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	SUBJECT		EFFECTIVE DATE
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			ORIGINATOR/REVIEW
DISTRIBUTION		CALEA: 42.2.9, 42.2.10	Investigative Division
ALL			
BY THE AUTHORITY OF THE CHIEF OF POLICE:			<i>James A. Coenen</i>

Purpose

To establish guidelines and procedures for eyewitness identification of suspects and the preparation and presentation of sequential lineups in compliance with Code of Virginia § 19.2-390.02, and in alignment with the Virginia Department of Criminal Justice Services (DCJS) Model Policy on Lineups/Eyewitness Identification.

Policy

Eyewitness identification evidence is often crucial in identifying offenders and exonerating the innocent; however, research indicates that misidentifications may occur due to a variety of reasons, including inappropriate or unintentional communication from the investigating officer conducting the lineup.—In order to ensure that inadvertent verbal cues or body language do not have an impact on a witness, whenever practical, considering the time of day, day of the week, and other personnel conditions within the department, the person conducting the photo or live lineup or show-up identification procedure should be someone other than the primary investigator assigned to the case. The department recognizes that assignments of personnel may make this impossible in a given case. In those cases where the primary investigating officer conducts the photo lineup identification procedure, he or she will employ the Folder Shuffle Method. Since live lineups are typically scheduled in advance, an investigator not familiar with the case shall conduct the procedure.

Definitions

Blind administration: During administration of the lineup the suspect is known to the investigating officer presenting the lineup; however, the investigating officer uses a procedure that prevents the investigating officer from knowing which photo is being viewed by the witness/victim.

Double-blind administration: During the administration of the lineup the suspect is unknown to both the investigating officer presenting the lineup and the witness/victim viewing the photo.

Live lineup: A live lineup is any procedure in which a victim or witness to a crime or other incident is asked to identify a suspect from among a group of persons in order to determine or confirm the identity of the suspect.

Photo lineup: An identification procedure in which an array of photographs, including a photograph of the suspected perpetrator of an offense and additional photographs of other persons not suspected of the offense is displayed to a witness/victim for the purpose of determining whether the witness/victim identifies the suspect as the perpetrator.

Show-up: A show-up procedure is an identification procedure in which a witness/victim is presented with a single suspect for the purpose of determining whether the witness/victim identifies this individual as the

perpetrator. The length of time between the occurrence of the crime and the identification of the suspect should be reasonable.

Composing the Photo Lineup (CALEA 42.2.9 A)

In composing a photo lineup, the person administering the identification procedure should ensure that the lineup is comprised in such a manner that the suspect does not unduly stand out. However, complete uniformity of features is not required.

Photos should be either all black and white or all color. If it is necessary to block-out or cover a notation, such as a name on one photo, then similar blocking-out or covering marks should be placed on all photos so that they will appear alike. The investigator should:

1. Include only one suspect in each identification procedure.
2. Select fillers (non suspects) who generally fit the witness's/victim's description of the offender at the time of the incident, if multiple photos of the suspect are reasonably available to the investigator. When there is a limited or inadequate description of the offender provided by the witness, or when the description of the offender differs significantly from the appearance of the suspect, fillers should resemble the suspect in significant features.

Note: Digitally altering photos, including the suspect, may be done as long as the alteration does not become impermissibly suggestive by drawing the attention of the witness/victim to a particular photo. Any alterations that are done to one photo should be done to all photos to ensure consistency, and if an investigator plans to alter any photo(s) he/she should print a copy of the unaltered photo(s) and include it in the case file. Further, any alterations made to any photo(s) should be documented in the investigator's PD-3 and specifically disclosed to the Commonwealth's Attorney.

3. Include five fillers (non suspects) per identification procedure.
4. Place the suspect in different positions in each lineup when conducting more than one lineup for a case with multiple witnesses or suspects.
5. Avoid reusing fillers in lineups shown to the same witness/victim when showing a new suspect.
6. Ensure that no writings or information concerning previous arrest(s) will be visible to the witness/victim.
7. Review the array, once completed, to ensure that the suspect does not unduly stand out.
8. Assign each photo/person an identification number. Record the identification number on the back of each photo. The identification number shall consist of the case report number, plus the letter "A" followed with the number one through six. For example, 2010-123456A1, 2010-123456A2, etc. If an additional lineup for a second suspect is shown, the identification numbers would be 2010-123456B1, 2009-123456B2, etc. If an additional lineup for a third suspect is shown, the identification numbers would be 2010-123456C1, 2009-123456C2, etc.

