

THURMONT POLICE DEPARTMENT

GENERAL ORDER

Date Issued: March 12, 2014

Effective Date: March 12, 2014

Order No: Chapter 28.1

Authority: Chief of Police

Gregory L. Eyer

Manual Page No:

Subject: ***Eyewitness Identification***

Replaces Page No:

Accreditation Standard: Chapter 42

Distribution: **ALL**

Amends:

Number of Pages: 6

Related Documents:

Rescinds: Policy dated November 1, 2007

This Directive is for internal use only, and other than as contraindicated here this Directive does not create or enlarge this Department's, governmental entity, any of this Department's officers, and/or any other entities' civil, criminal, and/or other accountability in any way. This Directive is not to be construed as the creation of a standard of safety or care in any sense, with respect to any complaint, demand for settlement, or any other form of grievance, litigation, and/or other action. Deviations from this Directive, if substantiated, can only form the basis for intra-Departmental administrative action(s) (including discipline and/or termination).

I. PURPOSE:

To establish procedures for conducting eyewitness identification by means of photographs or other acceptable methods in compliance with Senate Bill 752; Public Safety Article Section 3-506.

II. DISCUSSION:

Eyewitness identification is an integral element of any criminal investigation. The procedures that are employed in obtaining identification are crucial to the outcome of an investigation and are designed to eliminate any inference or influence upon a witness or suggestiveness on the part of an investigation.

Senate Bill 752 requires all law enforcement agencies to adopt written policies pertaining to eyewitness identification and file these policies with the Maryland State Police. Further, the policies must comply with the U.S. Department of Justice standards on obtaining accurate eyewitness identification.

III. POLICY:

It is the policy of the Thurmont Police Department to conduct all identifications of suspects in a manner that is fair, non-suggestive, and in conformance with current legal practices; and to ensure that:

1. Eyewitnesses are given specific instructions prior to being shown a suspect;

2. Photo arrays are conducted using **sequential rather than simultaneous presentation**; and
3. Photo arrays, line-ups and voice identifications are conducted using blind administration.

IV. DEFINITIONS:

“Administrator” means the person conducting an identification procedure.

“Blind” means the administrator does not know the identity of the suspect.

“Blinded” means the administrator may know who the suspect is but does not know which lineup member is being viewed by the eyewitness.

“Eyewitness” means a person who observes another person at or near the scene of an offense.

“Filler” means a person or a photograph of a person who is not suspected of an offense and is included in an identification procedure.

“Folder Shuffle Method” means a system for conducting a photo lineup that:

- 1) complies with the requirements of this section; and
- 2) is conducted by placing photographs in folders, numbering the folders, shuffling the folders, and then presenting the folders sequentially so that the administrator cannot see or track which photograph is being presented to the eyewitness until after the procedure is completed.

“Identification Procedure” means a procedure in which a live lineup is conducted or an array of photographs, including a photograph of a suspect and additional photographs of other persons not suspected of the offense, is displayed to an eyewitness in hard copy form or by computer for the purpose of determining whether the eyewitness identifies the suspect as the perpetrator.

“Identification Statement” means a documented statement that is sought by the administrator when an identification is made:

- 1) from the eyewitness;
- 2) in their own words, describing the eyewitness’ confidence level that the person identified is the perpetrator of the crime;
- 3) given at the time of the viewing by the eyewitness during the identification procedure; and
- 4) given before the eyewitness is provided feedback.

“Live Lineup” means a procedure in which a perpetrator is placed among a group of other persons whose general appearance resembles the perpetrator.

“Perpetrator” means a person who committed an offense.

“Suspect” means a person who is suspected of committing an offense.

“Show-Ups” is when a law enforcement officer shows one suspect to one witness for the purpose of eyewitness identification:

- 1) must be conducted during the immediate investigation of the offense; and
- 2) when practical, the witness must be taken to the location of the detained suspect

“Composite” is renderings of recollections of a witness describing a suspect’s appearance. Composites may be completed by an artist, computer program, or Identi-kit which features a variety of different facial features.

“Photo Line-up” means a display of a photograph of the suspect along with other individuals whose physical characteristics resemble the suspect’s description and appearance at the time of the incident.

V. PROCEDURES:

Due process requires that identifications be conducted in a fair, objective, and non-suggestive manner. Due process is violated when identification procedures conducted by the police are unnecessarily suggestive and conducive to irreparable mistaken identification.

Upon response to the scene of a crime, an officer should make an effort to prevent eyewitnesses from comparing their recollections of the offender or the incident. Officers may accomplish this by promptly separating the witnesses and interviewing each out of the earshot of the others. Witnesses should not participate in identification procedures together. For example, witnesses should not be transported together to view a suspect during a show-up.

