

# Eyewitness Identification

## 602.1 PURPOSE AND SCOPE

This policy sets forth guidelines to be used when members of this department employ eyewitness identification techniques (Penal Code § 859.7).

### 602.1.1 DEFINITIONS

Definitions related to the policy include:

**Eyewitness identification process** - Any field identification, live lineup or photographic identification.

**Field identification** - A live presentation of a single individual to a witness following the commission of a criminal offense for the purpose of identifying or eliminating the person as the suspect.

**Live lineup** - A live presentation of individuals to a witness for the purpose of identifying or eliminating an individual as the suspect.

**Photographic lineup** - Presentation of photographs to a witness for the purpose of identifying or eliminating an individual as the suspect.

## 602.2 POLICY

This department will strive to use eyewitness identification techniques, when appropriate, to enhance the investigative process and will emphasize identifying persons responsible for crime and exonerating the innocent.

## 602.3 INTERPRETIVE SERVICES

Members should make a reasonable effort to arrange for an interpreter before proceeding with eyewitness identification if communication with a witness is impeded due to language or hearing barriers.

Before the interpreter is permitted to discuss any matter with the witness, the investigating member should explain the identification process to the interpreter. Once it is determined that the interpreter comprehends the process and can explain it to the witness, the eyewitness identification may proceed as provided for within this policy.

## 602.4 EYEWITNESS IDENTIFICATION PROCESS AND FORM

The Investigations supervisor shall be responsible for the development and maintenance of an eyewitness identification process for use by members when they are conducting eyewitness identifications.

The process should include appropriate forms or reports that provide (Penal Code § 859.7):

- (a) The date, time and location of the eyewitness identification procedure.
- (b) The name and identifying information of the witness.

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- (c) The name of the person administering the identification procedure.
- (d) If applicable, the names of all of the individuals present during the identification procedure.
- (e) An instruction to the witness that it is as important to exclude innocent persons as it is to identify a perpetrator.
- (f) An instruction to the witness that the perpetrator may or may not be among those presented and that the witness is not obligated to make an identification.
- (g) If the identification process is a photographic or live lineup, an instruction to the witness that the perpetrator may not appear exactly as he/she did on the date of the incident.
- (h) An instruction to the witness that the investigation will continue regardless of whether an identification is made by the witness.
- (i) A signature line where the witness acknowledges that he/she understands the identification procedures and instructions.
- (j) A statement from the witness in the witness's own words describing how certain he/she is of the identification or non-identification. This statement should be taken at the time of the identification procedure.
- (k) Any other direction to meet the requirements of Penal Code § 859.7, including direction regarding blind or blinded administrations and filler selection.

The process and related forms should be reviewed at least annually and modified when necessary. [See attachment: FSPD Eyewitness Identification Form.pdf](#)

#### **602.5 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:

- 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 should be audio and video recorded and the recording should be retained according to current evidence procedures. When it is not feasible to make a recording with both audio and visual representations, an audio recording should be made (Penal Code § 859.7).

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#### **602.6 DOCUMENTATION**

A thorough description of the eyewitness process and the result of any eyewitness identification should be documented in the case report. This includes the prescribed instructions to the witness including a statement that the suspect may or may not be in the line-up or show-up.

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 along with the exact words used by the witness when identifying the suspect.

##### **602.6.1 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).

##### **602.6.2 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).

#### **602.7 PHOTOGRAPHIC LINEUP AND LIVE LINEUP CONSIDERATIONS**

During the composition and presentation of live or photographic lineups, the following considerations are designed to prevent opportunities to influence the witness.

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).

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.

##### **602.7.1 OTHER SAFEGUARDS**

Witnesses should be asked for suspect descriptions as close in time to the incident as possible and before conducting an eyewitness identification. No information concerning a suspect should be given prior to obtaining a statement from the witness describing how certain he/she is of the identification or non-identification. Members should not say anything to a witness that may validate or invalidate an eyewitness' identification. In photographic lineups, writings or information

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concerning any previous arrest of a suspect shall not be visible to the witness (Penal Code § 859.7).

#### **602.8 FIELD IDENTIFICATION CONSIDERATIONS**

Field identifications, also known as field elimination show-ups or one-on-one identifications, may be helpful in certain cases, where exigent circumstances make it impracticable to conduct a photo or live lineup identifications. A field elimination show-up or one-on-one identification should not be used when independent probable cause exists to arrest a suspect. In such cases a live or photo lineup is the preferred course of action if eyewitness identification is contemplated.

