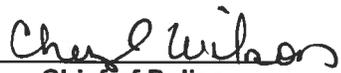


LANCASTER POLICE DEPARTMENT
GENERAL ORDERS MANUAL

<i>Effective Date</i> September 2, 2015		<i>Amended Date</i>		<i>Directive</i> 7.18.1	
<i>Subject</i> Eyewitness Identification					
<i>Reference</i>			<i>Approved</i>  Cheryl Wilson Chief of Police		
<i>Distribution</i> All Personnel City Manager City Attorney		<i>TPCA Best Practices Recognition</i> <i>Program Reference</i> 7.32		<i>Review Date</i>	<i>Pages</i> 7

This Operations Directive is for internal use only and does not enhance an officer's civil or criminal liability in any way. It should not be construed as a creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violations of this Operations Directive, if proven, may only form the basis for a complaint by this Department, and only in a non-judicial administrative setting.

SECTION 1 PURPOSE

The purpose of this order is to establish the minimum guidelines and protocol for eyewitness identification procedures for photographic and field identifications. These procedures should maximize the reliability of identification, minimize unjust accusations of innocent persons, and establish evidence that is reliable and conforms to established legal requirements.

SECTION 2 POLICY

Eyewitness identifications are a significant component of many criminal investigations. The identification process must be carefully administered to minimize the likelihood of misidentifications. It is the policy of the McKinney Police Department to conduct eyewitness identifications in a manner that reduces erroneous convictions and enhances the reliability and objectivity of eyewitness identification.

SECTION 3 DEFINITIONS

- A. **Assigned Investigator:** The officer primarily responsible for investigating an incident.
- B. **Independent Administrator:** An administrator who does not know the identity of the suspect or the suspect's position in the photographic line-up.
- C. **Blind Testing Procedure:** A photographic line-up procedure wherein the person administering the test, acting as an independent administrator, does not know the identity of the suspect.
- D. **Confidence Statement:** A declaration provided by an eyewitness immediately upon identification of a suspect in a photo line-up, before any feedback is provided, in which the witness articulates in his or her own words the level of confidence in identifying the suspect.
- E. **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.
- F. **Fillers:** The photographs used in a photographic line-up whose race, sex, age, height, weight, hair style, and general appearance resemble the suspect.

LANCASTER POLICE DEPARTMENT
GENERAL ORDERS MANUAL

<i>Effective Date</i> September 2, 2015	<i>Amended Date</i>	<i>Directive</i> 7.18.1
<i>Subject</i> Eyewitness Identification		

- G. **Folder Shuffle Method:** A method of administering a photo array such that the administrator cannot see or track which photograph is being presented to the witness until after the procedure is completed. This method is employed when a blind procedure is not possible.
- H. **Illiterate Person:** An individual who speaks and understands English but cannot read and write English.
- I. **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 them prior to viewing a suspect in any identification procedure.
- J. **Live Line-Up:** 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.
- K. **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 English and includes persons who can comprehend English, but are physically unable to write.
- L. **Photographic Line-Up:** A collection of photographs including a suspect photograph and filler photographs that are placed in random order and shown to a witness for the purpose of identifying and eliminating suspects.
- M. **Sequential Viewing:** Presentation of photographs one at a time in random order before an eyewitness for the purpose of identifying and/or eliminating suspects.
- N. **Suspect:** An individual who has been specifically identified by the investigation as possibly being the person who committed the crime.
- O. **Witness:** A term referring to a complainant, victim, eyewitness, or any other form of witness to an incident.

SECTION 4 PROCEDURES

A. GENERAL GUIDELINES FOR LINE-UPS

- 1. 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 investigator determine a need for a live line-up, the investigator should contact the District Attorney's Office for procedural and technical assistance and the line-up should be carried out with the intent of this policy.
- 2. Photographic line-ups are approved for use by this department if the following procedures are followed. Photographic identification of suspects by witnesses should supplement other investigative actions and/or evidence.

