



DEPARTMENTAL
GENERAL
ORDER

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Lineups
Prisoner Lineups
Show-Ups, Prisoner

PRISONER LINEUPS

The purpose of this order is to state Departmental policy and procedures for conducting prisoner lineups in order to promote fairness, eliminate witness suggestion and document the proceedings for use in court.

I. PLANNING A LINEUP

A. Time

Lineups usually will be conducted at 1900 hours on weekdays. On weekends, lineups shall be conducted at a time that is mutually convenient for the witnesses and the jail staff.

B. Witness

1. The investigator who will conduct the lineup shall contact witnesses by telephone, request them to attend the lineup and advise them where and when it will be held. Witnesses shall not be advised that a person in the lineup is believed to be responsible for the crime.
2. Lineups involving adult suspects shall be conducted in Room 239 of the Police Administration Building (P.A.B.), 455 Seventh Street. Lineups involving juvenile suspects shall be conducted at the Juvenile Probation Center, 400 Broadway, or at Juvenile Hall, 2200 Fairmont Drive, San Leandro, depending on where the juvenile is being held. Depending on the circumstances, juvenile lineups involving three or more multiple witnesses may be conducted at the P.A.B. with the prior approval of a command officer.

3. The investigator shall ask witnesses to arrive at the appropriate facility one-half hour before the lineup will begin.

C. Suspect

1. The investigator shall inform an adult suspect who has been arrested on regular warrant charges pertaining to the crime under investigation, or who has been arraigned, that he/she has an absolute right to have counsel observe the lineup unless he/she waives that right.
 - a) When a suspect exercises his/her right to have counsel observe the lineup, the investigator shall make every reasonable effort to contact the attorney named, or to obtain court-appointed counsel.
 - b) An uncharged prisoner, including any person arrested without a warrant on probable cause, or arrested on the basis of a pre-complaint (Ramey) warrant, does not have the absolute right to have counsel observe the lineup (People v. Johnson [1992] 3 Cal. 4th 1183, 1222-1223). If, however, the suspect requests that an attorney be present, the investigator may make a reasonable effort to contact the attorney named, or to obtain court-appointed counsel.
2. In the event that an adult suspect is not in custody, the investigator shall instruct him/her to report to the jail office at 611 Broadway one hour before the lineup is to begin.
3. The investigator shall request the Juvenile Probation Department to advise juvenile suspects when they will be required to participate in a lineup and to read them their rights regarding counsel.

D. Attorney

1. A reasonable amount of time (approximately 30 minutes) will be allowed for the scheduled attorney to appear for the lineup.

- a) In the case of a charged suspect, if counsel is unable to attend, a photographic or videotape identification procedure may be used, without the witnesses being present during the photo or taping process.
 - b) In the case of an uncharged suspect, if counsel has been requested and is unable to attend, the lineup may be conducted without the attorney present.
2. Attorneys shall be contacted as follows:
- a) If the suspect is already being represented by the Public Defender's Office, the investigator shall, in all cases, contact the Public Defender as soon as possible and advise him/her of the time and place of the lineup.
 - b) If the suspect is not already being represented by the Public Defender's Office and wants to have counsel observe the lineup, the investigator shall:
 - (1) If the suspect requests a specific attorney, make every reasonable effort to contact the attorney as soon as possible and advise the attorney of the time and place of the lineup.
 - (2) If the suspect does not request a specific attorney, contact the Public Defender's Office and advise them of the impending lineup and provide the name and PFN of the suspect.
 - c) If the Public Defender declares a conflict of interest or cannot attend the lineup, contact the judge in Municipal Court Department 6, and request court-appointed counsel and advise the court clerk of the time and place of the lineup. If the judge is not available, the investigator may call the Court Appointed Counsel office directly at (510) 893-8660.

E. Documentation.

1. The investigator shall note in the remarks portion of the Follow-Up Investigation Report (336-201) all attorney or Public Defender notifications, the date and time, and the name of the person notified.
2. If the charged suspect waives his/her right to have an attorney observe the lineup, the investigator shall record that fact in the remarks portion of the Follow-Up Investigation Report and have the suspect sign a waiver on the Statement form (536-200-1). (An uncharged suspect does not need to sign a waiver.)

II. CONDUCTING A LINEUP

A. General Preparations

1. As soon as possible prior to the scheduled lineup time, the investigator shall inform the Jail Division watch supervisor or the Juvenile Probation Department which suspect or suspects are to be in the lineup.
 - a) Lineups in which there is one suspect should be comprised of six persons, including the suspect.
 - b) Lineups in which there are two suspects should be comprised of eight persons, including the suspects.
 - c) When there are three or more suspects, multiple lineups shall be conducted.
2. When a juvenile is involved, the investigator shall give the Juvenile Probation Department three copies of the Identification Show-Up Report (TF-880) and request that it be completed for the lineup.
3. If an adult suspect is not in custody and has been instructed to report to the jail office prior to the lineup, the investigator shall proceed to the jail to confirm that the suspect should be admitted for the purpose of participating in a lineup and to take custody of his/her possessions after he/she is searched and admitted.

