

Eyewitness Identification

610.1 PURPOSE AND SCOPE

State

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

610.1.1 DEFINITIONS

Best Practice MODIFIED

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.

Showup - The presentation of a suspect to an eyewitness within a short time frame following the commission of a crime to either confirm or eliminate him or her as a possible perpetrator. Showups, sometimes referred to as field identifications, are conducted in a contemporaneous time frame and proximity to the crime.

Administrator - The law enforcement official conducting the identification procedure.

610.2 POLICY

Best Practice MODIFIED

The Indio Police 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. Officers shall adhere to the procedures for conducting eyewitness identifications set forth herein, in order to maximize the reliability of identifications, minimize erroneous identifications, and gather evidence that conforms to contemporary eyewitness identification protocols

610.3 INTERPRETIVE SERVICES

Best Practice

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.

Indio Police Department

Indio PD Policy Manual

Eyewitness Identification

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.

610.4 EYEWITNESS IDENTIFICATION PROCESS AND FORM

State **MODIFIED**

The Major Crimes Unit or Street Crimes Unit 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.
- (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.

610.5 EYEWITNESS IDENTIFICATION

State **MODIFIED**

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:

Indio Police Department

Indio PD Policy Manual

Eyewitness Identification

- 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.

Whenever feasible, the eyewitness identification procedure should be audio and video recorded and the recording should be retained according to current evidence procedures (Penal Code § 859.7).

610.6 DOCUMENTATION

Best Practice **MODIFIED**

A thorough description of the eyewitness process and the result of any eyewitness identification should be documented in the case report or supplemental report.

If a photographic lineup is utilized, a copy of the photographic lineup presented to the witness should be included in the case report and the original shall be booked in evidence and documented in FileonQ. In addition, the order in which the photographs were presented to the witness should be documented in the case report.

610.6.1 DOCUMENTATION RELATED TO RECORDINGS

State

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).

610.6.2 DOCUMENTATION RELATED TO BLIND ADMINISTRATION

State

If a presentation of a lineup is not conducted using blind administration, the handling member shall document the reason (Penal Code § 859.7).

610.7 PHOTOGRAPHIC LINEUP AND LIVE LINEUP CONSIDERATIONS

State **MODIFIED**

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).

Eyewitness Identification

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.

610.7.1 OTHER SAFEGUARDS

State MODIFIED

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

610.8 FIELD IDENTIFICATION CONSIDERATIONS

Best Practice MODIFIED

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:
 - (a) The length of time the witness observed the suspect.
 - (b) The distance between the witness and the suspect.
 - (c) Whether the witness could view the suspect's face.
 - (d) The quality of the lighting when the suspect was observed by the witness.
 - (e) Whether there were distracting noises or activity during the observation.
 - (f) Any other circumstances affecting the witness's opportunity to observe the suspect.
 - (g) 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.

Eyewitness Identification

- (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.

610.8.1 CONDUCTING A FIELD LINEUP

When conducting a field lineup, the officers should perform the following:

1. Document a description of the suspect prior to the lineup.
2. Attempt to obtain the suspect's cooperation in the lineup procedure by requesting the suspect's voluntary participation in the lineup if feasible.
3. If feasible record the process with your body worn camera or fellow officer's body worn camera.
4. Transport the witness to the location of the suspect.
5. Provides instructions to the witness and read them the Simmons admonishment.
6. Document the circumstances of the lineup to include:
 - Time.
 - Location.
 - Distance.
 - Lighting.
 - Weather conditions.
 - If suspect has changed his or her appearance since the time of the crime.
8. Document the suspect's cooperation or lack of cooperation.
9. Documents both identification and non-identification results in writing, including facts such as:
 - The witness's own words regarding how certain he or she is.
 - How quickly the witness identified the individual(s).

610.8.2 SIMMONS ADMONISHMENT

Eyewitness Identification

The courts have ruled it is a violation of due process under the Fifth and Fourteenth Amendments for police to suggest in any way, that a suspect to be observed at a lineup or show-up committed the crime. To avoid being suggestive, officers should admonish the witness(s) and or victim(s) prior to viewing the suspect. The following are samples of “Simmons Admonishments” in reference to in-field show-ups, photo line-ups, and line-ups (in custody). These samples are provided as guidelines only.

(a) In-Field Show-ups

(1) You will be asked to look at a person or persons. The fact the person/persons are shown to you should not influence your judgment. You should not conclude or guess the person/persons have committed the crime. You are not obligated to identify anyone. It is just as important to free innocent persons from suspicion as to identify parties. Please do not discuss the case with other witnesses nor indicate in any way that you have or have not identified someone.

(b) Photo Line-ups

(1) You will be asked to look at a group of photographs. The fact the photographs are shown to you should not influence your judgment. You should not conclude or guess the photographs contain the picture of the person who committed the crime. You are not obligated to identify anyone. It is just as important to free innocent persons from suspicion as to identify guilty parties. Please do not discuss the case with other witnesses nor indicate in any way that you have or have not identified someone.

(c) Line-ups (In Custody)

(1) You will be asked to look at a group of people. The fact the people are shown to you should not influence your judgment. You should not conclude or guess the group of people contain the person who committed the crime. You are not obligated to identify anyone. It is just as important to free innocent persons from suspicion as to identify guilty parties. Please do not discuss the case with other witnesses nor indicate in any way that you have or have not identified someone.