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ISSUE: 23-06

TRAINING BULLETIN

DATE: January 20, 2023

Senate Bill 923: Eyewitness Identification in Criminal Investigations

Effective January 1, 2020, California Penal Code 859.7 went into effect and placed strict guidelines on the administration of photographic lineups. The new penal code placed several requirements on the officer administering such identification procedures. The administration of such lineups shall be conducted utilizing “blind” or “blinded” administration. Utilizations of lineups not considered “blind” are limited and must be sufficiently documented.

Preparation of a line-up:

- All photographs included in the photo lineup should be similar in appearance and format
- Photographs should fit the eyewitness’ description of the perpetrator
- There shall be no indications within the lineup that the perpetrator has any prior arrests
- Only one suspected perpetrator shall be included in each photo lineup

****Both an audio and video electronic recording of identification procedures is required. If, for some reason, video recording is not available it must be documented as to why it was not used.****

What is “Blind Administration”

The officer administering a witness identification procedure does not know the identity of the suspect.

An example of this would be if Deputy “A” were investigating a Robbery and identified a possible suspect. When Deputy “A” wants to present a photographic lineup to a witness, Deputy “A” would produce a photographic lineup. Deputy “A” would then give the photographic lineup to Deputy “B” (who has no knowledge of the suspect’s identity). Deputy “B” would then administer the photographic lineup to the witness and report back to Deputy “A.”

What is “Blinded Administration”

The officer administering a photographic lineup may know who the suspect is but does not know where the suspect’s photograph is positioned in the photographic lineup. This can be accomplished through an automated computer system or a “folder shuffle method.”

Example #1: Deputy “A” is investigating a Robbery and identifies a suspect. Deputy “A” asks Deputy “B” to create a photographic lineup containing a particular suspect. Deputy “B” creates the lineup and places it into an envelope in which Deputy “A” cannot see the lineup. Deputy “A” then reads the witness the photographic lineup admonition (separate from the lineup) and provides the photographic lineup concealed in the envelope to the witness.

Example #2: Deputy “A” is investigating a Robbery and identifies a suspect. Deputy “A” creates a photographic lineup containing a particular suspect. Deputy “A” then places individual photographs of each person contained in the lineup into separate folders and shuffles the folders to the point that Deputy “A” no longer knows which folder contains the suspect’s photograph. Deputy “A” then provides the photographic lineup admonition to the witness and then provides all of the folders to the witness for them to examine the photographs.

Prior to administering a photographic lineup, the officer must:

- Obtain a description of the perpetrator
- Inform the witness that the perpetrator may or may not be among the persons included
- Inform the witness that they are not compelled to make an identification
- Inform the witness that an identification or the lack thereof will not end the investigation

****Witnesses shall view lineups separately****

During the photographic lineup showing:

- Nothing shall be said to potentially influence the witness’ identification of a person
 - If a witness identifies a person believed to be the perpetrator, the administering officer must:
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- Immediately inquire as to the witness's confidence level in accuracy and record such confidence verbatim in written form
- No information about the selected person may be provided to the witness prior to stating their confidence
- The administering officer shall not validate or invalidate the identification

The Photographic Lineup Admonition has been updated to include all required information. It has also been separated from the photographic lineup in order to allow blind or blinded administration. The amended Photographic Lineup Admonition reads:

In a moment I am going to show you a group of photographs. This group of photographs may or may not contain a picture of the person who committed the crime now being investigated. Keep in mind that hairstyles, beards, and facial hair may be easily changed. Also, photographs may not always depict the true complexion of a person – it may be lighter or darker than shown in the photograph. Pay no attention to any marking or numbers that may appear on the photographs or any difference in type or style of the photographs. When you have looked at all the photographs, tell me if you see the person or persons who committed the crime. Keep in mind, you are not obligated to select any person within the lineup. Whether or not a person is selected in this photographic lineup, the investigation will not end. Do not tell other witnesses that you have or have not identified anyone.