

Burleson Police Department
Administrative Policy and Procedures

Number: 06-007

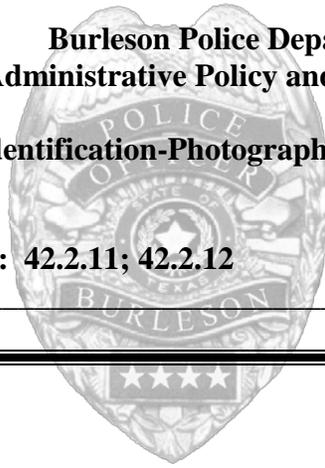
Document Title: Eyewitness Identification-Photographic & Show ups/ Line ups

Effective Date: 12/2009

Last Revised Date: 01/18/2017

CALEA Standards Referenced: 42.2.11; 42.2.12

ISSUING AUTHORITY: _____



I. Purpose

The purpose of this policy is to outline proper protocol for eyewitness identification procedures for photographic, show-up, and live lineup identifications which maximize the reliability of identifications, protect innocent persons, and establish evidence that is reliable and conforms to established legal requirements. The Burleson Police Department will adopt, implement, and as necessary amend this policy regarding the administration of photograph, show-up, and live lineup identification procedures.

II. Policy

Eyewitness identifications are a significant component of many criminal investigations. The identification process must be carefully administered to minimize the likelihood of misidentifications. Moreover, constitutional safeguards must be observed in the process. The goal of reducing erroneous convictions can be furthered in many ways. Employing the most rigorous eyewitness identification methods is one way of doing this, but there are others. The eyewitness identification process is only one step in the criminal investigative process, albeit an important one. Corroborative evidence, for example, will lessen the impact of erroneous eyewitness identification. The more, other evidence that is available, the less risk there is of conviction based solely on erroneous eyewitness identification. There is no substitute for a competent and thorough criminal investigation.

This policy was written to provide guidance on eyewitness identification procedures based on credible research on eyewitness memory and best practices designed not only to reduce erroneous eyewitness identification but also to enhance the reliability and objectivity of eyewitness identifications.

Evidence-based and best practices surrounding the collection and preservation of eyewitness evidence are addressed as are procedures to be employed where witnesses or victims are unable to read or write, are non-English speaking, or possess limited English language proficiency.

III. Definitions

1. **Sequential, Blind Photo Array Procedure** – photo arrays where the photographs are presented one at a time to the witness or victim by a person who does not know who the suspect is. This method requires a preparer who may be familiar with the case and an administrator who does not know the identity of the suspect. [42.2.11a]
2. **Sequential, Blinded Photo Array Procedure** – A procedure where the photographs are presented one at a time to the witness or victim by a person who knows who the suspect is, but who takes steps (putting the photographs in folders and shuffling them) to avoid knowledge of which person the witness or victim is looking at. This method typically involves an administrator who is familiar with the case and knows who the suspect is. [42.2.11a]
3. **Folder Shuffle Method** – A method of administering a photo array such that the administrator cannot see or track which photograph is being presented to the witness until after the procedure is completed. This method is employed when a blind procedure is not possible. [42.2.11a]
4. **Fillers** – Non-suspect photographs or persons. Fillers are selected to both fit the description of the perpetrator provided by the witness and to ensure that no individual or photo stands out. [42.2.11a]
5. **Illiterate Person** – An individual who speaks and understands English but cannot read and write in English.
6. **Interpreter** – An interpreter is a person who is fluent in English and the language of the witness or victim and who facilitates communication between two parties in two different languages. The term includes persons who facilitate communication with persons who are deaf, hearing impaired, or speaking impaired.
7. **Sequential Live Lineup** – live lineups where the persons in the live lineup are presented one at a time to the witness or victim. This method requires a preparer who may be familiar with the case and an administrator who does not know the identity of the suspect. [42.2.11a]

- 8. Person with Limited English Proficiency** – An individual who is unable to communicate effectively in English with a level of fluency that is typical of native English speakers. Such a person may have difficulty speaking, reading, or writing in English and includes persons who can comprehend English, but are physically unable to talk or write.
- 9. Photo Array** – An identification procedure in which a series of photographs is displayed to the witness or victim in order to identify or exclude the suspect. [42.2.11a]
- 10. Show-up** – An identification procedure in which a single suspect is shown to a victim or witness soon after the commission of a crime (generally within two hours) for the purpose of identifying or eliminating the suspect as the perpetrator. [42.2.12a]
- 11. Witness Certification Statement** – A written statement that is read out loud to the witness or victim describing the procedures of the identification process.