4. For each witness who will attend the lineup, the investigator shall complete the RD number, date and witness name portions of a Lineup Card (TF-657).
5. The investigator shall obtain a camera from the Criminal Investigation Division. Lineup pictures for court use shall be taken on 35mm color film to ensure that the print is detailed enough so the suspect can be identified from the picture.
6. The investigator shall be responsible for security during a lineup. If any of the suspects are escape risks, the investigator shall ensure that additional members are assigned to attend the lineup.
7. The key to the lineup room is available in the jail office.

B. Witness Instruction

1. When possible, the investigator shall seat witnesses at least one space from one another in the lineup room.
2. The investigator shall review the instructions on the Lineup-Card with the witnesses. When they all understand the instructions, he/she shall have them sign their cards.

C. Defendant Instruction

1. After instructing the witnesses, the investigator shall take the attorney (if one is present) to the lineup holding area and have the attorney observe while the investigator or the Juvenile Probation Department instructs the lineup participants.
2. The investigator shall inspect the lineup participants to ensure a reasonable degree of physical similarity among them.
3. The investigator shall allow the suspect to select his/her position in the lineup sequence.
4. The investigator shall explain to the participants in an adult lineup the instructions they will be directed to follow during the lineup and advise them that they may be directed to speak for

voice identification, make some physical motions or wear articles of clothing or glasses.

5. The attorney representing the subject may not interfere with the conduct of a lineup; however, if the attorney makes a suggestion that does not endanger the orderly conduct of the lineup, it may be followed if it is reasonable. Any request by the attorney shall be noted in the investigator's follow-up report.

D. Conducting the Lineup

1. After the witnesses and participants have been instructed, the investigator shall direct the participants to walk onto the lineup stage in the prearranged order and form a line facing the audience. The investigator shall point to each participant in turn and inform the witnesses what his/her lineup position number is.
2. The investigator shall have each participant, in numerical sequence, come to the center of the stage, make four quarter turns, walk the full length of the stage, and return to his/her position in line.
3. If the suspect spoke during the crime, the investigator shall have each participant, in numerical sequence, step forward and repeat the same words.
4. If the suspect wore particular articles of clothing or glasses during the crime, the investigator shall have each participant in turn wear the articles.
5. Upon completing the lineup, the investigator shall turn off the microphone.
6. The investigator shall then ask each witness if he/she wants the lineup participants to repeat any actions or to perform other actions. If there are such requests, the investigator shall instruct the lineup participants to turn around and have each perform the requested action in sequence. The investigator shall caution witnesses not to single out any one suspect, but to request all suspects perform actions, speak phrases, etc.

7. When the above procedures have been completed, the investigator shall take two pictures of each individual participating in the lineup, as well as two pictures of the entire lineup. The investigator will then collect the Lineup Card from each witness.
8. The investigator shall then return all the participants to the custody of the correctional officer or the Juvenile Probation Department custodian and obtain the original and one copy of the Identification Show-Up Report. The correctional officer or custodian shall retain the remaining copy.
9. If necessary, the investigator shall interview witnesses separately. Witnesses shall not be advised whether or not they have correctly identified the suspect.

E. Role of Attorney

1. If the investigator interviews witnesses immediately after the lineup, the attorney has a right to be present during the interviews if he/she so requests.
2. The attorney observer may consult the witnesses after the lineup, but they are not required to talk to him/her.

F. Documentation

1. The investigator shall turn the Lineup Cards, completed by the witnesses, the original and one copy of the Identification Show-Up Report and photographs of the lineup into the Property Unit as evidence.
2. The investigator shall record on the Follow-Up Investigation Report (336-201) the names of the witnesses, lineup participants and the attorney present; the identification made; and the actions required of the lineup participants.

G. Release of Uncharged Adult Suspect

In the event that an uncharged suspect is not positively identified during a lineup and there is no other evidence linking him/her to the crime,

immediately after the lineup, the investigator shall authorize the jail to release the suspect.

III. REFUSAL TO PARTICIPATE IN A LINEUP

- A. If at any point a suspect who is in custody refuses to participate in a lineup:
1. The investigator shall advise him/her as follows:

“You do not have a right to refuse to participate in a lineup. Your reluctance or refusal to participate will be recorded and can or will be used against you in court. You will be placed in a lineup.”
 2. If the suspect continues to refuse, the investigator shall record his/her refusal verbatim on the Follow-Up Investigation Report.
 3. If the suspect’s attorney is present, the investigator shall advise the attorney that the suspect refuses to participate voluntarily.
 4. After the suspect is informed that he/she must participate in a lineup, reasonable force or restraint may be used to compel him/her to participate, provided that all persons in the lineup are similarly restrained so that the suspect is not singled out by different treatment.
 5. If the suspect cannot be compelled to participate by means of reasonable force or restraint, the investigator shall arrange alternate identification procedures (e.g., photographs) and shall document on the Follow-Up Investigation Report the reasons why a physical lineup was not conducted.
- B. A suspect who is out of custody may refuse to participate in a lineup. The admissibility of such refusal will be determined by the court.

By order of

Joseph Samuels, Jr.
Chief of Police
GO20/M-6