B. PROCEDURES FOR LINE-UPS

LANCASTER POLICE DEPARTMENT
GENERAL ORDERS MANUAL

<i>Effective Date</i> September 2, 2015	<i>Amended Date</i>	<i>Directive</i> 7.18.1
<i>Subject</i> Eyewitness Identification		

1. Preparing Photographic Line-up Identifications (TPCA 7.32)
 - a. Include only one suspect in each identification procedure.
 - b. Select fillers (non-suspects) who generally fit the witness' description of the perpetrator. When there is a limited or inadequate description of the perpetrator provided by the witness, or when the description of the perpetrator differs significantly from the appearance of the suspect, fillers should resemble the suspect in significant features.
 - c. 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.
 - d. Include a minimum of five (5) fillers per identification procedure.
 - e. When conducting more than one line-up for a case due to multiple witnesses, consider placing the suspect in different positions in each line-up.
 - f. Avoid reusing fillers in line-ups 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.
 - h. Review the array, once completed, to ensure that the suspect does not unduly stand out.
2. Assigned Investigators shall employ the following guidelines in selecting photographs.
 - a. Use photographs of individuals who are reasonably similar in age, height, weight and general appearance and of the same sex and race. Fillers should be selected where no person stands out from the others.
 - b. 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.
 - c. Do not mix color and black and white photos.
 - d. Use photos of the same size and basic composition.
 - e. 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.
 - f. All individuals in the photographic line-up and the origin of the photos should be known to the assigned investigator, if possible.
 - g. Photos should be reasonably contemporary.
 - h. Do not use more than one photo of the same suspect.
 - i. If there is more than one suspect, include only one suspect in each line-up presentation.

LANCASTER POLICE DEPARTMENT
GENERAL ORDERS MANUAL

<i>Effective Date</i> September 2, 2015	<i>Amended Date</i>	<i>Directive</i> 7.18.1
<i>Subject</i> Eyewitness Identification		

C. PRESENTING PHOTOGRAPHIC LINE-UPS

1. Document all persons present during the line-up.
2. Police personnel administering or present during a line-up should be independent administrators unaware of which member of the line-up is the suspect in order to avoid actions or statements that could contaminate witness perception or judgement. If a department member is not available to conduct a line-up as an independent administrator, the primary detective may present the line-up by placing the photographs in separate folders and shuffling them as not to know which photograph the witness is viewing. The witness is only shown one folder at a time. (TPCA 7.32)
3. Police personnel present at the presentation should not make any suggestive statements, or take any other actions that may influence the judgment or perception of the witness. (TPCA 7.32)
4. Show the photographic line-up in the presence of one (1) witness at a time so that they will not be aware of the response of other witnesses.
5. Instructions should be given to the witness prior to viewing a photographic line-up; this can facilitate an identification or non-identification based on the witness' memory.
6. Inform the witness without other person present of the following, using the Photographic Line-up Form:
 - a. You will be shown a number of photographs.
 - b. I have been asked to show these photographs to you, but I do not know the identity of the suspect.
 - c. These photographs are numbered, and I will show them to you one at a time, in a random order. Please take as much time as you need before moving to the next photograph.
 - d. All of the photographs will be shown even if identification is made.
 - e. The person who committed the crime may or may not be in this line-up and you should not feel compelled to choose anyone. (TPCA 7.32)
 - f. Keep in mind that things like hair styles, beards, and mustaches can be easily changed and that complexion colors may look slightly different in photographs.
 - g. Regardless of whether you make identification, we will continue to investigate this incident.
 - h. If you recognize anyone, please tell me which photograph you recognize and how or why you recognize the individual.
 - i. You should not discuss the identification procedure or its results with any other eyewitnesses involved in the case and should not speak with the media regarding any identification you make.

LANCASTER POLICE DEPARTMENT
GENERAL ORDERS MANUAL

<i>Effective Date</i> September 2, 2015	<i>Amended Date</i>	<i>Directive</i> 7.18.1
<i>Subject</i> Eyewitness Identification		

- j. I am required to ask you to state in your own words, how certain you are if you make an identification.

7. Assigned Investigator's Responsibility:

- a. Obtaining a sworn law enforcement officer from the department, who is familiar with the contents of this policy and understands the line-up presentation process to act as an independent administrator of the line-up.
- b. Prepare the photographic line-up, number the photos on the back of the photograph, and place them in a folder for the independent administrator.
- c. Determining before any presentation if the witness is deaf, illiterate, or has limited English proficiency. If the witness is deaf, illiterate, non-English speaking, or has limited English proficiency, the investigator will arrange for assistance to translate the Photographic Line-Up Form in the language of the witness or otherwise assist the witness in understanding the instructions before proceeding. The identification of the assisting individual will be documented as well as the assistance provided. (TPCA 7.32)
- d. Preserving the photo line-up, whether an identification is made or not, together with full information about the identification process for future reference, by placing the photos in their original condition, the Photographic Line-Up Form, and audio/video recording of the administration process into evidence after the procedure. (TPCA 7.32)

