

NOPD CONSENT DECREE MONITOR  
NEW ORLEANS, LOUISIANA



July 2, 2019

202.747.1904 direct

File Number: 37PA-191555

Deputy Superintendent Otha Sandifer  
Compliance Bureau, New Orleans Police Department  
714 Broad Street  
New Orleans, LA 70119

Dear Deputy Superintendent Sandifer:

This letter constitutes confirmation on June 4, 2019 that the Office of Consent Decree Monitor ("OCDM") has reviewed and provided comments on Chapter 42.8 - Eyewitness Identification. The OCDM has no objection to the policy as written.

We believe that Chapter 42.8 - Eyewitness Identification, incorporates all requirements of the Consent Decree and sets forth clear and appropriate rules to guide officer conduct. We will continue to assess the adequacy of this policy following its implementation. If we identify any concerns following implementation, we will present those concerns to you and the Department of Justice. Additionally, we note that, pursuant to the Consent Decree, NOPD has agreed to review and revise policies and procedures as necessary upon notice of a significant policy deficiency. We also note NOPD's obligation to review this policy after a year of implementation to ensure it "provides effective direction to NOPD personnel and remains consistent with the Agreement, best practices, and current law." Consent Decree at ¶ 8.

We appreciate your team's effort, cooperation, and responsiveness throughout this process.  
Very truly

Very truly yours,

David L. Douglass  
For SHEPPARD MULLIN RICHTER & HAMPTON LLP\*  
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CC: HONORABLE SUSIE MORGAN (VIA ELECTRONIC MAIL)  
JUDE VOLEK, DEPARTMENT OF JUSTICE (VIA ELECTRONIC MAIL)  
SUNNI LEBEOUF, CITY ATTORNEY (VIA ELECTRONIC MAIL)

SMRH:4816-6540-9429.8



# NEW ORLEANS POLICE DEPARTMENT OPERATIONS MANUAL

## CHAPTER: 42.8

### TITLE: EYEWITNESS IDENTIFICATION

**EFFECTIVE:**

**REVISED: (Conversion replaces P/PR610)**

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#### PURPOSE

This Chapter sets forth guidelines to be used when members of this department employ witness identification techniques other than photographic line-ups.

#### POLICY STATEMENT

1. This department will use witness identification techniques, when appropriate, to enhance the investigative process and will emphasize identifying those persons responsible for crime and exonerating the innocent.
2. NOPD members shall conduct photographic line-ups according to **42.8.1 – Eyewitness Identification – Photographic Line-Ups**.

#### DEFINITIONS

**Confirmation Photograph**—A single photograph displayed to a witness in an effort to confirm the identity of a suspect. This method is limited to situations in which the suspect is previously known to the witness by name.

**Eyewitness Identification Process**—Any field identification, live lineup or photographic identification.

**Field Identification/Show-Up**—A live presentation of a single individual to a witness shortly following the commission of a criminal offense for the purpose of identifying or eliminating the person as the suspect.

**Physical Lineup**—The live presentation of a number of people to an eyewitness for the purpose of identifying or eliminating an individual as the suspect. A lineup differs from a field identification/show up in that it is conducted in a controlled setting, such as a police facility, a known suspect is in the mix, and the participants are aware that an identification procedure is being conducted.

**Photographic Lineup**—Presentation of photographs to a witness for the purpose of identifying or eliminating an individual as the suspect.

**Sequential Lineups**—A set of photographs of individuals presented to an eyewitness

consisting of one suspect among a number of fillers with like characteristics, shown one at a time and in random order.

### EYEWITNESS IDENTIFICATION GENERAL

3. Due process requires that identifications be conducted in a fair, objective, and nonsuggestive manner.
4. Due process is violated when identification procedures arranged and/or conducted by the police are unnecessarily suggestive and conducive to irreparable mistaken identification.
5. Prior to conducting an identification procedure, investigators should take a full description of the suspect from the witness and document that description.
6. The officer should record the critical parts of what a witness has said verbatim as to how confident or certain he or she is of the identification made.
7. Officers should avoid any words or actions that suggest to the witness that a positive identification is expected, who they expect the witness to identify, or congratulating the witness on an identification.
8. Every show-up, photo array, line-up or voice identification procedure, whether an identification is made or not, shall be documented in a report (EPR). The report shall include a summary of the procedure, the persons who were present for it, instructions given to the witness by the officer (this is accomplished by submitting the appropriate witness instruction form as part of the report), any statement or reaction by the witness, and any comments made by the witness regarding the identification procedure.
9. Officers shall not, in any way, influence a witness as to whether any subject presented in a lineup is in any way connected to the case. Officers shall avoid mentioning that:
  - (a) The individual was apprehended near the crime scene.
  - (b) The evidence points to the individual as the suspect.
  - (c) Other witnesses have identified, or failed to identify, the individual as the suspect.
10. In order to avoid undue influence, witnesses shall view suspects or a lineup individually and outside the presence of other witnesses. Witnesses shall be instructed to avoid discussing details of the incident or of the identification process with other witnesses.
11. Each witness shall be admonished that he/she is not required to make an identification of any person shown during an eyewitness identification process and **that the suspect may or may not be present in the lineup.**
12. The eyewitness identification procedure shall be audio and/or video recorded and the recording shall be retained according to current evidence procedures.

