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POLICY/PROCEDURE NUMBER: 10-C.I.-006

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SUBJECT: SUSPECT PHYSICAL AND PHOTO LINE-UPS, FIELD SHOW-UPS, POLICE ART, AND VIDEO/AUDIO RECORDINGS

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IACLEA STANDARDS: 13.2.4

CSU POLICE SYSTEMWIDE POLICY – NO

APPROVED: Gregory L. Murphy, Chief of Police

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I. PURPOSE

The purpose of this policy is to outline the procedure for suspect physical and photographic line-ups, field show-ups, video/audio recordings, and the use of police artists in identifying suspect(s) of a crime.

II. POLICY

It is the policy of this Department to make use of, when possible, physical and photo line-ups, field show-ups, audio/video recordings, and police artists in the investigation of criminal cases to establish reliable eyewitness identification of a suspect(s).

III. DEFINITIONS

- A. Field Show-Ups: A field show-up is defined as a viewing by witness(es) and/or victim(s) of a suspect at, near, or in proximity of the scene of a crime with the intent to either identify the suspect as the perpetrator or clear the suspect of suspicion.
- B. Physical Line-Ups: The viewing of a suspect by witness(es) and/or victim(s) of a crime within a county or state jail facility with the intent to identify him/her as the perpetrator of a crime. Physical line-ups are formal in nature using multiple inmates and the suspect in accordance with detailed procedures set forth by each custodial facility.
- C. Photographic Line-Ups: The viewing of six photographs, one of which is of the suspect, by witness(es) and/or victim(s) of a crime with the intent to either identify the suspect as the perpetrator or clear the suspect of suspicion.
- D. Police Art: a composite drawing or sketch of a suspect composed by a law-enforcement investigative artist.

## IV. PROCEDURES

### A. Physical Line-ups

(Note: Every adult and juvenile California detention facility has procedural guidelines for conducting physical line-ups within their facility. Prior to scheduling a physical line-up, Department investigators (i.e., detectives) shall obtain a copy of the respective detention facility line-up procedures to ensure compliance with their regulations.)

1. **SCHEDULING AND LOCATION OF PHYSICAL SHOW-UPS FOR ADULT SUSPECTS.** Physical line-ups for adult suspects or juveniles certified as adults shall only be conducted by Department Investigators (i.e., detectives) pursuant to the Sheriff's Line-up Procedures (Attachment 'A') in the designated facilities at the Los Angeles County Jail or state correctional facility. The appropriate facility shall be contacted for scheduling information and to arrange for the selection of inmate participants resembling physical and/or voice characteristic of the suspect(s) as provided by the witness/victim, striving to ensure a non-bias composition and presentation process to prevent opportunities that would influence a witness.
2. **SCHEDULING AND LOCATION OF PHYSICAL SHOW-UPS FOR JUVENILE SUSPECTS.** Physical line-ups for juvenile suspects shall only be conducted by Department investigators at the San Fernando Valley Juvenile Hall or other appropriate juvenile detention facility.

A department investigator desiring to schedule a juvenile line-up shall contact the liaison officer at the concerned juvenile facility for scheduling information and to arrange for the selection of inmate participants resembling physical and/or voice characteristic of the suspect(s) as provided by the witness/victim. Juvenile detention liaison officers are available on court days between 0730 and 1600 hours.

3. **INVESTIGATOR DUTIES PRIOR TO PRE-ARRAIGNMENT LINE-UPS.** Investigators who intend to place an arrestee in a physical line-up prior to the arrestee's arraignment shall inform the arrestee that he has the right to have an attorney present during the line-up.

Note: Arraignments shall not be delayed in order to conduct a line-up.

4. **INVESTIGATOR DUTIES PRIOR TO POST-ARRAIGNMENT LINE-UP.** An investigator who intends to show an arrestee in a physical line-up shall inform the arrestee that:
  - The arrestee has the right to have an attorney present during the line-up, AND
  - If the arrestee so desires and cannot afford one, an attorney will be appointed without charge.
  - After the admonition has been given, the officer shall:
    - Determine whether the arrestee understands the right to an attorney, AND
    - Determine whether the arrestee wishes to have an attorney present during the line-up.

