

LINE-UPS/PHOTOGRAPHIC ARRAYS/ONE-ON-ONE SHOW-UP

Codified: 60.1

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Rescinds/Amends: 60.1

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PURPOSE

The purpose of this directive is to provide procedures to enhance the accuracy and integrity of subject identifications via photographic arrays, line-ups and show-ups.

DISCUSSION

It is beneficial to all concerned that procedures exist which provide for the proper identification of subjects. This ensures that all subject identifications are conducted in a professional and consistent manner.

POLICY

Eyewitness identification is a frequently used investigative tool. As such, the Santa Fe Police Department has established procedures in order to maximize the reliability of identifications, minimize unjust accusations of innocent persons and to establish evidence that is reliable and conforms to established legal procedure and best practices.

PROCEDURE

Identification of a person accused of a crime is a necessary element of any investigation. When identification is at issue, there are three different investigatory tools that law enforcement may use to obtain evidence of identification: (1) Live Line-up; (2) Photo Array; or a (3) Show-up identification.

Pursuant to NMSA 1987, Section 29-3B-3(E), the following procedure sets the minimum requirements for any Live Lineup or a Photo Array:

60.1.01: DEFINITIONS

A. For the purposes of this Directive, the following terms shall have the meaning listed thereafter:

1. Administrator - The administrator is a law enforcement officer that shows a photo line-up to a witness for purposes of subject identification.

2. Advisement - Written instructions provided to a witness prior to showing a photo line-up.
3. Blind Administrator - A blind administrator is a law enforcement officer that shows a photo line-up to a witness without knowing the identity of the subject of the crime at the time the officer shows the photo line-up.
4. Case Agent - The case agent is the law enforcement officer primarily responsible for investigating a reported crime irrespective of whether the officer is ultimately the arresting officer.
5. Photo Array - A photo array is the simultaneous showing of at least 6 photographs to a witness, one of which is the subject.
6. Sequential Line-up - A sequential line-up is the consecutive showing of 6 photographs to a witness. The witness is expected to decide whether each photograph depicts the subject before the witness is shown the next photograph.
7. Show-up - A show-up is the presentment of a subject, alone, whether in person or by photograph, to a witness for identification as the subject of a crime.
8. Subject - The subject is the person the case agent suspects of committing a
9. crime that the case agent is investigating. As used in this directive, a subject could refer to one or multiple individuals.
10. Unduly Suggestive - Undue suggestion is the intentional or inadvertent act of guiding a witness to select a specific subject, whom the case agent feels is the subject of a crime, during the creation or presentment of a photo line-up.
11. Witness - A witness is a person, including a victim who experienced a crime directly, who may, therefore, be able to identify the subject from the witness's recall of the actual event. As used in this directive, witness could refer to one or multiple individuals.

60.1.02: REQUIREMENTS FOR LIVE LINE-UP OR PHOTO ARRAY

- A. A blind administrator must perform the live line-up or photo line-up.
- B. A case agent must make an effort to document a description of the subject provided by the eyewitness, including a description of the circumstances under which the subject was seen by the eyewitness, the time of day, the length of time the subject was seen, the perceived or actual distance from the eyewitness to the subject and the lighting conditions.
- C. The eyewitness must be provided with instructions that minimize the likelihood of an inaccurate identification, including that the perpetrator may or may not be

in the identification procedure and that the investigation will continue regardless of whether an identification is made.

1. Example language for the instructions may be as follows: You have been asked to view a group of photographs/individuals. You should not assume that the photographs/person line-up contain the person who committed the crime. You are not obligated to identify anyone. It is just as important to free innocent persons of suspicion as it is to identify guilty persons. Do not allow yourself to be influenced by others. Do not discuss this case or this photo array/person line-up with other witnesses as it may compromise the investigation and subsequent prosecution.
- D. The line-up must be composed so that the fillers generally resemble the eyewitness' description of the perpetrator so that the subject does not unduly stand out from the fillers.
- E. Must include at least four fillers in a live line-up for a total of 5 (including the subject) and at least five fillers in a photo line-up for a total of 6 photos (including the subject) in the line-up.
- F. Ensure, when practicable, that a photograph of the subject used in a photo line-up is contemporary and resembles the subject's appearance at the time of the offense.
- G. Present separate photo line-ups and live line-ups when there are multiple eyewitnesses, ensuring that the same subject is placed in a different position for each identification procedure.
- H. The administrator must seek and document a clear statement from the eyewitness, at the time of the identification and in the eyewitness's own words, as to the eyewitness's confidence level that the person identified is the person who committed the crime.
- I. Minimize factors at any point in time that influence an eyewitness to identify a subject or affect the eyewitness's confidence level in identifying a subject, including verbal or nonverbal statements by or reactions from the administrator.
- J. Present line-up members one at a time.
- K. Video record the entirety of the photo array and live line-up.
- L. Preserve photographic documentation of all live line-up and photo array members as well as descriptions provided by the eyewitnesses of the perpetrator.

60.1.03: CONDUCTING THE LIVE LINE-UP

- A. The case agent will have another officer, who has no knowledge of the case, show, as a Blind Administrator, any or all line-ups or photographic arrays necessary to the investigation. When the case agent is a detective the detective will ask another detective, whenever possible, to show the line-up or photographic array. In the absence of another detective, the case agent will ask

another officer to show the line-up or photographic array. When the case agent is an officer other than a detective, the officer may utilize either a detective or other officer to show the line-up or photographic array.

