DAVIS POLICE DEPARTMENT

EYEWITNESS IDENTIFICATION
Policy and Procedure 2.60-C

DEPARTMENT MANUAL

I. POLICY

This policy sets forth guidelines to be used when members employ eyewitness identification procedures. It is written to conform to the requirements of Penal Code 859.7 (operative January 1, 2020) and is in full-force and effect immediately.

Members will use eyewitness identification procedures, when appropriate, to enhance the investigative process and will emphasize identifying persons responsible for crime and exonerating the innocent.

II. PROCEDURE

A. Definitions Related to this Policy Include:

“Blind administration” means the administrator of an eyewitness identification procedure does not know the identity of the suspect. Using the blind administration method is the preferred option.

“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:

• An automated computer program that prevents the administrator from seeing which photos the eyewitness is viewing until after the identification procedure is completed.
• 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.
• 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.

“Eyewitness” means a person whose identification of another person may be relevant in a criminal investigation.

“Eyewitness identification process” means any field identification, live lineup or photographic identification.

“Field show-up” or “Field identification” means a procedure in which a suspect or individual is contacted or 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 individual or detainee was the perpetrator. This is accomplished with a live presentation of a single individual to a witness following the commission of a criminal offense for the purpose of eliminating the person as the suspect.

“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.

“Identification procedure” means either a photo lineup or a live lineup.

“Investigator” means the person conducting the identification procedure. Any trained member may be designated as an Investigator.

“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. This is accomplished with a live presentation of individuals to a witness for the purpose of identifying or eliminating the individual as a suspect.

“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. This is accomplished with the presentation of multiple photographs using the blind or blinded administration procedure to a witness for the purpose of identifying or eliminating the individual as the suspect.

B. Interpretive Services

Investigators 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 (see PP 1.34-A, Language Services).

Before the interpreter is permitted to discuss any matter with the eyewitness, the investigator will 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 in this policy.

C. General Eyewitness Identification Process for Photo Lineups, Live Lineups and Field Show-ups

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

2. Prior to conducting the identification procedure, the witness should be asked to provide a clear statement of whether or not they personally know the responsible individual and, if so, how they know the individual. This information should be considered before deciding whether or not an additional identification procedure is necessary or which one should be used.

3. Assess whether an eyewitness should be included in an identification procedure by considering:
   - The length of time the eyewitness observed the perpetrator.
   - The distance between the eyewitness and the perpetrator.
   - Whether the eyewitness could view the perpetrator’s face.
• The quality of the lighting when the perpetrator was observed by the eyewitness.
• Whether there were distracting noises or activity during the observation.
• Any other circumstances affecting the eyewitness’s opportunity to observe the perpetrator.
• The length of time that has elapsed since the eyewitness observed the perpetrator.

In cases where the eyewitness did not have an opportunity to get a full view of the perpetrator’s appearance, when practicable, the investigator will consult with a supervisor before deciding whether to proceed with an identification procedure.

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

5. Only one suspected perpetrator shall be included in any identification procedure.

6. Eyewitnesses shall be instructed to avoid discussing details of the incident or of the identification process with other witnesses.

7. Nothing shall be said to the eyewitness that might influence the eyewitness’ identification of the person suspected as the perpetrator. The investigator will not mention that:
   • The individual was apprehended near the crime scene.
   • The evidence points to the individual as the perpetrator.
   • Other witnesses have identified or failed to identify the individual as the perpetrator.

8. An eyewitness shall be instructed of the following, prior to any identification procedure:
   • The perpetrator may or may not be among the persons in the identification procedure.
   • The eyewitness should not feel compelled to make an identification.
   • An identification or failure to make an identification will not end the investigation.

9. If the eyewitness identifies a person 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. This may be accomplished by simply asking the person, “What is your level of confidence this is the responsible person?” and immediately recording the witness’ complete response.
   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.