When initiating a field identification, the member should observe the following guidelines:

- (a) Obtain a complete description of the suspect from the witness.
- (b) Assess whether a witness should be included in a field identification process by considering:
  1. The length of time the witness observed the suspect.
  2. The distance between the witness and the suspect.
  3. Whether the witness could view the suspect's face.
  4. The quality of the lighting when the suspect was observed by the witness.
  5. Whether there were distracting noises or activity during the observation.
  6. Any other circumstances affecting the witness's opportunity to observe the suspect.
  7. The length of time that has elapsed since the witness observed the suspect.
- (c) If safe and practicable, the person who is the subject of the show-up should not be handcuffed or in a patrol vehicle.
- (d) When feasible, members should bring the witness to the location of the subject of the show-up, rather than bring the subject of the show-up to the witness.
- (e) The person who is the subject of the show-up should not be shown to the same witness more than once.
- (f) In cases involving multiple suspects, witnesses should only be permitted to view the subjects of the show-up one at a time.
- (g) The person who is the subject of the show-up should not be required to put on clothing worn by the suspect, to speak words uttered by the suspect or to perform other actions mimicking those of the suspect.
- (h) If a witness positively identifies a subject of the show-up as the suspect, members should not conduct any further field identifications with other witnesses for that suspect. In such instances members should document the contact information for any additional witnesses for follow up, if necessary.

## **Attachments**

## **FSPD Eyewitness Identification Form.pdf**



# FRESNO STATE POLICE DEPARTMENT

## EYEWITNESS IDENTIFICATION PROCEDURE (California Penal Code 859.7 Compliance Check List) INSTRUCTIONS TO INVESTIGATORS

### Instructions to Investigators:

You shall not:

- Mention to the eyewitness that a suspect has, or has not been, apprehended.
- Mention to the eyewitness that evidence tends to identify a particular suspect.
- Mention to the eyewitness that other eyewitnesses have, or have not, identified a perpetrator.
- Name, or otherwise identify to the eyewitness, a particular person as a suspect.
- Validate, or invalidate, the eyewitness identification.

You shall:

- Obtain from the eyewitness, ***prior to the identification procedure*** and as close to the time of the crime as possible, a description of the perpetrator.
- Administer a blind, or blinded, identification procedure.
  - Document why a blind, or blinded identification procedure was not used (as applicable).
- Immediately inquire as to the eyewitness' confidence level in the accuracy of the identification and record in writing, ***verbatim***, what the eyewitness says.
- Conduct the identification procedure in private, with only one eyewitness present at a time.
- Instruct eyewitnesses not to discuss the identification procedure with other witnesses.
- Audio ***and*** video record the identification procedure.
- Document why the identification procedure was not video recorded (as applicable).
- Document in the case report:
  - a thorough description of the eyewitness identification procedure
  - the result of the identification procedure
  - a copy of the lineup that was presented to the eyewitness
  - the order in which the photographs were presented to the eyewitness

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**"Blind administration"** means the administrator of an eyewitness identification procedure does not know the identity of the suspect.

**"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 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.

Procedure Information:

Location conducted: \_\_\_\_\_

Date conducted: \_\_\_\_\_

Time conducted: \_\_\_\_\_

Blind(ed) Investigator (presenter): \_\_\_\_\_

Other persons present: \_\_\_\_\_

Eyewitness Information:

Name: \_\_\_\_\_

DOB: \_\_\_\_\_

CDL #: \_\_\_\_\_

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The eyewitness identification procedure documented herein was conducted as follows:

1. The procedure was conducted privately such that no other eyewitness could see or hear the procedure as it was conducted.
2. The eyewitness was asked to provide a description of the perpetrator prior to being shown the photographs.
3. The eyewitness was given the instructions listed above and titled, *Instructions to Eyewitnesses*.
4. The photographs were presented using a  blind  blinded procedure.
5. The procedure was  audio recorded  audio & video recorded.
6. The photographs were presented:
  - as a one-page six-pack
  - sequentially in the following order: \_\_\_\_\_
7. The eyewitness  did  did not identify a perpetrator.
8. Regarding the confidence with which the eyewitness identified a perpetrator, the eyewitness stated:

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Reporting Officer

Date / Time





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## EYEWITNESS IDENTIFICATION PROCEDURE (California Penal Code 859.7 Compliance Check List) INSTRUCTIONS TO EYEWITNESSES

CASE # \_\_\_\_\_

### Instructions to Eyewitnesses:

In a moment I am going to show you a group of photographs. Before viewing them, it is important that you understand that:

1. The person who committed the crime may, or may not, be depicted among the photographs.
2. You should not feel any pressure to identify anyone from the photographs. It is more important not to identify an innocent person than it is to identify a perpetrator.
3. Law enforcement investigators will not be disappointed or angry if you do not identify a perpetrator.
4. Hair styles, beards, and moustaches may be easily changed.
5. Photographs may not always depict the true complexion on a person. It may be lighter or darker than shown in photographs.
6. These photographs were not necessarily taken recently. The people depicted in them may not have looked, on the date of the crime, like they do in the photographs.
7. You should pay no attention to any markings or numbers that may appear on the photos or any other differences in the type or style of the photos.
8. If you do not identify anyone, it will not cause the associated investigation to be terminated. In other words, the investigation being conducted does not depend solely on your ability to identify a perpetrator.
9. You should not tell other potential eyewitnesses that you did, or did not, identify anyone.

I hereby acknowledge that I understand the Identification Procedures/Instructions enumerated above.

\_\_\_\_\_  
Eyewitness Signature

\_\_\_\_\_  
Date