B. Subjects in custody may not refuse to participate in a lineup. However, certain safeguards must be followed:

1. Subjects have a right to have an attorney present.
2. At least five (5) persons will participate with the subject in the lineup.
3. All participants should be of the same sex, have a similar physical description, and be wearing similar attire.
4. Each participant will be instructed in the lineup procedure.
5. Each participant will be assigned a numbered position, which may be changed between lineups with different witnesses to assure a positive identification.
6. Participants will be asked to step forward by using their numbered position. They will each be asked to turn to offer profile and back views for the witness.
7. If verbal identification is necessary, each participant will be asked to say the same phrase.
8. If necessary, all participants may be requested to repeat certain steps above.
9. In conducting a lineup, the case agent should avoid making any suggestive statements to the witness and avoid any other suggestive circumstances.
10. The line-up, when presented to the witness, shall be video recorded via body worn camera, in-car camera, or both.
11. Line-up participants or photographs shall be presented one at a time.

60.1.04: CONDUCTING A LINE-UP WHEN SUBJECT IS NOT IN CUSTODY

- A. If a subject is not in custody, the subject may participate voluntarily or by court order.
- B. In each case, the case agent should consider whether this person is to be interviewed.
- C. If an interview is anticipated, it may be necessary to advise the subject of the subject's Miranda Rights.

60.1.05: NOTIFICATION OF SUBJECT'S ATTORNEY

- A. When practicable, the subject's attorney will be given at least a half day notice before conducting the lineup. If the subject's attorney cannot attend and the lineup must be held because of hardship to the witness, efforts must be made to have an attorney present to protect the subject's constitutional rights.
- B. Police personnel may request that a public defender attend the line-up if necessary.

60.1.06: ATTORNEY'S ROLE DURING THE LINE-UP

Attorneys viewing lineups may make comments or suggestions; however, the case agent shall remain in charge. The attorney shall not interview the witness.

60.1.07: SELECTION OF LINE-UP PARTICIPANTS

- A. Volunteers may be asked to participate in a lineup or prisoners from a correctional facility may be used to obtain the required number of participants. Under no circumstances will federal prisoners be used and the use of prisoners charged with felonies will be avoided.

60.1.08: EXCEPTIONS

- A. Line-ups will not be held under the following circumstances:
 - 1. A subject is personally known to the witness or witness.
 - 2. A subject has been arrested at the scene of a crime and in the presence of the witness or witnesses.

60.1.09: PHOTOGRAPHIC ARRAYS

The case agent may create a photo array or request another officer create the photo array for him or her. The key in creating the photo array is to avoid unduly suggesting the subject as the subject of a crime under investigation. The depicted subject should not patently, "Stand out" among the other depicted subjects. Example: If a witness described the subject as having a mustache and the subject is included in the photo array with a mustache, the remaining five depictions should not be clean shaven. If possible, in such a scenario, all depictions should have mustaches.

- A. Any photographic array shown by a blind administrator for a case agent will require a complete report, documented by the case agent, containing the following information.
 - 1. Name of witnesses to whom the array was shown.
 - 2. Name of subject.
 - 3. Type of identification made (positive, negative or tentative).
 - 4. Name of other persons' photographs shown in the photographic array.

5. Use of at least six (6) total photos including the subject's photo.
 6. All photographs used in the photographic array will be of persons similar in appearance to the subject.
 7. The blind administrator should avoid making any suggestive statements and avoid suggestive circumstances while having a witness view a photographic array.
 8. The subject has no right to counsel prior to using his/her photograph in a photographic array.
 9. The photo array, when presented to the witness, shall be video recorded via body worn camera or in-car camera, or both.
- B. In the event identification is made, the blind administrator will ensure that the person making the identification initials each photograph.
1. The photograph that is identified should contain the date, time, and signature of the person identifying it.
- C. Once the photographic array has been shown to the witness and the above requirement has been completed, the photographs will be sealed in an envelope and submitted as evidence.

60.1.10: SHOW-UP IDENTIFICATION

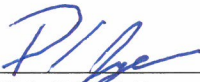
- A. When a case agent deems it necessary to conduct a one-on-one show-up in the field during an ongoing investigation, the following conditions should exist:
1. Must be a reported crime.
 2. The description of the subject given to police by the witness must match that of the subject being detained.
 3. The subject must be found within a reasonable time and distance from the crime scene.
 4. Show-up identification of the subject must be administered close in time to the commission of the crime.
 5. The witness will be taken to a neutral, non-law-enforcement location where the detained subject is being held.
 6. A report will be written describing the circumstances and conditions of the one-on-one show-up, including the location of the subject, the subject's surroundings and the name and location of all other persons present at the time of the identification.
 - a. The subject should not be handcuffed or placed in the back of a police vehicle, except for the purpose of officer safety.

- b. When this occurs, the case agent conducting the one-on-one identification must ensure that the witness making the identification understands that the conditions are not meant to suggest that person is the subject and that the conditions do not influence their identification.
- 7. In situations in which multiple witnesses are present, officers will select the appropriate witness to view the subject based on credibility, degree of involvement, or other knowledge related to the case, to establish probable cause for making an arrest.
- 8. All efforts must be made to avoid the appearance of police-suggested identification.
- 9. The one-on-one show-up, when presented to the witness, shall be video recorded via body worn camera, in-car camera, or both.

60.1.11: STATUTORY REQUIREMENTS

- A. In accordance with NMSA 1978, Section 29-3B-3(D), the Santa Fe Police Department shall review this directive no later than February 1 of each odd-numbered year.

Drafted (awm/01-03), Revised (jcg, pmj/03-24)

Approved: 
Chief Paul Joye

Date: 6/21/24