



# **LAGUNA BEACH POLICE DEPARTMENT**

## **TRAINING BULLETIN # 20-01**

### **Photo Line Up**

#### **PURPOSE**

The purpose of this training bulletin is to provide employees with the updated procedures regarding Photo Line-ups. This training bulletin will cover CPC 859.7, which was enacted on January 1, 2020. Officers should familiarize themselves with CPC 859.7 and with LBPDP Policies 611 through 611.8.

#### **1. Definition**

##### **PC 859.7 states:**

(a) All law enforcement agencies and prosecutorial entities shall adopt regulations for conducting photo lineups and live lineups with eyewitnesses. The regulations shall be developed to ensure reliable and accurate suspect identifications. In order to ensure reliability and accuracy, the regulations shall comply with, at a minimum, the following requirements:

(1) Prior to conducting the identification procedure, and as close in time to the incident as possible, the eyewitness shall provide the description of the perpetrator of the offense.

(2) The investigator conducting the identification procedure shall use blind administration or blinded administration during the identification procedure.

(3) The investigator shall state in writing the reason that the presentation of the lineup was not conducted using blind administration, if applicable.

(4) An eyewitness shall be instructed of the following, prior to any identification procedure:

(A) The perpetrator may or may not be among the persons in the identification procedure.

(B) The eyewitness should not feel compelled to make an identification.

(C) An identification or failure to make an identification will not end the investigation.

(5) An identification procedure shall be composed so that the fillers generally fit the eyewitness' description of the perpetrator. In the case of a photo lineup, the photograph of the person suspected as the perpetrator should, if practicable, resemble his or her appearance at the time of the offense and not unduly stand out.

(6) In a photo lineup, writings or information concerning any previous arrest of the person suspected as the perpetrator shall not be visible to the eyewitness.

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- (7) Only one suspected perpetrator shall be included in any identification procedure.
- (8) All eyewitnesses shall be separated when viewing an identification procedure.
- (9) Nothing shall be said to the eyewitness that might influence the eyewitness' identification of the person suspected as the perpetrator.
- (10) If the eyewitness identifies a person(s) he or she believes to be the perpetrator, all of the following shall apply:
  - (A) The investigator shall immediately inquire as to the eyewitness' confidence level in the accuracy of the identification and record in writing, verbatim, what the eyewitness says.
  - (B) Information concerning the identified person shall not be given to the eyewitness prior to obtaining the eyewitness' statement of confidence level and documenting the exact words of the eyewitness.
  - (C) The officer shall not validate or invalidate the eyewitness' identification.
- (11) An electronic recording shall be made that includes both audio and visual representations of the identification procedures. Whether it is feasible to make a recording with both audio and visual representations shall be determined on a case-by-case basis. When it is not feasible to make a recording with both audio and visual representations, audio recording may be used. When audio recording without video recording is used, the investigator shall state in writing the reason that video recording was not feasible.
- (b) Nothing in this section is intended to affect policies for field show up procedures.
- (c) For purposes of this section, the following terms have the following meanings:
  - (1) "**Blind administration**" means the administrator of an eyewitness identification procedure does not know the identity of the suspect.
  - (2) "**Blinded administration**" means the administrator of an eyewitness identification procedure may know who the suspect is, but does not know where the suspect, or his or her photo, as applicable, has been placed or positioned in the identification procedure through the use of any of the following:
    - (A) An automated computer program that prevents the administrator from seeing which photos the eyewitness is viewing until after the identification procedure is completed.
    - (B) The folder shuffle method, which refers to a system for conducting a photo lineup by placing photographs in folders, randomly numbering the folders, shuffling the folders, and then presenting the folders sequentially so that the administrator cannot see or track which photograph is being



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presented to the eyewitness until after the procedure is completed.

(C) Any other procedure that achieves neutral administration and prevents the lineup administrator from knowing where the suspect or his or her photo, as applicable, has been placed or positioned in the identification procedure.