Note: If the arrestee desires an attorney, the investigator shall include the attorney's name on the follow-up investigation report.

5. **ARRESTEE WAIVES ATTORNEY.** When an arrestee waives the right to have an attorney present at the line-up, the investigator shall cause the arrestee to read the Los Angeles County Sheriff line-up waiver form, and, if appropriate, to sign the waiver. The investigator shall retain the following in the case investigation envelope:

- Statements indicating the arrestee's understanding of his/her right to have an attorney present at the line-up.
- Statements indicating the arrestee's waiver of his/her right to the presence of an attorney during the line-up.
- The waiver form, signed by the arrestee.

Note: If the arrestee waives his/her right to the presence of an attorney but refuses to sign the waiver form, a statement indicating the arrestee's refusal to sign shall be documented on the waiver form and in the follow-up investigation report.

6. **ARRESTEE REQUESTS ATTORNEY.** When an arrestee has retained an attorney or has one appointed to be present at the physical line-up, the investigator shall:

- Notify both the prosecuting and defense attorneys as to the date, time and location of the line-up immediately after the line-up is scheduled by the Department's Investigations Unit; and,
- Include the name of the attorney, the date, and the time of the notification in the follow-up investigation report.

In the case of a pre-arraignment line-up, if the arrestee requests a private attorney, that attorney must be able to appear within 12 to 24 hours of being notified. If the private attorney cannot appear within that time period, the arrestee shall be advised that:

- The arrestee does not have the right to have that particular attorney present at the line-up; AND,
- The arrestee may request a public defender at the line-up or the arrestee may appear without counsel; AND,
- If the arrestee refuses to appear in the line-up, it will be commented on in a court of law.

Note: Formal pre-arraignment line-ups without counsel are permitted only under exigent circumstances unless the arrestee waives the right to counsel.

7. **ATTORNEY PRESENT AT LINE-UP.** Upon request by an attorney representing an arrestee in a physical line-up, the investigator shall ensure that the attorney is:

- Given an opportunity to confer with his/her client before the line-up;
- Allowed to observe the entire line-up prior to the show-up;
- Allowed to attend the line-up session in the capacity of an observer only; AND,

- Allowed to attend the identification process which follows the line-up, in the capacity of an observer only.

Note: The investigator shall make a note in the follow-up investigation report of any objection made by the arrestee's attorney, a copy of which shall be retained in the respective case folder.

8. DEFENSE ATTORNEY NOTIFIED BUT FAILS TO ATTEND. When an attorney who has been notified that an arrestee requested his/her presence at a physical line-up and the attorney fails to appear, the investigator shall delay the line-up and attempt to contact the attorney representing the arrestee.

Note: If unable to contact the attorney, be guided by the advice of the prosecuting attorney.

9. ARRESTEE REFUSES TO PARTICIPATE IN LINE-UP. The investigator shall advise an arrestee who refuses to participate in a pre- or post-arraignment physical line-up, or an attorney who advises the arrestee not to participate in a pre- or post-arraignment line-up that:

- The line-up is for elimination or identification purposes only; AND,
- The arrestee does not have a right to refuse to participate in any phase of the line-up; AND,
- The refusal of an arrestee to participate in a line-up may be introduced in a court of law.

The investigator shall ensure that:

- Circumstances of a refusal are documented on the Los Angeles County Sheriff line-up refusal form;
- Circumstances of the refusal are documented in the follow-up investigation report; and,
- The arrestee has signed a Los Angeles County Sheriff line-up refusal form, if possible.

Note: Force shall not be used to compel an arrestee to participate in a line-up. If an arrestee refuses to participate, the investigator shall follow the procedure for identifying the arrestee through the use of photographs. See section IV, sub-section C of this policy for photographic show-up procedures.

