

**TYLER POLICE DEPARTMENT  
GENERAL ORDER**

**18.400**

**EYEWITNESS IDENTIFICATION**

**REVISED 8/25/14**

**EFFECTIVE 1/12/10**

**18.401 PURPOSE**

It is the purpose of this policy to establish guidelines for conducting eyewitness identifications.

**18.402 POLICY**

Constitutional safeguards must be observed in the process of identifying the perpetrator(s) of a crime. Eyewitness identification is a frequently used investigative tool. As such, officers shall strictly adhere to the procedures set forth here in order to maximize the reliability of identifications, minimize unjust accusations of innocent persons and to establish evidence that is reliable and conforms with established legal procedures.

Officers should consider the totality of the circumstances when employing a specific identification procedure. Factors to be considered include the opportunity of the witness/victim to view the perpetrator at the time of the crime, the witness's/victim's degree of attention, the accuracy of the witness's/victim's prior description of the perpetrator, the level of certainty demonstrated by the witness/victim in the identification process, and the length of time between the crime and the confrontation or identification process.

**18.403 DEFINITIONS**

- A. Double Blind – The person presenting a photo lineup to a witness or victim that does not know which photo is the suspect.
- B. Blind Photo Array – The person who administers the photo lineup knows who the suspect is, but utilizes a folder shuffle procedure whereby each photo is presented one at a time, but steps are taken so the administrator cannot see or track which photograph is being presented to the witness. This method is employed when a double blind procedure is not practical or possible.
- C. Lineup – The use of individually shown photographs that a witness/victim is shown to aid in the identification or elimination of a possible suspect in a criminal case. Normally a lineup consists of six photographs of individuals that are similar in appearance to a potential suspect.
- D. Show-up – In a show-up, a single suspect is viewed by a victim or witness immediately following the commission of a crime (generally within one hour) for the purpose of identifying or eliminating the suspect as the perpetrator. This procedure normally takes place during the preliminary investigation by the Patrol Division and involves the witness(s)/victim(s) being transported separately to the location where a possible suspect has been detained.

**18.405 PROCEDURES**

**A. Show-ups**

Some courts have suppressed identification evidence based on the use of show-ups. Due to this fact, it is preferable to arrest a subject if probable cause exists and then utilize a photographic lineup. However, when circumstances require the use of show-ups, a supervisor shall be present and the following guidelines shall be followed. Patrol officers are to consult with a supervisor and the assigned investigator prior to utilizing a show-up if time permits for all offenses. All show-ups must be captured on the in vehicle video system (where practical). If the officer is unable to video or audio record the show-up the officer must articulate the reason in detail in the report.

- 1. Prior to conducting a show-up, the officer shall:
  - a. Determine and document, a description of the perpetrator.
  - b. Officers may handcuff or keep the suspect handcuffed during the show-up if the officer is able to articulate the reason why it was necessary. This must be explained in detail in the officer's report.

- c. Transport the witness/victim to the location of the detained suspect to limit the legal impact of the suspect's detention. The person stopped is to be detained for only that reasonable amount of time necessary to complete the procedure.
- d. If the suspect is under arrest for other charges, then it is permissible to transport the suspect to the victim/witness location for the show-up.
- e. When multiple witnesses/victims are involved, separate the witnesses/victims and instruct them to avoid discussing the details of the incident with one another. If a positive identification is obtained from one witness/victim through a show-up, use a photo lineup for the remaining witnesses/victims.
- f. Caution the witness/victim that the person he/she is looking at may or may not be the perpetrator.
- g. The same suspect shall not be presented to the same witness/victim more than once.
- h. Show-up suspects shall not be required to put on clothing worn by the perpetrator, to speak words uttered by the perpetrator or to perform other actions of the perpetrator.
- i. Words or conduct of any type by officers that may suggest to the witness/victim that the individual is or may be the perpetrator shall be scrupulously avoided.
- j. Instruct the witness/victim that a statement of certainty will be needed for both identifications and non-identifications.

2. When conducting a show-up, the officer shall:

- a. Document the show-up on the Show-up Viewing Form.
- b. Read the instructions to the witness/victim from the Show-up Viewing Form.
- c. Document the time and location of the procedure.
- d. Document the distance the person fitting the description is from the crime scene at the time he/she is stopped.
- e. Record both identification and non-identification results in writing, including the witness's/victim's own words regarding how certain he/she is in making the identification.
- f. In the event the witness/victim does not identify the person detained, the officer detaining the potential suspect should record the identity of the person detained on a Field Interview Card or other appropriate report.

B. Use of In-Car Imaging

The use of computerized images from driver's licenses, jail, or other sources may be useful in confirming the identity of a suspect personally known to the victim or witness prior to the commission of the crime. It should not be used in place of a lineup or show-up because it does not have the safeguards against misidentification that are built into those procedures. To avoid undue influence, an image should not be shown to the victim or witness when a subsequent line-up or show-up is likely without first consulting with a supervisor and with the assigned investigator when possible.