III. Standard Operating Procedures

The procedures which follow have been designed to: (a) reduce erroneous eyewitness identifications, (b) enhance the reliability and objectivity of eyewitness identifications, (c) collect and preserve eyewitness evidence properly, (d) respect the needs and wishes of victims and witnesses, and (d) address the needs of witnesses with limited English proficiency, where applicable. Photo arrays are preferred over other techniques because: (a) they can be controlled better, (b) nervousness can be minimized, and (c) they are easier to manage logistically. Because witnesses may be influenced, however unintentionally, by cues from the person administering the procedure, a blind administrator should be used. This can be achieved through the use of a blind or a blinded photo array procedure (e.g. the folder shuffle method). Because research shows the sequential presentation of live lineups and photo arrays is less likely to result in misidentification and carry very little risk of increasing the likelihood of failure to identify the suspect, a sequential presentation should be used. The following is the most preferred method to the least preferred method of eyewitness identification: sequential blind photo array, sequential blinded photo array, sequential live lineup, and show-up.

1. Preparation for a Blind, Blinded Photo Array Procedure, Live Lineup, or Show-up

a. Designating a Preparer

Preparing the photo array or live lineup should be undertaken by someone other than the person who will administer the photo array or live lineup procedure. Ideally, the investigating officer will prepare the photo array or live lineup as this ensures that others who might be involved in the case are not used as fillers. Moreover, because the investigating officer knows who the suspect is, they should not be conducting the actual administration of the photo array, unless the Blinded Photo Array procedure is utilized.

b. Selecting Suspect Photograph

If multiple photos of the suspect are available, choose the photo that most resembles the suspect's appearance at the time of the crime. Do not include more than one photograph of the same suspect. If you do not know what the suspect looked like at the time of the crime, choose the photo that most resembles the victim's or witness's description of the perpetrator. If there are multiple suspects, include only one suspect's photo in the array. [42.2.11a]

c. Selecting Fillers

All persons in the photo array or live lineup should be of the same sex and race and should be reasonably similar in age, height, weight, and general appearance. Ideally, the characteristics of the fillers should be consistent with the description of the perpetrator provided by the witness(es). Where there is a limited or inadequate description of the perpetrator provided by the witness(es), where the description of the perpetrator differs significantly from the appearance of the suspect, fillers should be chosen so that no person stands out in the photo array or live lineup. Do not mix color and black and white photos. Use photos of the same size and basic composition. Never mix mug shots with other types of photographs. [42.2.11a]

d. Choosing Number of Fillers

Wherever possible, include a minimum of five fillers. Because increasing the number of fillers tends to increase the reliability of the procedure, one may have more than the minimum number of fillers.

e. Ensuring Similarity

Assess the photo array or live lineup to ensure that no person stands out from the rest. Cover any portions of the photographs that provide identifying information on the suspect and similarly cover other photographs used in the array. [42.2.11a]

f. Placing Subject Photographs in folders

- 1) Place the photographs which will comprise the photo array in separate folders and place them in random order (mix them up) so you do not know which photograph is in which folder.
- 2) Place two empty folders at the end.
- 3) Number the folders.
- 4) Present the folders to the independent administrator.

2. Administration

The administrator of the blind photo array or live lineup presentation should be an independent administrator who does not know the identity of the suspect and the witness should be informed of this. In a blind procedure, no one should be present who knows the suspect's identity.

a. Blinded Administration

In the event that a blind administration is not practical a blinded administration may be utilized. The photo array administrator should document the reason why the preferred blind procedure was not used. The blinded administrator should use the same procedure outlined above. Moreover, the photo array should be administered in such a manner that the administrator does not know which person in the array the witness is looking at.

b. Instruct Witness [42.2.11d / 42.2.12d]

Because witnesses may be under pressure to identify a suspect, they should be informed that the suspect may or may not be present in a live lineup, photo array, or a show-up and that the person presented in a show-up may or may not be the perpetrator. As another way of alleviating pressure on the witness to identify a suspect, the administrator of a live lineup, photo array, or show-up should also explain to the witness that the investigation will continue, regardless of whether identification is made.

