



SAN ANTONIO POLICE DEPARTMENT GENERAL MANUAL



Procedure 702 – Eyewitness Identification

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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 identification procedures. The procedures in this policy are applicable when a person is developed as a suspect in the incident under investigation.

03. TERMINOLOGY

- A. **Administrator.** The person charged with presenting a 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 the line-up.
- D. **Blind Manner.** The presentation of a photographic line-up by either a blind administrator or a blinded administrator.
- E. **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.
- 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 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 where the photographs are placed in separate folders or envelopes and 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. **Interpreter.** An individual with the necessary skills that enable them to communicate with an illiterate person or a person with limited English proficiency to the degree they can ensure the person clearly understands all instructions given then prior to viewing a suspect in any identification procedure.
- K. **Live Lineup.** 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 and/or eliminating suspects.



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- L. **Person with Limited English Proficiency.** An individual who is unable to communicate effectively in English with a level of fluency that is typical of a native English speaker. Such a person may have difficulty speaking, reading, or writing in English and includes persons who can comprehend English, but are physically unable to write.
- M. **Photographic Line-up.** A collection of photographs including a suspect photograph and *filler* photographs that are shown to a witness for the purpose of identifying and eliminating suspects.
- N. **Sequential Viewing.** An identification procedure in which photographs **or persons in a live line-up** are shown one at a time to a witness.
- O. **Simultaneous Viewing.** An identification procedure in which all photographs **or persons in a live line-up** 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.** A term referring to a complainant, victim, 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 blinded administrator, using the folder method in a blind manner.
 - 3. Live line-up conducted by a blind administrator.
 - 4. 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. Live line-ups will not normally be used due to the difficulty of administration and the difficulty in obtaining sufficient number of individuals with similar physical characteristics. Should an assigned investigator determine a need for a live line-up, the investigator should refer to sections .10 - .11 of this procedure
- D. 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.
- E. Identification of suspects by witnesses should supplement other investigative actions and/or evidence.
- F. 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.
- G. 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 deaf or person with limited English proficiency, to assist in the identification process. Consider arranging for an interpreter if a person interviewed:



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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
- H. 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 SAPD Form #141 WLU F/P, stating why the person was unable to sign the form.
- I. Documentation of Line-ups:
1. In all cases, the administrator 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. Audio recording is the preferred alternative. If neither method is employed, then the reason for not video or audio recording should be documented. The recording will be safeguarded and maintained pursuant to the unit's Standard Operating Procedures.

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. 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 an administrator of the line-up.
 3. Preserving the photo line-up, whether an identification is made or not, together with full information about the identification process for future reference, by safeguarding the photos in their original condition and the Photographic Lineup Form, pursuant to the individual unit Standard Operating Procedures.
 4. In preparing the photographic line-up; the assigned investigator should:
 - a. Include only one suspect in each identification procedure.
 - b. Select fillers that generally fit the witness' description of the perpetrator. Fillers should be selected where no person stands out from the others.
 - c. Use photographs of individuals who are reasonably similar in age, height, weight and general appearance and of the same sex and race. Avoid use of fillers that so closely resemble the suspect that a person familiar with the suspect might find it difficult to distinguish the suspect from the fillers.



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- d. If multiple photos of the suspect are reasonably available to the investigator, select a photo that resembles the suspect's description or appearance at the time of the incident.
 - e. Include a minimum of five fillers per identification procedure. Place a filler in the lead position, with the remaining photographs in random order. Place two blanks on the same type of photographic paper at the end (these will not be shown to the witness). If showing the same suspect to a different witness, if using the same filler photographs place a filler in the lead position, with the remaining photographs in a new random order.
 - f. Avoid multiple identification procedures in which the same witness views the same suspect more than once, and avoid using the same fillers in lineups shown to the same witness if showing a new suspect.
 - g. Ensure that no writings or information concerning previous arrest(s) will be visible to the witness. Do not mix color and black and white photos.
 - h. Use photos of the same size and basic composition. Mug shots should not be mixed with other photos. If mug shots are to be used, cover any portions that provide identifying information about the subject.
 - i. Photos should be reasonably contemporary.
 - j. Do not use more than one photo of the same suspect.
 - k. If there is more than one suspect, include only one suspect in each line-up presentation.
 - l. View the array, once completed, to ensure that the suspect does not unduly stand out.
- B. 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: DUTIES OF THE ADMINISTRATOR

- 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 his report.
- B. If using a blinded administrator, the procedure must be conducted in a manner such that the administrator does not know either the position of the suspect in the array, or which person in the array the witness is looking at. In addition to the following the procedures listed in .06 - .07 , below, the blinded 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.