ATTENDANCE OF VICTIM(S) OR WITNESS(ES) AT LINE-UP. Each victim or witness who might identify an arrestee as the perpetrator of a crime shall be informed of the date, time, and location of the line-up at which the arrestee is to be shown. In the event a witness or victim is deaf, illiterate, and/or limited in English language proficiency, department investigators shall schedule a time to conduct the physical lineup after an interpreter or appropriate special needs practitioner/assistant is obtained.

Victims and witnesses identifying the suspect are to follow the victim/witness line-up requirements of the detention facility hosting the line-up. Some allow for the victim(s) and witness(es) to participate in the same room and others only permit the viewing out of

sight and sound of other victim(s) and witness(s). The detention facility procedural guidelines will provide the statement(s) to be given each witness/victim prior to showing the individuals placed within the physical line-up.

Note: No one attending the physical line-up shall provide feedback on the person identified or not. The investigator overseeing the line-up shall assure this occurs and shall only attempt to obtain facts to corroborate the identification by the victim or witness. All comments made by the witness or victim during the physical line-up shall be documented in the case report. If an identification is made, the investigator shall only ask the victim/witness if there is anything significant that caused him/her to select a particular photograph, i.e., how they recognized the person; if the person selected is different in any way from their recollection of the suspect during the commission of the crime; etc. This must be done to identify the level of confidence expressed by the victim/witness. Victims and witnesses shall never be told that they have picked the "right" or "wrong" person.

10. TRANSPORTATION OF ADULT ARRESTEE FOR FORMAL LINE-UP. If an adult arrestee in custody is to appear in a physical line-up, the investigator shall transport the arrestee to the location of the scheduled line-up unless transportation can be arranged by the Los Angeles Sheriff's Department.
11. ARRESTEE POSSIBLY INVOLVED IN OTHER JURISDICTIONS. The investigator shall send a teletype notification to all concerned outside investigating agencies when an arrestee appearing in a physical line-up is believed to be involved in crimes committed in the concerned jurisdiction. See below for teletype procedures.
12. RESULTS OF FORMAL LINE-UPS TELE-TYPED. At the conclusion of a formal line-up, the investigator shall send a teletype of the results to all concerned outside investigating agencies. See below for teletype procedures.

#### B. TELETYPE: Physical Line-Up Investigative Procedures

1. TELETYPE NOTIFICATION OF "LINE-UP" APPEARANCE. A teletype notification regarding a suspect appearing in a "physical line-up" shall be sent in the following form:
2. FOLLOWING SUSPECT WILL BE IN LINE-UP: (location); (date and time); (name and description of suspect); (modus operandi, including any information which may aid in connecting suspect with a crime); (name, serial number, and detail of investigating officer)
3. TELETYPE NOTIFICATION OF "LINE-UP" RESULTS.
  - a. Suspect Identified. A teletype regarding identification of a suspect in a physical line-up shall be sent in the following sequence:
    - "Line-up" number of identified suspect;
    - Name of suspect identified;
    - Offense for which suspect was booked;
    - Crime with which suspect was identified;
    - Name of person who made identification;
    - Case report number of report of crime with which suspect was identified;

- Name of the concerned law enforcement agency and the case number, when suspect identified with a crime committed in another jurisdiction;
  - Names of victims and witnesses attending the line-up;
  - Names of suspect's defense attorneys and deputy district attorneys attending the line-up;
  - Name and serial number of the investigator/officer who selected the participants for the line-up;
  - Unusual actions which the investigator requested the suspect to perform during the line-up; and,
  - Name, serial number, and assignment of the investigator conducting the line-up.
- b. Suspect Not Identified. When no suspects are identified in a physical line-up, the teletype notification shall contain the following:
- No Suspects Identified;
  - (Names of victims and witnesses attending the line-up); and,
  - (Name, serial number, and assignment of the investigator conducting the line-up.)