When conducting photo arrays, live lineups, or show-ups each witness should be instructed outside the presence of the other witnesses. Based on the type of identification procedure being conducted the administrator should choose one of the following Witness Certification Statement forms:

- 1) Witness Certification Statement - Photo Arrays
- 2) Witness Certification Statement – Live Lineup
- 3) Witness Certification Statement – Show-up

Once the appropriate Witness Certification Statement is selected a written copy should be provided to the witness. The administrator should read the instruction statement aloud at the beginning of each identification procedure.

c. Document Consent to Participate

Witnesses should then be asked to read and sign the Consent to Participate paragraph at the end of the Witness Certification Statement. Some witnesses may decline to sign. When a witness declines to sign, it is sufficient for the investigating officer to document that the witness was appropriately instructed.

d. Present Folders or Subjects**1) Photo Arrays**

Present each folder to the witness separately (one at a time), in order. The administrator should not be in a position to view the photographs while the witness is viewing the photographs. The eyewitness should be the only person viewing the photographs. When the witness is

finished viewing the photo, have the witness hand the folder back to the administrator.

2) Live Lineup

Begin with all live lineup participants out of the view of the witness. The preparer should place the persons who will comprise the live lineup in random order. The preparer should present the ordered live lineup to the administrator. The preparer must not tell the administrator the position of the suspect. Ensure that no one who knows the suspect's identity is present during the live lineup. In some live lineups, exceptions must be made to allow for the presence of defense counsel; however, once the identification procedure begins the defense counsel's role is limited to that of an observer.

3) Show-up

Because they are highly suggestive, show-ups are vulnerable to challenges to their validity. Consequently, Show-ups should be avoided whenever possible. Photo arrays and live lineups are preferred. However, where circumstances require the prompt display of a suspect to a witness, the following procedures should be followed to minimize potential suggestiveness.

- a.** Separate witnesses and do not allow communication between them before or after conducting a show-up.
[42.2.12c]
- b.** Document the witness's description of the perpetrator prior to conducting the show-up.
- c.** Use show-ups only where the suspect is detained within a reasonably short time frame following the offense and is found in relatively close proximity to it. Although this is dependent on the individual circumstances of each case, courts have generally held that a two-hour time lapse is acceptable.
[42.2.12a]
- d.** Transport the witness to the location of the suspect whenever practical, rather than bringing the suspect to the witness. If the suspect is under arrest or provides documented consent the suspect may be transported to

a secondary location where the witness can view the suspect for possible identification. [42.2.12b]

- e. Do not Return Suspect to Crime Scene. [42.2.12b]
- f. Consider carefully whether to take the suspect to the witness's or victim's home. [42.2.12b]
- g. Do not conduct show-ups when the suspect is in a patrol car, handcuffed, or physically restrained by police officers unless such protective measures are necessary to ensure safety.
- h. Once a positive identification has been made of the suspect by one witness, you are strongly urged to use a photo array or a live lineup with any remaining witnesses. [42.2.12c]
- i. Do not require show-up suspects to put on clothing worn by, speak words uttered by, or perform other actions of the perpetrator.
- j. Officers should avoid words or conduct that may suggest to the witness that the individual is or may be the perpetrator. [42.2.12f]
- k. Remind the witness not to talk about the show-up to other witnesses until police or prosecutors deem it permissible. [42.2.12c]

e. Question Witness [42.2.11e / 42.2.12e]

After the witness has viewed a subject, or in the case of a photo array, looked at a photo and handed it back to the administrator. The administrator should ask: **"Is this the person you saw [insert description of act here]?"** If the witness answers "Yes," ask the witness, **"In your own words, can you describe how certain you are?"**

f. Document Witness's Responses [42.2.11g / 42.2.12g]

Document the witness's response using the witness's own words. Have the witness complete the appropriate section of the Witness Certification Statement to reflect the outcome of the procedure. After the identification procedure is complete and outside the presence of the witness the administrator should use the section of the Witness

Certification Statement labeled Administrator Certification to document the outcome of the procedure and identify the name of the individual picked by the witness.

g. Show All Folders with Photos in a Photo Array or Subjects in a Live Lineup.