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- 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 he or she is 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 procedures 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: provides the witness with a Photographic Line-up Form (SAPD 141 WLU-P); reads the instructions and admonitions verbatim from the form; obtains the witness' signature indicating they understand the procedure; 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, 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; and, 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. 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. 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, the administrator shows the witness the folder and asks if they see the person who committed the crime. 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.
- G. The administrator: completes the Statement of Victim/Witness portion of SAPD 141 WLU-P, including making sure the witness' confidence statement is documented in the witness' own words, regarding how certain they are of the identification; has the witness complete and sign the appropriate portion of the form; returns all files, photographs and forms to the assigned investigator; and, completes a supplement on the identification procedure.

07. LIVE LINEUP PROCEDURES

- A. The assigned investigator is responsible for the following preliminary procedures:
 - 1. A suspect has the right to have an attorney present at a live lineup if the lineup is held after the initiation of criminal proceedings against the suspect (i.e., after the complaint has been filed, a formal charge has been filed, a preliminary hearing has been held, suspect has been arraigned, or an indictment or information has been filed). A suspect who has the right to have an attorney present at a lineup is advised by the assigned investigator that:
 - a. He has the right to have an attorney present to observe the procedure;
 - b. If he cannot afford an attorney, one is provided for him free of charge; and
 - c. The lineup is delayed for a reasonable amount of time after the attorney is notified, in order to allow the attorney to attend.



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2. The assigned investigator will take a formal statement from the accused if he waives his right to counsel and he agrees to give a statement. In the event the accused refuses to waive his rights and refuses to employ or have an attorney appointed for him, the assigned investigator will contact a Bexar County District Court judge and requests that the judge appoint an attorney on behalf of the accused.
3. When a suspect who has the right to counsel at a lineup desires to have counsel present, the following procedures are followed.
 - a. The assigned investigator will call the suspect's attorney and inform the attorney of the time and date of the lineup and allow the suspect to talk to him;
 - b. When the suspect has no attorney, but wishes to retain one, he is given a reasonable amount of time to do so; and
 - c. In the case of indigent suspects, the assigned investigator will contact a Bexar County District Court judge to have an attorney appointed to represent the suspect.
4. In the event the suspect's counsel fails to appear at the scheduled lineup, the lineup is delayed for a short period of time. The assigned investigator may take the following steps if the attorney still does not appear:
 - a. Delay the lineup until a later date;
 - b. Arrange for a substitute counsel to represent the suspect at the lineup; or
 - c. Hold the lineup without counsel if it is impractical to delay it or appoint substitute counsel.
5. Prior to the lineup, the assigned investigator will inform the District Attorney's Office of the date, time, and location of the proceedings to give them the opportunity to send a representative.
6. Before placing the suspect in the lineup, the assigned investigator will inform the suspect that:
 - a. He is being placed in a lineup along with persons similar in appearance; and
 - b. He may be required to wear certain clothing, utter certain words, or perform certain acts, but such appearance, words, or acts are for identification purpose only.
7. When a suspect is uncooperative or refuses to participate in a lineup:
 - a. He is advised by the assigned investigator that he has no right to refuse and that his refusal may be introduced at his trial as evidence of consciousness of guilt; and
 - b. A record is made of the precise words of refusal.
8. Prior to beginning the lineup, the assigned investigator will instruct the defense counsel as to the procedure for the lineup:
 - a. The offense with which his client is charged or suspected;
 - b. The names and addresses of witnesses who view the lineup are not revealed to counsel;
 - c. To direct all comments or inquiries to the administrator outside the presence of the witnesses during the lineup;



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- d. Objections or lack of objections to the lineup arrangement or procedure are noted on the record of the lineup procedure;
 - e. Counsel may be removed from the lineup proceedings if attempts are made to obstruct or delay the lineup; and
 - f. When substitute counsel cannot be readily obtained, the lineup continues without counsel for the suspect
- B. The assigned investigator is responsible for:
1. Preparing the line-up, including selecting the fillers.
 2. 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.
 3. Preserving the line-up and identification process for future reference via photographic/video documentation and all completed forms and reports, whether an identification is made or not.
 4. In preparing the line-up; the assigned investigator should:
 - a. Include only one suspect in each identification procedure.
 - b. Select fillers that generally fit the witness' description of the perpetrator. Fillers should be selected where no person stands out from the others.
 - c. Use individuals who are reasonably similar in age, height, weight and general appearance and of the same sex and race. Avoid use of fillers that so closely resemble the suspect that a person familiar with the suspect might find it difficult to distinguish the suspect from the fillers.
 - d. Include a minimum of five fillers per identification procedure. Place a filler in the lead position, with the remaining persons in random order. If showing the same suspect to a different witness, using the same filler persons, place a filler in the lead position, with the remaining persons in a new random order.
 - e. Avoid reusing fillers in lineups shown to the same witness if showing a new suspect.
 - f. If there is more than one suspect, include only one suspect in each line-up presentation.
 - g. View the line-up, once completed, to ensure that the suspect does not unduly stand out.
 5. Presenting the ordered live lineup to the administrator; the administrator may not be told which position the suspect is in.
- C. 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 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.



