



# VIA TRANSIT POLICE DEPARTMENT

## Standard Operating Procedures



### Section 707 – Eyewitness Identifications

Office with Primary Responsibility:	COP	Effective Date: Prior Revision Date:	March 29, 2019 March 21, 2018
Office(s) with Secondary Responsibilities:		Number of Pages:	5
Forms Referenced in Procedure:	<u>Photographic Line Up Form</u> <u>Field Identification Form</u>	Related Procedures:	ALL

#### 01. POLICY

Eyewitness identification is a frequently used investigative tool. This Policy is designed to maximize the reliability of identifications, protect innocent persons, and to establish evidence that is reliable and which conforms to established legal requirements. This procedure does not apply to situations where the suspect is known to a witness due to a previous encounter or encounters, and a single photo is used to link a known suspect to an offense.

#### 02. PURPOSE

It is the purpose of this policy 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.

#### 03. 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.



# VIA TRANSIT POLICE DEPARTMENT

## Standard Operating Procedures



### *Section 707 – Eyewitness Identifications*

- 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.

#### **04. GENERAL PROCEDURES FOR LINE-UPS**

- A. The following is a list of acceptable identification methods, from most preferred to least preferred:
  - 1. Photographic line-up conducted by a blind administrator
  - 2. Photographic line-up conducted by a blind administrator, using the folder method in a blind manner.
  - 3. Field identification procedures
- B. Sequential viewing should be used rather than simultaneous viewing whenever possible. If simultaneous viewing is used, then the reason for this option should be documented in the assigned investigator's report.
- C. Because criminal investigations can vary drastically from one case to another, assigned investigators may be faced with a situation unforeseen by this procedure and there may be a need to deviate from this procedure. In those cases, assigned investigators must document, in detail, the circumstances causing the need to deviate from this procedure and what actions were taken.
- D. Identification of suspects by witnesses should supplement other investigative actions and/or evidence.
- E. The assigned investigator, prior to beginning the identification procedure, will determine if the witness has seen the suspect at any time since the crime occurred (whether in person, in newspaper, television reports, etc). If so, the assigned investigator will contact the DA's office to determine if the identification process should continue.
- F. The assigned investigator is responsible for determining before any identification procedures if the witness is deaf or has limited English proficiency. If the witness is deaf or a person with limited English proficiency, unless the administrator is fluent in sign language or the witness's language, the assigned investigator must obtain the services of an interpreter. The interpreter shall sign the witness certification statement on obtaining consent of a



# VIA TRANSIT POLICE DEPARTMENT

## Standard Operating Procedures



### *Section 707 – Eyewitness Identifications*

deaf or person with limited English proficiency, to assist in the identification process. 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
- G. 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 in the narrative of their report, stating why the person was unable to sign the form.
- H. Documentation of Line-ups:
1. In all cases, the officer will, at a minimum, document in a supplement report the details of the line-up presentation process and result, and return the supplement, the Line-up Form, and all original photographs and documents to the assigned investigator. Any officers who witnessed the line-up will also write supplemental reports. If an interpreter is used, the identification of the interpreter will be documented as well as the assistance provided.
  2. If the witness cannot read or write, the identification procedure should be video recorded.
- I. 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 Bexar County District Attorney for procedural and technical assistance. An Investigator who determines that a live line-up is needed should contact the San Antonio Police Department for a location suitable for a live line-up and all live line-ups should be carried out with the principles of this policy in mind.

#### **05. PREPARING PHOTOGRAPHIC LINE-UPS**

- A. The assigned investigator is responsible for:
1. The preparation of the photographic line-up, including selecting the fillers and ensuring each of the photographs are 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. Needed translators may be obtained through the Police Dispatcher.
  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 any audio/video recording of the administration process are placed into evidence after the procedure.



## VIA TRANSIT POLICE DEPARTMENT Standard Operating Procedures



### Section 707 – Eyewitness Identifications

5. In preparing the photographic line-up; the assigned investigator should:

a. Include only one suspect in each identification procedure.

b. [REDACTED]

c. [REDACTED]

d. [REDACTED]

e. [REDACTED]

f. [REDACTED]

g. [REDACTED]

h. [REDACTED]

i. [REDACTED]

j. [REDACTED]

k. [REDACTED]

l. [REDACTED]

B. The officer who administers the line-up herein referred to as the “Administrator”, is responsible for:

1. Ensuring they are 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. Ensuring witnesses are not allowed to confer with each other before, during or after the identification procedure.
5. Returning all line-up materials and documentation to the assigned investigator.

#### **06. PRESENTING PHOTOGRAPHIC LINE-UPS**

- A. Assigned investigators should use a blind administrator whenever possible, and the assigned investigator should not be within hearing or view, or present in the same room at the time the line-up is conducted. If a situation occurs where a blind administrator cannot be used, the assigned investigator will document the reason in their



# VIA TRANSIT POLICE DEPARTMENT

## Standard Operating Procedures



### *Section 707 – Eyewitness Identifications*

report. It is the intent of the VIA Transit Police Department to present all photographic lineups to witnesses in a blind manner.

