

 NORFOLK Department of Police		Operational General Order - 423: Eyewitness Identification		
		Office of Preparation: Strategic Management Division (rck)		
		CALEA:	42.2.11; 42.2.12	
		VLEPSC:	OPR 02.07; 02.08	
LEGAL REVIEW DATE:		February 9, 2015	PREScribed DATE:	3/3/15
City Attorney:		Wayne Ringer	City Manager/Director of Public Safety: [Signature]	
APPROVED BY THE AUTHORITY OF THE CHIEF OF POLICE:			[Signature]	

Purpose

The purpose of this order is to establish procedures for eyewitness identification of suspects in compliance with the Code of Virginia 19.2-390.02 and the Virginia Department of Criminal Justice Services (DCJS) model policy established for Line-ups and Eyewitness Identification.

Policy: (CALEA 42.2.11, 42.2.12)

The Norfolk Department of Police strives to provide its employees with the most reliable procedures for identifying individuals involved in criminal matters. Eyewitness identification evidence is often crucial in identifying offenders and exonerating the innocent; however, research suggests that misidentifications may occur due to a variety of reasons, including inappropriate or unintentional communication from the investigating officer conducting a line-up. In order to ensure that inadvertent verbal cues or body language do not have an impact on a witness, whenever practical, the person conducting the photo or live line-up should be someone other than the primary investigator assigned to the case. The department recognizes that assignments of personnel and other circumstances may make this impossible in a given case. In those instances where the primary investigating officer conducts the photo line-up identification procedure, he or she will employ the Folder Shuffle Method. Since live line-ups are typically scheduled in advance, an investigator not familiar with the case shall conduct the procedure.

Supersedes:

1. None

Order Contents:

- I. Composing the Line-up
- II. Presenting Photo Line-ups
- III. Folder Shuffle Method
- IV. Conducting a Live Line-up
- V. Recording Identification Results
- VI. Conducting Show-ups
- VII. Mug Shot Review

I. Composing the Line-up **(CALEA 42.2.11.a) (VLEPSC OPR 02.07)**

- A. In composing a line-up, the person preparing the identification procedure should ensure that the line-up is comprised in such a manner that the suspect does not unduly stand out. However, complete uniformity of features is not required.
- B. Photos should be either all black and white or all color. 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. Individuals presented in a live line-up should be similarly attired. The investigator should:
 - 1. Include only one suspect in each identification procedure.
 - 2. Select fillers who generally fit the witness' description of the suspect at the time of the incident. If multiple photos of the suspect are available to the investigator, select a photo that resembles the suspect at the time of the incident. When a partial physical description of the suspect is provided by the witness, or when the description of the suspect differs significantly from the appearance of the suspect, then the fillers used should resemble the key significant features of the suspect.
 - 3. Include five fillers per identification procedure.
 - 4. Place the suspect in different positions in each line-up when conducting more than one line-up for a case with multiple witnesses or suspects.
 - 5. Avoid reusing fillers in line-ups shown to the same witness when showing a new suspect.
 - 6. Ensure that no writings or information concerning previous arrest(s) will be visible to the witness.
 - 7. Review the array, once completed, to ensure that the suspect does not unduly stand out.
 - 8. Individuals utilized in a live line-up will be photographed to preserve their appearance on the date of the line-up.
 - 9. Assign each photo or person an identification number. Record the identification number on the back of each photo. The identification

number shall consist of the report number, plus the letter "A" through "F" with each sequential photo being assigned a separate character. In the event of multiple offenders from a single incident, a numeral will be added to the letter (e.g., A1 through F1; A2 through F2) to identify the specific line-up. Fillers shall not be repeated in additional line-ups shown to the same witness.

10. During the line-up procedure, photos or individuals will not necessarily be shown in the sequence of the identification numbers. Preserve the presentation order of each line-up by completing the Line-up Documentation Form, PD021, (Attachment A). In addition, the photos themselves should be preserved in their original condition by placing them in the case folder for future review.

II. Presenting Photo Line-ups **(CALEA 42.2.11.b-g) (VLEPSC OPR 02.07)**

- 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 the identification or non-identification decisions.
- B. The case investigator shall select an individual to serve as the blind administrator. This administrator must not know which member of the line-up is the suspect.
- C. When presenting the line-up, the person administering the line-up should refer to PD022 (Attachment B) the witness instruction sheet.
 1. If there are multiple witnesses, each witness should view the line-up separately and the suspect should be placed in a different position in the line-up for each witness. Witnesses should be advised they are not permitted to speak with one another during line-up proceedings.
 2. Determine if the witness has conducted any research on and/or viewed any photos of any potential suspects related to the case.
 3. Instruct the witness prior to the line-up that the suspect might or might not be among those in the photo array, the line-up administrator does not know the suspect's identity, they should not feel compelled to make an identification, it is as important to exclude innocent persons as it is to identify the perpetrator, and the investigation will continue whether or not an identification is made.