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4. Ensuring witnesses are not allowed to confer with each other before, during or after the identification procedure and that the assigned investigator is not within hearing or view, or present in the same room at the time the line-up is conducted.
5. Returning all line-up materials and documentation to the assigned investigator.

08. PRESENTING LIVE LINE-UPS: DUTIES OF THE ADMINISTRATOR

- A. A blind administrator must be used, and the assigned investigator should not be within view or hearing, or present in the same room at the time the line-up is conducted.
- B. 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 he or she is unaware of which person 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.
- C. The administrator: provides the witness with a Live Line-up SAPD Form 141 WLU-L reads the instructions and admonitions verbatim from the form; obtains the witness' signature indicating they understand the procedure; 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.
- D. The administrator: completes the Statement of Victim/Witness portion of SAPD Form 141 WLU, including making sure the witness' confidence statement is documented in the witness' own words, regarding how certain they are of the identification; has the witness complete and sign the appropriate portion of the form; returns all files, photographs and forms to the assigned investigator; and, completes a supplement on the identification procedure.
- E. The administrator begins with all live lineup participants out of the view of the witness; presents the subjects one at a time in the order presented to the administrator by the assigned investigator; presents each individual to the witness separately, removing those previously shown from the field of view, if administering a sequential live lineup, or bring the participants in one at a time until they are all assembled, if administering a simultaneous live lineup.
- F. Even if the witness makes an identification, show the witness the next subject until all subjects have been shown. If a witness asks why he or she must view the rest of the persons, simply states the witness is required to view all the persons to assure objectivity and reliability.
- G. The witness should not know how many individuals will be shown.
- H. Ensure that any identification actions (e.g., speaking, moving, etc.) are performed by all members of the live lineup.
- I. To the extent possible, ensure that no one who knows the suspect's identity is present during the live lineup procedure. In some live lineups, exceptions must be made to allow for the presence of defense counsel.
- J. Only upon request of the witness, the witness may view the live lineup again after the first live lineup has been completed. If the witness requests an additional viewing, the independent administrator should present the entire live lineup a second time. The live lineup administrator should never suggest additional viewing. It is recommended that the witness not be allowed to view the live lineup more than two times.



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- K. When showing a different suspect to the same witness, do not reuse the same fillers from a previous array shown to that witness.
- L. Take precautions to ensure that witnesses do not encounter suspects or fillers at any time before or after the identification procedure.
- M. 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.

09. FIELD IDENTIFICATION PROCEDURES

- A. The use of field identification should be avoided whenever possible in preference for the use of a photographic or live lineup. 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. Therefore, when circumstances require the use of field identification the following guidelines should be followed:
 - 1. Supervisory approval should be obtained prior to 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.
 - 2. Single suspect field identification shall not be used if there is adequate probable cause to arrest the suspect. The follow up unit will conduct a lineup 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. Whenever possible, the witness should be transported to the location of the suspect rather than bringing the suspect to the witness. Suspects should not be taken to the crime scene, or to the witness's home.
 - 5. Field identifications should not be attempted more than two hours after the commission of a crime.
 - 6. Field identification should not be conducted when the suspect is in a patrol car, handcuffed, or physically restrained by police officers, unless such protective measures are necessary to ensure safety.
 - 7. Field identification should only be conducted with one witness present at a time. If the field identification is conducted for more than one witness it should be done separately. If one witness positively identifies the individual, consider making an arrest and using the above photographic lineup procedures for other witnesses.
 - 8. The same suspect should not be presented to the same witness more than once in either field or subsequent photographic line-ups.
 - 9. Field identification suspects should 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.
 - 10. Officers should avoid words or conduct of any type that may suggest to the witness that the individual is or may be the perpetrator will be avoided.
 - 11. Witnesses should be reminded not to talk about the show-up to other witnesses until police or prosecutors deem it permissible.



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12. The officer conducting the field identification: provides the witness with SAPD Form 141 WLU-F; reads the instructions and admonitions verbatim from the form; obtains the witness' signature indicating they understand the procedure; 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.
 - B. The officer conducting the show-up: completes the Statement of Victim/Witness portion of SAPD form 141 WLU-F, including making sure the witness' confidence statement is documented in the witness' own words regarding how certain they are of the identification; documents the witness's response in the witness's own words; has the witness complete and sign the appropriate portion of the form; returns all files, photographs and forms to the assigned investigator; and, completes a supplement on the identification procedure. The documentation of the show-up should also include the time, date and location of the procedure, identities of persons present, and the outcome of the procedure.
 - C. If an in-car video and audio recording system is active at the time of the field identification, it will not be stopped before or during the identification. The recording will be maintained pursuant to the applicable Standard Operation Procedures.
 - D. Each officer participating in the field identification will document their actions and any statements made in a supplement report.