Show all folders containing photos in a photo array or all subjects in a live lineup to the witness. Even if the witness makes an identification, show the witness the next photo or subject until you have gone through all the photographs or subjects. If a witness asks why he or she must view the rest of the photos or subjects, despite already making an identification, simply tell the witness that to assure objectivity and reliability, the witness is required to view all of the photographs or subjects. Consistency of Action is very important while conducting live lineups, ensure that any identification actions (e.g., speaking, moving) are performed by all members of the live lineup.

h. Avoid Feedback During the Procedure [42.2.11f / 42.2.12f]

Do not give the witness any feedback regarding the individual selected or comment on the outcome of the identification procedure in any way. Be aware that witnesses may perceive such things as unintentional voice inflection or prolonged eye contact, in addition to off-hand words or phrases, as messages regarding their selection. Avoid casual conversation comments such as “very good.” Be polite but purposeful when you speak.

i. Additional Viewings [42.2.11e]

Only upon request of the witness, the witness may view the photo array or live lineup again after the first photo array or live lineup procedure has been completed. If the witness requests an additional viewing, the administrator should present the entire photo array or live lineup in the same order as the original presentation, a second time. If this occurs, it must be documented. The administrator should never suggest an additional viewing to the witness. It is recommended that the witness not be allowed to view the photo array or live line up more than two times. When conducting Show-ups avoid multiple identification procedures in which the same witness views the same suspect more than once.

j. Subsequent Use of Materials

Ensure that if the witness writes on, marks, or in any way alters identification materials, those materials are not used in subsequent procedures.

k. Multiple Identification Procedures With Same Witness

Avoid multiple identification procedures in which the same witness views the same suspect more than once.

l. Multiple Identification Procedures With Different Witness

[42.2.11c]

If you need to show the same suspect to a new witness, have the preparer remix the photo array and renumber them accordingly. In a live line up have the preparer change the order of the subjects.

m. Multiple Suspects

When there are multiple suspects, a separate photo array or live lineup should be conducted for each suspect. There should not be more than one suspect per photo array or live lineup. When showing a different suspect to the same witness, do not reuse the same fillers from a previous live lineup or photo array shown to that witness.

n. Reuse of Fillers

When showing a different suspect to the same witness, do not reuse the same fillers from a previous photo array or live lineup shown to that witness.

o. Contact Among Witnesses, Suspects, and Fillers [42.2.11c / 42.2.12c]

To the extent possible, prevent witnesses from conferring with each other before, during, and after the photo array, live lineup, or show-up procedure. During live lineup procedures take precautions to ensure that witnesses do not encounter suspects or fillers at any time before or after the identification procedure.

p. Identification of Special Features

Only after an identification is made, a follow-up interview should assess any relevant factors that support the identification, such as: special facial features, hair, marks, etc.

3. Special Procedures are Required for Illiterate Persons or Persons Who Possess Limited English Proficiency

a. Be Alert to People Who do not Speak English or Possess Limited English Proficiency

Given the diversity of communities, police officers may encounter persons who do not speak English or who possess limited English proficiency in the course of a criminal investigation. When presented with this situation, officers should carefully consider the ethical and legal ramifications of how to handle the case when there is a language barrier.

b. Using an Interpreter

Unless the administrator speaks the victim's or witness's language fluently, an interpreter should be used for persons who do not speak English. The interpreter shall sign the Witness Instruction Statement on obtaining consent of a non-English speaking person to assist in the eyewitness identification process. Law enforcement personnel should consider arranging for an interpreter if a person interviewed:

- 1) Is unable to communicate in English
- 2) Has a limited understanding of English
- 3) Is deaf, hearing impaired, or speaking impaired
- 4) Is otherwise physically challenged to communicate in English

c. Review and Explain Forms

If the person is unable to read, the administrator, in the presence of the witness, will give the explanation, read any forms, and obtain consent and acknowledge the consent on the Witness Certification Statement, stating why the person was unable to sign the form.

4. Documentation [42.2.11b/g; 42.2.12g]

In order to strengthen the evidentiary value of the identification procedure photo arrays, live line ups, and show-ups should be documented in full. Video documentation (with audio) is the preferred method. Audio recording is the preferred alternative. If neither method is employed, then the reason for not video or audio recording should be documented. Preserve the photo array, together with all information about the identification process.