C. Photo Lineup

A photo lineup is the structured presentation of six photographs containing a recent photograph of the suspect plus photographs of other persons of similar appearance to be shown to a victim/witness for the purpose of identifying or eliminating the suspect as the perpetrator. The photos are to be shown one at a time to the witness/victim. For logistical reasons, a photo lineup is the preferred method of conducting a lineup for suspect identification or elimination. Photo lineups shall be presented double-blind so that the officer presenting the line-up to the witness/victim does not know the suspect's photo. The officer that knows the suspect is not to be in the room during the lineup viewing. Preferably, photo lineups will be conducted at a Department Facility where it can be video/audio recorded. When circumstances prevent a

witness/victim from coming to a Department Facility, or when the video equipment is out of service, an audio recording of the lineup proceeding will be made.

1. In composing a lineup, the officer shall:
  - a. Individually number each photo.
  - b. Include only one suspect in each identification procedure.
  - c. Select fillers (non-suspects) who generally fit the witness's/victim's description of the perpetrator. When there is a limited/inadequate description of the perpetrator provided by the witness/victim, or when the description provided differs significantly from the appearance of the suspect, fillers should resemble the suspect in significant features.
  - d. If multiple photos of the suspect are reasonably available to the officer, select a photo that resembles the suspect's description or appearance at the time of the incident.
  - e. Make every effort to include a minimum of five fillers per identification procedure.
  - f. Consider that complete uniformity of features is not required. 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.
  - g. Whenever possible, avoid mixing color and black and white photos, use photos of the same size and basic composition, and never mix mug shots with other snapshots or include more than one photo of the same suspect.
  - h. Cover any portions of mug shots or other photographs that provide identifying information on the subject, and similarly cover those used in the lineup.
  - i. Show the entire lineup to only one witness/victim at a time. Every photograph in the lineup must be presented to the witness/victim.
  - j. Never make suggestive statements that may influence the judgment or perception of the witness/victim.
  - k. Preserve the lineup together with full information about the identification process, for future reference, including the presentation order of the photo lineup (if applicable). In addition, the photos themselves should be preserved in their original condition and placed into evidence with a photocopy included in the case file.
  - l. Consider placing suspects in a different position in each lineup, both across cases and with multiple witnesses/victims in the same case. Position the suspect randomly in the lineup.
  - m. When showing a new suspect, avoid reusing fillers in lineups shown to the same witness/victim.
  - n. Ensure that no writings or information concerning the previous arrest(s) will be visible to the witness/victim.
  - o. View the lineup, once completed, to ensure that the suspect does not unduly stand out.
3. When presenting a photo lineup, the officer shall:
  - a. Provide viewing instructions as outlined within the Department Lineup Viewing Form.
  - b. Confirm that the witness/victim understands the nature of the lineup procedure.
  - c. Show the photos one at a time. The witness/victim may only view one photo and is not permitted to view multiple photos at the same time. The witness/victim may individually view each photo several times if needed to aid in the identification process. When the witness/victim cannot decide if the

lineup contains a photo of the suspect, the officer may conclude the lineup process as necessary.

- d. Avoid saying anything to the witness/victim that may influence the witness's/victim's selection.
- e. Record any identification results and have the witness/victim sign the photo, and the witness's/victim's statement of certainty.

4. Document in writing the photo lineup procedures, including:

- a. Identification information and/or sources of all photos used.
- b. Names of all persons present at the photo lineup.
- c. Date and time of the identification procedures.

Note: Instruct the witness/victim not to discuss the identification procedure or its results with other witnesses/victims involved in the case and discourage contact with the media.

5. When documenting an identification procedure, the officer shall:

- a. Record both identification and non-identification results in writing, including the witness's/victim's own words regarding how sure he/she is.
- b. Ensure that the results are signed and dated by the witness/victim.
- c. Ensure that no materials indicating previous identification results are visible to the witness/victim.
- d. Ensure that the witness/victim does not write on or mark the materials that will be used in other identification procedures.

E. Blind Photo Array

Circumstances exist where officers may have to travel well outside their jurisdiction in order to present a lineup. In these cases, it may not always be practical or efficient to have to utilize two officers to simply present a lineup. If the double blind administration procedure is not practical or possible, the Blind Photo Array method may be incorporated. This method allows the administrator to solely present a lineup. Although the administrator knows who the suspect in the case is, they are not able to see the photograph or know the location of the suspect photograph in the presented array. The best method to ensure the integrity of the presentation is to use the folder shuffle whereby either the administrator or a third person shuffles the photographs in a folder before presentation to the witness. The photo array administrator should thoroughly document the reason why the double blind method is not being used.

F. Live Physical Lineups

Live lineups are generally impractical due to logistical reasons because they must be conducted at the county jail or police facility, may necessitate the presence of the suspect's attorney, and require the procurement of at least four persons (generally prisoners or police officers) similar in appearance to the suspect. **As such this type of lineup is not to be used by Tyler Police Department officers.**

G. Training

All sworn personnel will receive training regarding show-ups and lineups during initial recruit training. Additionally, new detectives and new supervisors will receive training on show-ups and lineups during orientation. Retraining will be provided as necessary.

Approved: 08/25/14

Angie Sunde