Officers should use caution when interviewing eyewitnesses. Specifically, they should avoid whenever possible the use of leading questions. Prior to asking an eyewitness to identify a suspect, police officers should obtain a detailed description of the offender.

A. CONDUCTING A PHOTO ARRAY:

- 1) In a photo array, the suspect should not unduly stand out. An identification through a photo array using the following procedures should result in a strong evidentiary value.
- 2) Each photographic array will consist of at least six (6) photographs. (One photograph of a suspect and five (5) fillers.) All subjects will be of the same race and sex as the suspect. Physical characteristics of each subject used in a photographic array will be similar to that of the suspect. Nothing about the photographs that are utilized in photographic arrays will be suggestive in any way. If available, photographs that are utilized in photographic arrays will be obtained from the photographs on file with the Department of Central Booking.
- 3) Each single photograph shall be placed in a folder. All six (6) folders should be shuffled

by the administrator and then numbered prior to displaying the folders to the witness. This will allow the administrator to conduct a “*blinded*” presentation and have a record of the order in which the photo array was presented.

- 4) When photographs of a suspect are not available from the Department files or Central Booking, photographs may be obtained from other sources. Sources may consist of high school/college yearbooks or the Department of Motor Vehicle Administration, or any other resource which would produce an acceptable photograph of the suspect(s) and fillers.
- 5) If an eyewitness has previously participated in an identification procedure in connection with the identification of another person suspected of involvement in the offense, the fillers in the identification procedure shall be different from the fillers used in any prior identification procedure.
- 6) If there are multiple eyewitnesses, the identification procedure shall be conducted separately for each eyewitness:
 - a) The suspect shall be placed in a different position for each identification procedure conducted for each eyewitness; and
 - b) the eyewitnesses may not be allowed to communicate with each other until all identification procedures have been completed.
- 7) The administrator shall make a written record of the identification procedure that includes the following information:
 - a) All identification and non-identification results obtained during the identification procedures
 - b) A signed identification statement from the eyewitness
 - c) The names of all persons present at the identification procedure
 - d) The date and time of the identification procedure
 - e) Any eyewitness identification of a filler; and
 - f) All photographs used in the identification procedure.

***Use the “*Photo Array Instruction Form*” located at the end of this policy prior to presenting a photo array.**

B. CONDUCTING SHOW-UPS:

- 1) A show-up occurs when law enforcement officials show one suspect to one witness for the purpose of eyewitness identification. The use of show-ups can provide investigative information at an early stage, but the inherent suggestiveness of a show-up requires careful use of procedural safeguards.
- 2) When conducting a show-up:

- a) Prior to the show-up, it is important the witness be asked to give a detailed description of the suspect(s), and this description be carefully documented.
- b) When practical, transport the witness to the location of the detained suspect (as opposed to transporting the suspect to the witness) to limit the potential legal impact of the suspect's detention, and to minimize influence on the witness of seeing the suspect transported under custody. Show-ups will not be conducted at a police station or other law enforcement facility.

***Use the "Instruction Card for Show-up Identification Attempt" located at the end of this policy prior to conducting a show-up.**

C. COMPOSITE IMAGES:

- 1) With some investigations, law enforcement officials have an eyewitness description, but have either no specific suspect or no visual likeness of a known suspect. The use of composite images can yield investigative leads in cases in which no suspect has been determined. In these situations, law enforcement officials may try to produce a facial composite of the suspect(s) based on the witness' description.
- 2) Composite images can be beneficial investigative tools; however, they should not be used as stand-alone evidence and may not rise to the level of probable cause. Assess the ability of the witness to provide a description of the suspect(s). Select the procedure to be used from available resources, such as: Identi-kit, Artist Drawing, or Computer-Generated images. Avoid showing the witness any photos prior to the development of the composite. Conduct the procedure with each witness separately. Determine with the witness whether the composite is a reasonable representation of the suspect(s). Explain to the witness how the composite will be used in the investigation.

D. LIVE IDENTIFICATIONS:

- 1) The Thurmont Police Department does not conduct Live Line-ups.

ATTACHMENTS:

Photo Array Instruction Form
Instruction Card for Show-up Identification Attempt

DOCUMENT DATES :

Amended Date: February 19, 2014

Review Date:

Review Date:

Review Date:

Rescinds: Policy dated November 1, 2007

Order Written By: Lt. P.A. Droneburg

Order Edited and Approved By:

Accreditation Standards Included in this Order
CHAPTER 42