(3) "Eyewitness" means a person whose identification of another person may be relevant in a criminal investigation.

(4) "Field show up" means a procedure in which a suspect is detained shortly after the commission of a crime and who, based on his or her appearance, his or her distance from the crime scene, or other circumstantial evidence, is suspected of having just committed a crime. In these situations, the victim or an eyewitness is brought to the scene of the detention and is asked if the detainee was the perpetrator.

(5) "Filler" means either a person or a photograph of a person who is not suspected of an offense and is included in an identification procedure.

(6) "Identification procedure" means either a photo lineup or a live lineup.

(7) "Investigator" means the person conducting the identification procedure.

(8) "Live lineup" means a procedure in which a group of persons, including the person suspected as the perpetrator of an offense and other persons not suspected of the offense, are displayed to an eyewitness for the purpose of determining whether the eyewitness is able to identify the suspect as the perpetrator.

(9) "Photo lineup" means a procedure in which an array of photographs, including a photograph of the person suspected as the perpetrator of an offense and additional photographs of other persons not suspected of the offense, are displayed to an eyewitness for the purpose of determining whether the eyewitness is able to identify the suspect as the perpetrator.

(D) Nothing in this section is intended to preclude the admissibility of any relevant evidence or to affect the standards governing the admissibility of evidence under the United States Constitution.

(E) This section shall become operative on January 1, 2020.

### **611.5 EYEWITNESS IDENTIFICATION**

Members are cautioned not to, in any way, influence a witness as to whether any subject or photo presented in a lineup is in any way connected to the case.

Members should avoid mentioning that:

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- The individual was apprehended near the crime scene.
- The evidence points to the individual as the suspect.
- Other witnesses have identified or failed to identify the individual as the suspect.

In order to avoid undue influence, witnesses should view suspects or a lineup individually and outside the presence of other witnesses. Witnesses should be instructed to avoid discussing details of the incident or of the identification process with other witnesses.

The eyewitness identification procedure shall be audio and video recorded and the recording should be retained according to current evidence procedures (Penal Code § 859.7).

### **611.6 DOCUMENTATION**

A thorough description of the eyewitness process and the result of any eyewitness identification should be documented in the case report.

If a photographic lineup is utilized, a copy of the photographic lineup presented to the witness should be included in the case report. In addition, the order in which the photographs were presented to the witness should be documented in the case report.

#### **611.6.1 DOCUMENTATION RELATED TO RECORDINGS**

The handling member shall document the reason that a video recording or any other recording of an identification was not obtained (Penal Code § 859.7).

#### **611.6.2 DOCUMENTATION RELATED TO BLIND ADMINISTRATION**

If a presentation of a lineup is not conducted using blind administration, the handling member shall document the reason (Penal Code § 859.7).

Per **LBPD Policy 611.7**, it states, "When practicable, the member presenting the lineup should not be involved in the investigation of the case or know the identity of the suspect. In no case should the member presenting a lineup to a witness know which photograph or person in the lineup is being viewed by the witness (Penal Code § 859.7). Techniques to achieve this include randomly numbering photographs, shuffling folders, or using a computer program to order the persons in the lineup.

Individuals in the lineup should reasonably match the description of the perpetrator provided by the witness and should bear similar characteristics to avoid causing any person to unreasonably stand out. In cases involving multiple suspects, a separate lineup should be conducted for each suspect. The suspects should be placed in a different order within each lineup (Penal Code § 859.7).

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The member presenting the lineup should do so sequentially (i.e., show the witness one person at a time) and not simultaneously. The witness should view all persons in the lineup.

A live lineup should only be used before criminal proceedings have been initiated against the suspect. If there is any question as to whether any criminal proceedings have begun, the investigating member should contact the appropriate prosecuting attorney before proceeding.

Additional information pertaining to this subject can be found in LBPD Policy 611 – Eyewitness Identification.

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