- B. If using a blinded administrator, the procedure must be conducted in a manner such that the administrator does not know the position of the suspect in the array.
- C. The administrator must not provide any feedback of any kind at any time during the procedure. If the witness asks whether they picked the right person, the administrator will respond that they are unaware of which photograph is a suspect and which are fillers and the administrator will state that it would compromise the case to inform a witness of the procedure's results. Other persons present at the presentation must be instructed to not make any suggestive statements, or take any other actions that may influence the judgment or perception of the witness.
- D The Administrator:
  - 1. Provides the witness with a Photographic Line-up Form.
  - 2. Reads the instructions and admonitions verbatim from the form.
  - 3. Obtains the witness' signature indicating they understand the procedure.
  - 4. Signs the form as administrator; if the witness refuses to sign, documents that the witness was appropriately instructed; and, ensures that the witness understands the instructions before proceeding.
- E. If utilizing sequential viewing:
  - 1. The administrator: shows the witness the photographs in the order they were received from the assigned investigator, one at a time, and documents the order shown; retrieves the photograph from the witness before providing a new one;
  - 2. Allows the witness to see only one photograph at a time. If the witness identifies a suspect, the administrator must show the remaining photographs even if a witness has made an identification. If a witness asks why he or she must view the rest of the photographs, simply state the witness is required to view all the photographs to assure objectivity and reliability.
  - 3. The administrator records the number or other identification of the photograph; the witness and administrator sign and date the photograph selected; and, the witness is asked for a statement of how confident they are about their identification.
  - 4. The administrator should conduct a follow-up interview, only after an identification is made to assess any relevant factors that support the identification, such as: special facial features, hair, marks, etc. The administrator must not allow a witness to re-review a photograph unless the witness specifically request to do so, and the witness must re-review all photographs rather than a specific photograph(s). No more than two (2) viewings will be conducted.
- F. If utilizing simultaneous viewing,
  - 1. The administrator shows the witness the folder and asks if they see the person who committed the crime.;
  - 2. If the witness identifies a suspect, the administrator records the number or other identification of the photograph; the witness and administrator sign and date the photograph selected; and, the witness is asked for a statement of how confident they are about their identification;



## VIA TRANSIT POLICE DEPARTMENT Standard Operating Procedures



### *Section 707 – Eyewitness Identifications*

3. The administrator: completes the Line-up form, including making sure the witness' confidence statement is documented in the witness' own words, regarding how certain they are of the identification;
  4. Has the witness complete and sign the appropriate portion of the form;
  5. Returns all files, photographs and forms to the assigned investigator; and, completes a supplement on the identification procedure.
- G. Documentation of Photographic Line-ups: All photographic line-ups will be documented in the method reasonably available to the administrator at the time of presentation. Acceptable methods of documentation include the following:
1. Video and audio recording
  2. Audio recording only
  3. Written documentation of the line-up presentation process.

Note: In all cases, the administrator will, at a minimum, document in an offense- supplement report the details of the line-up presentation process and result, and return the supplement, the photographic line-up form, any video/audio recordings, and all original photographs and documents to the assigned investigator.

#### **07. FIELD IDENTIFICATION PROCEDURES**

- A. The use of field identification should be avoided whenever possible in preference for the use of a photograph. 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. Approval from a supervisor should be obtained prior to using a field identification. When circumstances require the use of field identification the following guidelines should be followed:
1. During any Field Identification the officer is responsible for ensuring the witness is able to understand the instructions given by officers. If the witness is deaf, illiterate, or is a person with limited English proficiency, the officer will provide for an interpreter or other assistance which must be articulated in their report.
  2. Single suspect field identification shall not be used if there is adequate probable cause to arrest the suspect. The Administrator will conduct a line-up at a later time, if necessary.
  3. A complete description of the suspect should be obtained from the witness prior to conducting a field identification. If the witness states that he or she was unable to clearly see the suspect, a field identification will not be done.
  4. [REDACTED]
  5. [REDACTED]
  6. [REDACTED]
  7. [REDACTED]
  8. [REDACTED]



- [REDACTED]
- [REDACTED]
9. [REDACTED]
- [REDACTED]
10. [REDACTED]
- [REDACTED]
11. [REDACTED]
- [REDACTED]
12. These restrictions apply not only to civilian field identifications, but to field identifications in which an officer is the witness.
- B. The officer conducting a field identification with supervisory approval should use the field identification form to inform the witness of the procedure and obtain evidence that the witness understands the procedure.
- C. The officer will video/audio tape the witness viewing the suspect using in-car video recording system. Regardless of the type video and audio recording system used at the time of the field identification, the recording will not be stopped before or during the identification. The recording will be maintained as evidence pursuant to Standard Operation Procedures.
- D. The officer conducting the field identification will document the witness's comments regarding the suspect during the identification on the field identification form and the form will be submitted as evidence pursuant to Standard Operating Procedures.
- E. Each officer participating in the field identification will document their actions and any statements made in a supplement report.