### WITNESSES WITH LIMITED ENGLISH PROFICIENCY

13. If a witness to a criminal offense does not fluently speak the English language or otherwise has difficulty communicating (e.g. hearing impaired), officers shall ensure an interpreter or an interpretive device is present and available before proceeding with eyewitness identification (refer to **Chapter 55.5.1 - Communication with persons who are deaf or hearing impaired** or **Chapter 55.4 - Limited English Proficiency Services**).

14. Before the interpreter is permitted to discuss any matter with the witness, the investigating officer shall 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 Chapter.

### **FIELD IDENTIFICATION CONSIDERATIONS**

15. Field identifications, also known as field show-ups or one-on-one identifications, may be helpful in certain cases where exigent circumstances make it impracticable to conduct photo or physical lineup identifications.
16. A field elimination or show-up identification should not be used when independent probable cause exists to arrest a suspect. In such cases a physical or photo lineup is the preferred course of action if eyewitness identification is contemplated.

### **DOCUMENTATION**

17. A thorough description of the eyewitness identification process, to include the display procedure, and the results of any eyewitness identification shall be documented in the investigative report. All witness statements and/or comments shall be documented in the report. (i.e., comments of how certain the witness is of the identification or non-identification, etc.).
18. The identities of all individuals present during the identification procedure shall be documented in the case report.

### **PHYSICAL LINEUPS**

19. A physical line-up shall only be conducted after consultation with the investigating officer's supervisor and the Orleans parish District Attorney's Office. When it is determined that a physical lineup will be necessary, the investigating officer shall contact the District Attorney's Office and request a lineup be scheduled. Officers shall request the presence of an Assistant District Attorney at the time a lineup is held; however, his/her presence is not required for the lineup. The investigating officer will follow the detailed instructions provided by the assigned Assistant District Attorney in conducting the physical lineup and documenting the same. As a general guideline, the person who conducts the physical lineup should have no knowledge of the investigation, and persons with the same general physical characteristics should be used as "fillers."

### **IDENTIFICATION OF SUSPECTS**

20. Fairness in the identification procedure as well as in the actual confrontation between the suspect and victim/witness shall be required.
21. Officers shall refrain from making any suggestive movements or statements at the time of the identification process. If the witness or victim is hesitant in identifying the suspect, the officers shall include that fact in the report.
22. When initiating a field identification, the officer shall 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:
    - i. The length of time the witness observed the suspect.
    - ii. The distance between the witness and the suspect.
    - iii. Whether the witness could view the suspect's face.

- iv. The quality of the lighting when the suspect was observed by the witness.
  - v. Whether there were distracting noises or activity during the observation.
  - vi. Any other circumstances affecting the witness's opportunity to observe the suspect.
  - vii. 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, officers should bring the witness to the location of the suspect, rather than bring the suspect to the witness.
  - (e) A person 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 suspects one at a time.
  - (g) A person in a field identification 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.
23. If a witness positively identifies an individual as the perpetrator, officers should not conduct any further field identifications with other witnesses for that suspect. In such instances, officers should document the contact information for any additional witnesses for follow-up. Any physical items the suspect may have in his possession which can be identified by the victim/witness, such as clothing, stolen items, etc., and which may be used in the prosecution of the subject, shall be confiscated by the officer.

#### **CONFIRMATION PHOTOGRAPHS**

24. If a victim or witness identifies an individual suspect by a name, even a street name, and he/she indicates that he/she knew the subject prior to the incident in question, officers may use a confirmation photograph, if available, to verify that the identity of the suspect.
25. To utilize a confirmation photograph, the officer shall:
- (a) Relocate the victim or witness to the District station if the witness consents;
  - (b) Interview the victim or witness utilizing the interview/interrogation room and record the entire confirmation process on video;
  - (c) Document on video and in the EPR the information provided by the victim or witness that allows the usage of a confirmation photo;
  - (d) Present the photograph to the victim or witness and ask if this is a photograph of the suspect the victim or witness previously identified by name;
  - (e) Document the identification process in the EPR and specifically note the degree of certainty of the results of the identification;
  - (f) On the back of the photograph, note the date and time of the presentation and have the victim or witness sign the back of the photograph used;
  - (g) A copy of the photograph may be used in the investigative report or file, but the original dated and signed photograph shall be placed on the evidence books at Central Property and Evidence under the investigation's item number by the officer conducting the confirmation photo process within 24 hours of the presentation.
26. The investigating officer shall enter all required information into the Photographic Line-Up Log immediately after the administration of the confirmation photo.
27. **Only one confirmation photograph process shall be used in any case to identify a known suspect.**

**DRAWINGS, SKETCHES AND IDENTI-KIT COMPOSITES**

28. An artist's sketch, computerized drawing, composite, or other depiction can sometimes aid an investigation, but are most effective when a witness has a good recollection of the offender's facial features. However:
  - (a) Research has shown that a person selected based on resemblance to composite is **more likely to be mistakenly identified**.
  - (b) Additionally, building a composite has been shown to **lower a witness's accuracy** for identifying the original face.
29. Prior to attempting a sketch or composite, officers should take a full description of the offender from the witness and document the description in his/her report.
30. A sketch prepared by a trained artist is preferred over a composite.
31. Sketches and composites should not be attempted prior to the showing of a photo array or line-up.
32. Once the sketch or composite has been completed, the witness should be asked to state in his/her own words how accurately the composite reflects how the suspect appeared during the crime and a report should be prepared regarding the sketch or composite procedure.
33. The fact that a suspect resembles a sketch or composite is not, without more evidence, probable cause to believe that the suspect is the offender.
34. The use of mug books, mug shots and hypnotically aided identification is prohibited.