

**SAN MARCOS POLICE DEPARTMENT  
POLICIES AND PROCEDURES MANUAL**

**Section Title:** Eyewitness Identification

**General Order:** 307

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**Issuing Authority:** *Howard E. Williams*  
**Howard E. Williams, Chief of Police**

**I. POLICY**

Eyewitness identifications are a significant component of many criminal investigations. The identification process must be carefully administered to minimize the likelihood of misidentifications. Moreover, constitutional safeguards must be observed in the process. The goal of reducing erroneous convictions can be furthered in many ways. Employing the most rigorous eyewitness identification methods is one way of doing this, but there are others. The eyewitness identification process is only one step in the criminal investigative process, albeit an important one. Corroborative evidence, for example, will lessen the impact of an erroneous eyewitness identification. The more additional evidence that is available, the less risk there is of conviction based solely on erroneous eyewitness identification. There is no substitute for a competent and thorough criminal investigation.

This policy seeks to provide guidance on eyewitness identification procedures based on credible research on eyewitness memory and best practices designed not only to reduce erroneous eyewitness identification but also to enhance the reliability and objectivity of eyewitness identifications.

**II. PURPOSE**

The purpose of this policy is to outline proper protocol for eyewitness identification procedures for photographic, show-up, and live lineup identifications which maximize the reliability of identifications, protect innocent persons, and establish evidence that is reliable and conforms to established legal requirements.

**III. DEFINITIONS**

- A. **Blind Procedure** – A procedure wherein the person administering the live lineup or photo array does not know who the suspect is.
- B. **Blinded Photo Array Procedure** – A procedure wherein the person who administers the photo array knows who the suspect is, but each photo is presented so that the administrator cannot see or track which photograph is being presented to the witness.

- C. **Fillers** – Non-suspect photographs or persons. Fillers are selected to both fit the description of the perpetrator provided by the witness and to ensure that no individual or photo stands out.
- D. **Illiterate Person** – An individual who speaks and understands English but cannot read and write in English.
- E. **Interpreter** – An interpreter is a person who is fluent in English and the language of the witness or victim and who facilitates communication between two parties in two different languages. The term includes persons who facilitate communication with persons who are deaf, hearing impaired, or speaking impaired.
- F. **Person with Limited English Proficiency** – An individual who is unable to communicate effectively in English with a level of fluency that is typical of native English speakers. Such a person may have difficulty speaking, reading, or writing in English and includes persons who can comprehend English, but are physically unable to talk or write.
- G. **Sequential Photo Array** – An identification procedure in which the persons in the live lineup or the photographs in the photo array are displayed one by one (sequentially).
- H. **Show-up** – An identification procedure in which a single suspect is shown to a victim or witness soon after the commission of a crime for the purpose of identifying or eliminating the suspect as the perpetrator.
- I. **Witness Certification Statement** – A written statement that is read out loud to the witness or victim describing the procedures of the identification process.

#### IV. EYEWITNESS IDENTIFICATION - GUIDELINES

- A. Selecting the best identification method
  1. Photo arrays are preferred over other techniques because: (a) they can be controlled better, (b) nervousness can be minimized, and (c) they are easier to manage logistically.
  2. Because of the difficulty of administration and the difficulty in obtaining a sufficient number of individuals with similar physical characteristics, live line-ups will not normally be used.
  3. Because they are highly suggestive, show-ups are vulnerable to challenges to their validity. Consequently, a show-up should be employed only where other indicia of guilt are present (e.g., suspect located relatively close in time and place to the crime).
  4. Because witnesses may be influenced, however unintentionally, by cues from the person administering the procedure, a blind administrator should be used. This can be achieved through the use of a blind procedure or a blinded photo array procedure (e.g. the folder shuffle method).

5. Because research shows the sequential presentation of photo arrays is less likely to result in misidentification and carry very little risk of increasing the likelihood of failure to identify the suspect, a sequential presentation should be used.
- B. All persons in the photo array or live lineup should be of the same sex and race and should be reasonably similar in age, height, weight, and general appearance. Ideally, the characteristics of the filler should be consistent with the description of the perpetrator provided by the witness(es). Where there is a limited or inadequate description of the perpetrator provided by the witness(es), where the description of the perpetrator differs significantly from the appearance of the suspect, where a witness has provided a highly detailed description, or where the witness's description of the perpetrator or the suspect has a highly distinctive feature, fillers should be chosen so that no person stands out in the live lineup or photo array.
  - C. Because witnesses may be under pressure to identify a suspect, they should be informed that the suspect may or may not be present in a live lineup or photo array and that the person presented in a show-up may or may not be the perpetrator.
  - D. As another way of alleviating pressure on the witness to identify a suspect, the administrator should also explain to the witness that the investigation will continue, regardless of whether an identification is made.
  - E. Precautions must be taken to ensure that witnesses do not encounter suspects or fillers at any time before or after the identification procedure. Avoid multiple identification procedures in which the same witness views the same suspect more than once. When showing a different suspect to the same witness, do not reuse the same fillers from a previous live lineup or photo array shown to that witness. Witnesses should not be allowed to confer with each other before, during, or after the identification procedure. Ensure that no one who knows the suspect's identity is present during live lineup or photo array procedure. In some live lineups, exceptions must be made to allow for the presence of defense counsel.
  - F. In order to strengthen the evidentiary value of the identification procedure, it should be documented in full. Video documentation is the preferred method. Audio recording is the preferred alternative. If neither method is employed, then the reason for not video or audio recording should be documented.
  - G. For specific guidelines related to conducting photo arrays, refer to the San Marcos Police Department Operations Division Procedures Manual, Section 201, CID – Investigations, subsection V – Eyewitness Identification.
  - H. For specific guidelines related to conducting field identifications/show-ups, refer to the San Marcos Police Department Operations Division Procedures Manual, Section 102, Patrol – Investigations, subsection XXI – Field Identification/Show-ups.