D. Field Show-ups

Live field identifications, also known as field show-ups, field elimination show-ups, or field one-on-one identifications, may be helpful in certain cases where exigent circumstances make it impracticable to conduct a photo or live lineup identifications. Field show-ups do not involve the use of photographs and should not be confused with the procedure for conducting a full “live lineup” or “photo lineup” as defined in this policy. The overriding reason for conducting a field show-up should be because the crime has just occurred; a person has been contacted and/or detained following the
commission of the crime; and a prompt on-the-scene identification enables the investigating officer to quickly exclude from consideration innocent persons so a search for the real perpetrator can continue while it is reasonably likely they are still in the immediate area.

A field elimination or show-up identification should not be used when independent probable cause already exists to arrest the person suspected as the perpetrator because field show-ups can be unduly suggestive. However, in some cases, the field show-up would clearly be needed to provide the probable cause to arrest the individual because without the identification there would be no probable cause that the individual was involved in the crime.

Officers should not use live field show-ups as “confirmatory show-ups.” A confirmatory show-up occurs when officers attempt to confirm that an already arrested person was the perpetrator by displaying them to witnesses without fillers, whether live or by photograph. Such a procedure is highly suggestive and may lead to suppression of the identification. For example, if the witness already personally knows and names (identifies) the responsible person, and the officer confirms the identity of the contacted and/or detained individual, no live field show-up is generally needed because probable cause already exists. In such cases a live or photo lineup is the preferred course of action if further eyewitness identification procedure is contemplated or even needed at all.

When initiating a live field show-up, the member will observe the following guidelines:

- If safe and practicable, the individual should not be handcuffed or in a patrol vehicle.
- When feasible, members should bring the eyewitness to the location of the individual, rather than bring the individual to the eyewitness.
- The individual should not be shown to the same eyewitness more than once.
- In cases involving multiple perpetrators, eyewitnesses should only be permitted to view one individual at a time.
- The individual should not be required to put on clothing worn by the perpetrator, to speak words uttered by the perpetrator or to perform other actions mimicking those of the perpetrator.
- If a witness positively identifies the individual as the perpetrator, members should not conduct any further field identifications with other eyewitnesses for that perpetrator. In such instances members should document the contact information for any additional witnesses for follow up, if necessary.

E. Eyewitness Identification Form

The Investigations Division Commander is responsible for the development and maintenance of an eyewitness identification form required for use by members when they are conducting eyewitness identifications (“live lineup” or “photo lineup”).

The form will include:

- The date, time and location of the eyewitness identification procedure.
- The name and identifying information of the eyewitness.
- The name of the investigator.
- If applicable, the names of all of the individuals present during the identification procedure.
- An instruction to the eyewitness that the perpetrator may not appear exactly as he or she did on the date of the incident.
- An instruction to the eyewitness that the perpetrator may or may not be among the persons in the identification procedure.
- An instruction that the eyewitness should not feel compelled to make an identification.
• An instruction to the eyewitness that an identification or failure to make an identification will not end the investigation.
• A signature line where the eyewitness acknowledges that they understand the identification procedures and instructions.

F. Photo and Live lineup Identification Procedure

1. 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.

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

3. Because the blind administration is the preferred method, the investigator shall state in writing the reason that the presentation of the lineup was not conducted using blind administration, if applicable.

4. The investigator will present a lineup sequentially (i.e., show the eyewitness one person at a time) and not simultaneously during the identification procedure. The eyewitness should view all persons in the lineup.

5. All eyewitnesses shall be separated when viewing an identification procedure.

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.

G. Documentation

A thorough description of the identification procedure used and the results of any eyewitness identification shall be documented in the case report.

If a photographic lineup is used, a copy of the photographic lineup presented to the eyewitness shall 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.

An electronic recording shall be made that includes both audio and visual representations of the identification procedures (See PP 4.10-A, Use of BWC). When it is not feasible to make a recording with both audio and visual representations, audio recording will be used. When audio recording without video recording is used, the investigator shall state in writing the reason that video recording was not feasible.

Darren Pytel
Police Chief
5/19

Revised
11/19 additional procedures added