can make an identification using a photo, a photo lineup should be employed.
 3. When conducting a suspect show-up, the witness should be transported to the location of the detained suspect to limit the legal impact (time) of the suspect's detention. The location must be a neutral, non-law enforcement location.
 4. Factors that shall be considered are:
 - a. The time and distance of the witness from the crime
 - b. The physical/mental condition of the witness
 - c. The ability of the witness to visually make identification from a vehicle
 - d. Any safety concerns related to taking the witness to the location of the suspect
 5. Keep the witness in the car.
 6. Standard instructions to be used by the detective conducting the show-up to instruct the witness prior to the procedure.
 - a. The perpetrator may or may not be the person that is presented to the eyewitness.
 - b. The eyewitness should not feel compelled to make an identification.
 - c. The investigation will continue regardless of whether an identification is made.

- d. The procedure requires the detective to ask the eyewitness to state, in his or her own words, how certain s/he is of the identification s/he has made.
 - e. The eyewitness should not discuss the identification procedure with other eyewitnesses involved in the case and should not speak to the media.
7. Discerning the level of confidence in an identification, the detective will ask the witness to state, in his/her own words, how certain they are of the identification that they made. Document the procedure and outcome of the show-up, including noting the witness' response and exact words. When available, in-car camera systems should be used to capture the witness' statements.
 8. Only one witness at a time should participate in the show-up procedure (independent of other witnesses). If a positive identification is made, and an arrest is justified, additional witnesses should be shown a photo lineup.
 9. The lead detective or deputy should provide direction to the detective(s) conducting the show-up to avoid any conduct that might directly or indirectly influence the witness' decision, and to avoid any comments or actions that suggest the witness did or did not identify the suspect when the show-up is completed. Ask only if the witness can identify the person who committed the crime.
 10. Have back-up ready to make an arrest should a positive identification be made.
 11. Document a statement of certainty for identifications and non-identifications, including the time and location of the procedure.
 12. The investigating deputy or detective should photograph the suspect at the time and place of the show-up to preserve a record of his/her appearance at the time of the show-up.