#### C. Photo Line-Ups (PHOTOGRAPHIC IDENTIFICATION OF A SUSPECT)

Department investigators (i.e., detectives) who intend to show a suspect's photograph to a victim or witness for the purpose of identification shall:

- Obtain the suspect's most recent photograph and at least five additional photographs, if possible, depicting persons of similar appearance and screen color background, while creating a photographic line-up using tools available in RIMS, CalPhoto, Los Angeles County PhotoManager or via the Department's "six-pack" template. This is done to ensure a non-bias composition and presentation process that would help prevent opportunities that may influence a witness.; AND,
- Record separately the names, dates of birth and numbers assigned to each photo; AND
- Obliterate, or otherwise remove, all markings such as dates and booking numbers from the photographs (again to ensure a non-bias composition and presentation process); AND,
- Make a separate copy of the photographic line-up for each victim or witness identifying the suspect, having them view the line-up out of sight and sound of victim(s), witness(s), officer(s), or others associated with the case. Only the line-up administrator should be present during the viewing.
- Give each witness the following directions prior to showing the photographic spread (also referred to as a "six-pack"):

"I am going to show you six photographs. Please look at all six photographs before making any comment. The person who committed the crime may or may not be among those shown in the photographs you are about to see. If you recognize any of the persons in the photographs as the suspect, go back and pick out the person you recognize. If you recognize any of the persons, please do not ask me whether your choice was 'right' or 'wrong,' as I am prohibited by law from telling you." Show the entire set of photographs to the victim or witness.

- If the victim or witness makes an identification, the investigating officer shall direct the victim or witness to circle the specific photograph identified on the photographic line-up. The victim or witness should then initial and record the date and time of the identification on the line-up.

Note: The Department investigator (i.e., detective) shall not provide feedback on the photograph identified upon conclusion of the photographic line-up. He/she shall only attempt to obtain facts to corroborate the identification by the victim or witness. All comments made by the witness or victim during the photographic line-up shall be documented in the RIMS report. If an identification is made, the investigating officer shall only ask the victim/witness if there is anything significant that caused him/her to select a particular photograph, i.e., how they recognized the person; if the photo is different in any way from their recollection of the suspect; etc. This must be done to identify the level of confidence expressed by the victim/witness. Victims and witnesses shall never be told that they have picked the "right" or "wrong" photo.

In the event a witness or victim is deaf, illiterate, and/or limited in English language proficiency, department investigators shall schedule a time to conduct the photographic lineup once an interpreter or appropriate special needs practitioner/assistant may be obtained.

#### D. Field Show-ups (IDENTIFICATION OF SUSPECTS IN THE FIELD)

A police officer may detain a suspect if there is "reasonable suspicion" to believe the suspect committed a crime. Avoid a full search of the suspect or any search of his vehicle prior to positive identification. If the detention occurs soon after the crime, it is appropriate to arrange a show-up between the victim(s) and/or witness(es) and the suspect.

However, the courts require that you inconvenience the suspect as little as possible in making this arrangement. As a general rule, this means the witness should be brought to the suspect; do not take the suspect to the witness if there is any reasonable alternative. A suspect may be transported to a victim or witness for the purpose of identification **ONLY** when:

- An officer is conducting a preliminary investigation and a field confrontation is necessary to determine if the suspect is the perpetrator of the offense; AND,
- Probable cause exists to arrest the suspect for the offense; OR,
- Exigent circumstances exist that make it unreasonable for the victim or witness to be transported to the suspect; OR,
- The officer obtains the free and voluntary consent of the suspect.

An officer who intends to conduct a field show-up shall transport each witness/victim individually via a patrol or detective car as needed (when more than one is present), providing each person with the following (verbatim) Field Identification Admonition and

ensuring they are out of sight/sound of the other victims/witnesses. Documentation of the field show-up, the advisement, victim/witness responses, and results shall be made within the applicable RIMS report.

### **Field Identification Admonition**

“We are detaining a person for you to view who may or may not be the person who committed the crime now being investigated. The fact that this person is detained, and may or may not be handcuffed, should not influence your identification. It is just as important to free innocent persons from suspicion as it is to identify guilty persons.

Please look at the detained person carefully. If you wish to see him/her walk or stand or move in any particular way, please tell an officer. Also, if you wish to see the person under different lighting conditions, please tell an officer.

Please do not talk to anyone other than police officers while you are viewing the detained person. You are to make up your own mind whether or not you can identify the detained person. After you have had enough time to view this person, please tell an officer whether or not you can make an identification. Please use your own words to tell the officer how certain you are of any identification you may make.”