Note: During the lineup procedure, photos will not necessarily be shown in the sequence of the identification numbers.

9. After each photo has been assigned an identification number, record the number along with all other pertinent information on the Lineup Identification Index (PD-56A).
10. Preserve the presentation order of each lineup by completing the Sequential Lineup Worksheet (PD-56). In addition, the photos themselves should be preserved in their original condition by placing them in a lineup photo envelope.

Presenting the Photo Lineup (CALEA 42.2.9 C, D, F)

The identification procedure should be conducted in a manner that promotes the accuracy, reliability, fairness and objectivity of the witness's/victim's identification. These steps are designed to ensure the accuracy of identification or non-identification decisions. When presenting the lineup, the person administering the lineup should:

1. Determine if the witness/victim has conducted any research on and/or viewed any photos of any potential suspects related to the case.
2. Instruct the witness/victim prior to the lineup that the suspect might or might not be among those in the photo array, the lineup administrator does not know the suspect's identity, they should not feel compelled to make identification, it is as important to exclude innocent persons as it is to identify the perpetrator, and the investigation will continue whether or not an identification is made.
3. Instruct the witness/victim that if the offender is seen in the lineup, he/she might not appear exactly the same as on the date of the incident because features such as clothing, head or facial hair, can change. Additionally, photos do not always depict the true complexion of a person, which might be lighter or darker than shown in the photo.
4. Provide the following additional viewing instructions to the witness/victim:
 - a. Individual photos will be viewed one at a time.
 - b. Photos are in random order.
 - c. Take as much time as needed in making a decision about each photo.
 - d. All photos will be shown, even if identification is made prior to viewing all photos.
5. Confirm that the witness/victim understands the nature of the sequential procedure.
6. Present each photo to the witness/victim separately, in a previously determined order, as documented on the lineup worksheet, removing those previously shown.
7. Care should be taken to avoid the witness/victim from turning the photo and reading the identification number recorded on the back. However, the nature of the identification number is purposely complex to the witness/victim, so that any inadvertent glance should not significantly hinder the identification process.
8. The officer administering the lineup is prohibited from providing feedback to the witness /victim. Feedback is defined as any comment in the form of an opinion about the reaction of the witness/victim. Questions made to clarify a witness'/victim's reaction are permissible provided they are not suggestive or would influence the witness/victim.
9. If identification is made, avoid reporting to the witness/victim any information regarding the individual he or she has selected.

10. If witness/victim requests to view the photo sequence again, (or specific photos again), they may be shown a second time.
11. Instruct the witness/victim not to discuss the identification procedure or its results with other witnesses/victims involved in the case and discourage contact with the media.

The Folder Shuffle Method (CALEA 42.2.9 A, D, E, G)

The Folder Shuffle Method was devised to address concerns surrounding limited resources while allowing for blind administration. The Folder Method is to be used by the investigating officer when he/she knows who the suspect is and another investigator with no knowledge of the case is unavailable to present the lineup. If the investigating officer of a particular case is the only law enforcement personnel available to conduct a photo lineup, the following instructions are to be followed:

1. Use one suspect photograph that resembles the description of the perpetrator provided by the witness, five filler photographs that match the description but do not cause the suspect photograph to unduly stand out, and ten folders [four of the folders will not contain any photos and will serve as 'dummy folders'].
2. Affix one filler photo to Folder #1 and number the folder.
3. The individual administering the lineup should place the suspect photograph and the other four filler photographs into Folders #2-6 and shuffle the photographs so that he/she is unaware of which folder the suspect is in, and then number the remaining folders, including Folders #7-10, which will remain empty. [This is done so that the witness does not know when he has seen the last photo].
4. The administrator should provide instructions to the witness/victim. The witness/victim should be informed that the suspect may or may not be contained in the photos he/she is about to see and that the administrator does not know which folder contains the suspect.
5. Without looking at the photo in the folder, the administrator is to hand each folder to the witness/victim individually. Each time the witness/victim has viewed a folder, the witness/victim should indicate whether or not this is the person the witness/victim saw and the degree of confidence in this identification, and return the photo to the administrator. The order of the photos should be preserved, in a facedown position, in order to document in Step 6.
6. The administrator should then document and record the results of the procedure.