8. Independent Administrators Responsibility:

- a. Prior to beginning the presentation, determine if the witness has seen the suspect at any time since the crime occurred (whether in person, or in newspaper, television reports, etc.). If so, contact the assigned investigator to determine if the identification process should continue. Document this action in a supplement report.
- b. Provide the witness with a Photographic Line-Up Form and explain the instructions for the line-up, ensure the witness understands the instructions, if the witness understands, obtain the witness' signature indicating he or she understand the procedure and sign the form as the administrator. If the witness does not understand the instructions, clarify and answer any questions the witness has about the instructions before proceeding.
- c. Show the witness the photographs in a random order, one at a time, sequentially, and document the order shown. Remove each photograph from the witness prior to providing a new one. Allow the witness to see only one photograph at a time.
- d. If the witness identifies a suspect, record the number of the photograph and ask the witness for a statement of how confident they are about their identification. Show the remaining photographs even if a suspect is identified.
- e. Complete the "Statement of Victim/Witness" portion of the form, including documenting the witness' confidence statement in their own words, regarding how certain they are of any identification. Have the witness complete and sign the appropriate portion of the

LANCASTER POLICE DEPARTMENT
GENERAL ORDERS MANUAL

<i>Effective Date</i> September 2, 2015	<i>Amended Date</i>	<i>Directive</i> 7.18.1
<i>Subject</i> Eyewitness Identification		

form. Return all files, photographs and forms to the assigned investigator and complete an offense supplement on the identification procedure.

- f. Do not provide any feedback of any kind to the witness during the procedure including whether or not they picked the right person, the independent administrator should respond that he or she is unaware of which photo is the suspect and which are fillers.

D. DOCUMENTATION OF PHOTOGRAPHIC LINE-UPS

1. All presentations of photographic line-ups to witnesses will be video and/or audio recorded unless the below issues prevail. Upon completion of the presentation process, the video and/or audio recording will be placed into evidence, per department policy. The independent administrator will also complete a detailed supplement report in the department's Records Management System outlining the line-up presentation, process and results. The recording, all original photographs and the Photographic Line-Up Form will be returned to the assigned investigator. (TPCA 7.32)
2. If the witness is afraid or refuses to be recorded, or if the identification process might put the witness in danger if subsequently identified, the administrator will complete a detailed supplement report in the department's Records Management System outlining the line-up presentation process, results and reason why the recording process was not used.

E. FIELD IDENTIFICATION PROCEDURES (TPCA 7.32)

1. Many courts have suppressed identification evidence based on the use of field identification because of the inherent suggestiveness of the practice. The use of field identification should be avoided whenever possible in preference for the use of a photographic or live line up. 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 exigent circumstances require the use of field identification the following guidelines should be followed. (TPCA 7.32)
 - a. 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 has limited English proficiency, the officer will provide for an interpreter or other assistance, if one cannot be obtained in a timely manner then the field identification should not continue.
 - b. Single suspect field identification shall not be used if there is adequate probable cause to arrest the suspect.
 - c. A complete description of the suspect should be obtained from the witness prior to conducting field identification. If the witness indicates they are unsure if they can identify the individual, field identification will not be done.
 - d. Whenever possible, the witness should be transported to the location of the suspect rather than bringing the suspect to the witness.
 - e. Field identifications should not be attempted more than two hours after the commission of a crime.

LANCASTER POLICE DEPARTMENT
GENERAL ORDERS MANUAL

<i>Effective Date</i> September 2, 2015	<i>Amended Date</i>	<i>Directive</i> 7.18.1
<i>Subject</i> Eyewitness Identification		

- f. Field identifications 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.
- g. 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 line-up procedures for other witnesses.
- h. The same suspect should not be presented to the same witness more than once in either field or photographic line-ups.
- i. 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.
- j. Words or conduct of any type by officers that may suggest to the witness that the individual is or may be the perpetrator will be avoided.

2. Documentation of Field Identifications

- a. The officer conducting field identification, after supervisory approval, will complete a detailed supplement report in the department's Records Management System, outlining the date, time and location the field identification presentation was conducted and any statement the witness made during the field identification. If the officer conducting the field investigation is the primary reporting officer, the officer may add the above supplement report information in the officer's offense/incident report instead of completing a separate supplement report.
- b. All field identifications will be video and audio recorded using either the officer's in-car camera or body worn camera. The officer conducting the field identification shall complete and submit to the on-duty supervisor, a request for either the in-car camera or body worn camera video used to record the field identification with the witness and document it in their report.

F. SCOPE OF RESPONSIBILITY

- 1. All members of the department shall know and comply with all aspects of this directive.
- 2. All Division Commanders and supervisory personnel are responsible for ensuring compliance with the provisions and intent of this directive.