Note: In the event a witness or victim is deaf, illiterate, and/or limited in English language proficiency, the investigating officer shall attempt to obtain an interpreter or appropriate special needs practitioner/assistant to assist in the administration of the field show-up. If none can be located, attempt to proceed with the show-up noting the special circumstance within the case report. If possible, take a photograph of the possible suspect participating in the show-up to allow follow-up by department investigators.

Officer(s) conducting a field show-up shall not provide feedback to any victim/witness regarding their response to the person being viewed. All comments made by the witness or victim during the field show-up shall be documented in the RIMS report. If an identification is made, the investigating officer shall only ask the victim/witness if there is anything significant that caused him/her to select a particular person/individual, i.e., how they recognized the person; if the individual is different in any way from their recollection of the suspect; etc. This must be done to identify the level of confidence expressed by the victim/witness.

#### E. Police Art as an Investigative Tool

A police artist is on contract with the Department and may be enlisted as an investigatory aid with the approval of the Chief of Police or her/his designee.

The first officer on the scene of a crime plays an important role in preserving the witness for the purpose of rendering a composite sketch. Great care must be taken not to influence, offend or frighten the witness or otherwise taint the memory of the witness in any way.

A composite sketch is a likeness—not a portrait—of a suspect under investigation for a crime. The sketch is prepared by a professional police investigative artist from an

eyewitness' account, and it should be treated the same as any other suspect information obtained from an eyewitness. It serves to eliminate many classes of suspects (for example, by race, sex, age, build, scars and deformities) and helps the officer on the street focus attention on subjects who closely match the witness' description.

Once completed, the composite sketch provides an officer with sufficient reasonable suspicion to stop and question a subject who resembles the drawing. Whether the sketch may also be relied on in court will depend greatly on the experience and expertise of the police artist and the validity of the techniques which he or she used as well as the "foundation" for the sketch which is established by the prosecution.

As an alternative, the department has access to Identi-Kit's facial composite software system. When needed, officers may access this system to create the facial composite of a suspect while interviewing a victim and/or witness.

## V. AUDIO AND VIDEO RECORDINGS

The use of audio and video recordings for establishing reliable identification testimony by a witness/victim shall only be performed by a department investigator (i.e., detective). In deciding whether or not to use these methods of suspect identification, consideration shall be made to the following:

- A. Length of time between the crime and subsequent identification.
- B. The witness' opportunity to view or hear the criminal during the crime.
- C. The accuracy of the witness' prior description of the suspect(s).
- D. The level of certainty the witness demonstrated that he/she could be of assistance (e.g., confidence level) prior to the identification.
- E. The witness' degree of attention during the crime.

Note: Investigator(s) conducting a viewing of video and audio recordings shall not provide feedback to any victim/witness regarding their response to the person being viewed or heard. All comments made by a witness or victim during the viewings shall be documented in the RIMS report. If an identification is made, the investigator shall only ask the victim/witness if there is anything significant that caused him/her to select a particular photograph, i.e., how they recognized the person; if the video or sound different in any way from their recollection of the suspect; their degree of certainty of the identification, etc. This must be done to identify the level of confidence expressed by the victim/witness.

## VI. TRAINING

### A. Department Investigators (i.e., detectives)

Sworn personnel assigned to the Investigations Unit shall participate in the specialized POST investigator/detective training which includes training in the use of physical and photo lineups as an investigative tool. In addition, department investigators receive annual in-service training on lineups (physical & photo) and show ups via department policy/procedure 10-C.I.-006.

### B. Patrol Supervisors/Officers

All sworn personnel receive initial training on field show ups within the POST basic police academy program and shall receive additional training within the department's Field Training Officer (FTO) program. Annual refresher in-service training is provided to sworn personnel on department policy/procedure 10-C.I.-006 (SUSPECT PHYSICAL AND PHOTO LINEUPS, FIELD SHOW-UPS, POLICE ART, AND VIDEO/AUDIO RECORDINGS).