Recording Identification Results (CALEA 42.2.9 B, G)

When conducting an identification procedure, the person administering the lineup shall preserve the outcome of the procedure by documenting any identification or non-identification results obtained from the witness/victim. A complete and accurate record of the outcome of the identification procedure is crucial. This record can be a critical document in the investigation and any subsequent court proceedings. When documenting the identification procedure, the person administering the lineup should:

1. Record both identification and non-identification results, including the witness's/victim's own words and identify the level of confidence expressed by the witness/victim in terms of statement, conduct, or other relevant observations, on the Sequential Lineup Worksheet (PD-56).

2. Ensure that the results are signed and dated by the witness/victim and person administering the lineup.
3. Ensure that no materials indicating previous identification results are visible to the witness/victim.
4. Ensure that the witness/victim does not write on or mark any materials that will be used in other identification procedures.
5. Police personnel may use audio or video equipment to record the lineup process, if deemed necessary. The recording will be vouchered and submitted to Property and Evidence.

Conducting the Live Lineup (CALEA 42.2.9 A, B, C, D, E, F, G)

If an investigator wishes to conduct a live lineup he/she should first consult with his/her supervisor and the Commonwealth Attorney's to address any procedural concerns. If the decision is made to conduct a live lineup, the investigator should follow the same procedures as outlined above in composing and presenting a photo lineup with special attention to the following:

1. Create a consistent appearance between the suspect and the fillers with respect to any unique or unusual feature – such as a scar or tattoo – used to describe the perpetrator by concealing or artificially concealing that feature. If the suspect, for instance, has a facial scar or tattoo, black out, conceal or otherwise cover up that area of the suspect's face and then do the same for each of the lineup members to achieve consistency across all lineup members.
2. Any actions that may help identify the suspect, such as speech, gestures, or other movements, shall be performed by all lineup participants.
3. All lineup participants shall be kept out of view of the witness/victim except when they are presented for identification.
4. If there are multiple eyewitnesses, each eyewitness should view the lineup separately and the suspect should be placed in a different position in the live lineup for each eyewitness.
5. Remember that a defendant who has been charged with a crime has a constitutional right to counsel for all proceedings that involve the defendant personally which follow that status.
6. Advise the accused that he may take any position in the live lineup that he prefers and may change positions prior to summoning a new witness.
7. Ensure that witnesses are not permitted to see nor are they shown any photographs of the accused immediately prior to the lineup.
8. Ensure that no more than one witness views each lineup at a time, and that at all times they are kept separated and not permitted to speak with one another during lineup proceedings.

Conducting Show-ups (42.2.10 A, B, C, D, E, F, G)

Show-ups will be defined as physically relocating a witness of a crime to another location to possibly identify a suspect of that crime.

Show-ups should be used when:

- a. There is an issue of officer or public safety
- b. There is a potential flight risk of the suspect
- c. A physical or photo line-up is not practical

Whenever it is anticipated that the case will be assigned to a detective, the patrol officer shall contact a detective from the appropriate unit prior to a show-up being conducted. The length of time between the occurrence of the crime and the identification of the suspect should be reasonable.

When circumstances require the prompt display of a suspect to a witness/victim, the inherent suggestiveness of the encounter can be minimized through the use of procedural safeguards. The investigator shall employ the following procedures to avoid influencing the witness.

1. Determine and document, prior to the show-up, a description of the offender.
2. Transport the witness/victim to the location of the detained suspect by police vehicle.
3. Caution the witness that the person he/she is looking at might or might not be the offender and they should not feel compelled to make identification.
4. The officer administering the show-up is prohibited from providing feedback to the witness /victim. Feedback is defined as any comment in the form of an opinion about the reaction of the witness/victim. Questions made to clarify a witness's/victim's reaction are permissible provided they are not suggestive or would influence the witness.
5. If more than one suspect is involved in the show-up, whenever possible:
 - a. Separate the suspects.
 - b. Have the witness/victim view suspects one at a time.
6. Record all identifications and non-identifications using the witness's/victim's own words and identify the level of confidence expressed by the witness/victim in terms of statement, conduct, or other relevant observations.
7. Record the witness's/victim's names, suspect's name and description, and the date, time and location of the show-up. If possible, officers² in the field should utilize their in-car video system to record identifications. Additional policy regarding police in-car cameras is outlined in General Order 10.03 (In-Car Cameras).
8. Do not return the victim, witness, or suspect to the crime scene prior to the scene being processed.
9. When multiple witnesses are involved:
 - a. Separate witnesses and instruct them to avoid discussing details of the incident with other witnesses.
 - b. If a positive identification is obtained from one witness, a lineup should be used for the remaining witnesses.
 - c. Multiple witnesses should be transported in separate police vehicles to avoid suggestiveness or pressure to identify the suspect.