4. Instruct the witness that if the suspect is seen in the line-up, they 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.
5. Provide the following additional viewing instructions to the witness:
 - a. Individual photos will be viewed one at a time.
 - b. Photos are in random order.
 - c. Take as much time as needed in making a decision about each photo.
 - d. All photos will be shown, even if identification is made prior to viewing all photos.
6. Confirm that the witness understands the nature of the sequential procedure.
7. Present each photo to the witness separately, in a previously determined order, as documented on the Line-up Documentation Form (PD 021), removing those previously shown.
8. Monitor the witness to prevent them from turning the photo and reading the identification number recorded on the back. However, the nature of the identification number is purposely coded in a way that any inadvertent glance should not significantly hinder the identification process.
9. The officer administering the line-up is prohibited from providing feedback to the witness. Feedback is defined as any comment in the form of an opinion about the reaction of the witness. The officer may clarify a witness' reaction as long as the questions are not suggestive and/or would influence the identification.
10. If identification is made, avoid reporting to the witness any information regarding the individual they have selected. The administrator shall determine the level of confidence of the witness identification by completing PD023 (Attachment C).
11. If the witness requests to view the photo sequence again, (or specific photos again), they may be shown a second time. The line-up must be shown in its entirety and in the same order previously viewed.
12. Instruct the witness not to discuss the identification procedure or its results with anyone else involved in the case and discourage contact with the media.

13. The administrator shall ensure the results of the photo line-up are documented on PD021 (Attachment A).

III. Folder Shuffle Method **(CALEA 42.2.11) (VLEPSC OPR 02.07)**

- A. The Folder Shuffle Method was developed to address concerns surrounding limited resources while allowing for blind administration. The Folder Shuffle Method is to be used by the investigating officer when he or she knows who the suspect is and another investigator with no knowledge of the case is unavailable to present the line-up.
- B. In addition to the procedures outlined above, the below instructions are to be followed:
 1. Use one suspect photograph that resembles the description of the suspect 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").
 2. Affix one filler photo to Folder #1 and number the folder on the outside.
 3. Affix the suspect photograph and the remaining four filler photographs inside the next five folders. Shuffle the folders before numbering them so that the administrator is unaware of which folder contains the suspect photograph. Number the outside of the shuffled folders #2 through #6. The remaining folders will not contain photos and should be labeled #7 through #10 (This is done so that the witness does not know when the last photo has been shown).
 4. The administrator should provide instructions to the witness. The witness should be informed that the suspect may or may not be contained in the photos they are about to see and that the administrator does not know which folder contains the suspect. The officer administering the line-up is prohibited from providing feedback to the witness.
 5. Without looking at the photo in the folder, the administrator is to hand each folder to the witness one at a time. Each time the witness has viewed a folder, they should indicate whether or not this is the person they saw. The order of the photos should be preserved, in a facedown position, in order to document the procedure.

6. If the witness requests to view the photo sequence again, (or specific photos again), they may be shown a second time. The line-up must be shown in its entirety and in the same order previously viewed.

C. The administrator shall document the results of the identification procedure.

IV. Conducting a Live Line-up **(CALEA 42.2.11.a-g) (VLEPSC OPR 02.07)**

A. If an investigator wishes to conduct a live line-up they should first consult with their supervisor and the Commonwealth Attorney to address any procedural concerns.

B. If the decision is made to conduct a live line-up, the investigator shall follow the guidelines above in composing and presenting the line-up with special attention to the following:

1. Create a consistent appearance between the suspect and the fillers with respect to any unique or unusual feature, such as a scar or tattoo used to describe the suspect.
2. Any actions that may help identify the suspect, such as speech, gestures, or other movements, shall be performed by all line-up participants.
3. All line-up participants shall be kept out of view of the witness except when they are presented for identification.
4. Line-up participants will be shown sequentially as is done with photographs.
5. If there are multiple witnesses, each witness should view the line-up separately and the suspect should be placed in a different position in the live line-up for each witness. Witnesses should be advised they are not permitted to speak with one another during line-up proceedings.
6. The suspect may take any position in the live line-up he or she prefers and may change positions prior to summoning a new witness.
7. Ensure that witnesses are not permitted to see nor are they shown any photographs of the suspect immediately prior to the line-up.

C. The administrator shall document the results of the identification procedure.

V. Recording Identification Results **(CALEA 42.2.11.g) (VLEPSC OPR 02.07)**

- A. When conducting an identification procedure, the person administering the line-up 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 line-up shall:
 - 1. Record both identification and non-identification results, including the witnesses' own words, conduct, or other relevant observations on the Line-up Documentation Form PD021 (Attachment A).
 - 2. In the event of an identification by a witness, confidence statements shall be documented using the Witness Statement of Confidence Form PD023 (Attachment C). Confidence should not be determined using a numerical scoring system, i.e. scale of 1 through 10 or percentages of certainty.
 - 3. Ensure that the results are signed and dated by the witness and person administering the line-up.
 - 4. Ensure that no materials indicating previous identification results are visible to the witness.
 - 5. Ensure that the witness does not write on or mark any materials that will be used in other identification procedures.

VI. Conducting Show-ups **(CALEA 42.2.12.a-f) (VLEPSC OPR 02.08)**

- A. Show-ups shall be performed using a live suspect. Officers using photographs for an identification shall conduct a photo line-up procedure.
- B. Show-ups should be used when:
 - 1. There is an issue of officer or public safety
 - 2. There is a potential flight risk of the suspect
 - 3. A physical or photo line-up is not practical

4. The length of time between the commission of the crime and the identification procedure of the suspect is reasonable.
- C. When circumstances require the prompt display of a suspect to a witness, the inherent suggestiveness of the encounter can be minimized through the use of procedural safeguards. The investigator shall employ the following procedures to avoid influencing the witness.
1. Determine and document, prior to the show-up, a description of the suspect.
 2. Transport the witness to the location of the detained suspect by police vehicle.
 3. Caution the witness that the person they are looking at might or might not be the offender and they should not feel compelled to make identification.
 4. The officer administering the show-up is prohibited from providing feedback to the witness. Feedback is defined as any comment in the form of an opinion about the reaction of the witness. Questions made to clarify a witness's reaction are permissible provided they are not suggestive or would influence the identification.
 5. If more than one suspect is involved in the show-up, whenever possible:
 - a. Separate the suspects.
 - b. Have the witness view the each suspect individually.
 6. Document the results of the procedure including the witness's own words, conduct, or other relevant observations. In the event of an identification by a witness, confidence statements shall be documented using the Witness Statement of Confidence Form PD024 (Attachment D). Confidence should not be determined using a numerical scoring system, i.e. scale of 1 through 10 or percentages of certainty.
 7. Record the witness's names, suspect's name and description, and the date, time and location of the show-up. The suspect should be photographed to document his or her appearance at the time of the show-up. If possible, officers should utilize issued recording equipment to capture the presentation of the suspect.
 8. Do not return the victim, witness, or suspect to the crime scene prior to the scene being processed.

9. When multiple witnesses are involved:

- a. Separate the witnesses and instruct them to avoid discussing details of the incident with others.
- b. If a positive identification is obtained from one witness, the show up should be terminated and a line-up should be used for the remaining witnesses.
- c. Multiple witnesses should be transported in separate police vehicles to avoid suggestiveness or pressure to identify the suspect.

VII. Mug Shot Reviews

- A. After obtaining the description of the suspect from the witness the investigating officer shall enter the parameters into an electronic records system. The system will select images based on the entered data and select images meeting the inputted criteria. The witness is provided with the opportunity to view images at their pace one at a time.
- B. The investigating officer shall document the descriptors that were entered into the computer and record the number and sequence of images presented to the witness as well as the time spent observing these images. Any individuals identified as "possible" or "similar" to the perpetrator of the offense will be documented.
- C. In the event of an identification by a witness, confidence statements shall be documented using the Witness Statement of Confidence Form PD023 (Attachment C). Confidence should not be determined using a numerical scoring system, i.e. scale of 1 through 10 or percentages of certainty.

Definitions:

Blind Administrator: The person administering the line-up has no knowledge of which person in the photo/live line-up is the suspect.

Blinded Administration: This is a line-up procedure in which the administrator may know the identity of the suspect, but by virtue of the use of procedures and/or technology, does not know which line-up member is being viewed by the witness.

Confidence Statements: A statement of the witness' own words, articulating their level of confidence in the identification taken at the time the identification is made.

Fillers: Non-suspect photographs or line-up members.

Folder Shuffle Method: A method requiring the photo line-up administrator to place a photograph of the suspect and filler photographs into blank folders with only one photograph per

folder. The folders are then “shuffled” before being presented individually to the witness. The administrator becomes “blinded” by the process.

Line-up: A line-up is any procedure in which a victim or witness to a crime or other incident is asked to identify a suspect from among a group of persons in order to determine or confirm the identity of the suspect. Such procedures can involve either viewing of persons or photographs.

Live Line-up: An identification procedure in which an array of individuals, including a suspected perpetrator of an offense and additional subjects not suspected of the offense, are displayed to a witness for the purpose of determining whether the witness identifies the suspect as the perpetrator.

Mug Shot Review: When the suspect is not known to the investigating officer, the victim or witness may be shown photographs of numerous suspects meeting the basic descriptors of the perpetrator.

Photo Line-up: An identification procedure in which an array of photographs, including a photograph of a suspected perpetrator of an offense and additional photographs of other persons not suspected of the offense, is displayed to a witness for the purpose of determining whether the witness identifies the suspect as the perpetrator.

Sequential Line-up: A method of administering a line-up in which the persons or photographs are shown to the witness one at a time, with an independent decision on each, before the next person or photograph is shown.

Show-Up: A show-up is an in-field identification procedure conducted in close proximity in time to the actual event. A victim or witness is presented with a single suspect for the purpose of determining whether the witness identifies this individual as the perpetrator.

Related Documents

1. G.O. OPR-420: Preliminary Investigations

Attachments

- A. Line-up Documentation Form (PD 021)
- B. Witness Instruction Sheet (PD 022)
- C. Eyewitness Statement of Confidence in Line-up identification (PD 023)