

East Haven Police Department 	Type of Directive: Policies & Procedures		No. 417.4
	Subject/Title: Eyewitness Identification		Issue Date: February 26, 2019
	Issuing Authority: Honorable Board of Police Commissioners		Effective Date: March 31, 2019
References/Attachments: Connecticut Public Act # 12-111 Connecticut General Statutes § 54-1p		Review Date: Annually	Rescinds: 417.3
			Amends: N/A

I. PURPOSE

- A. The purpose of this directive is to set forth the policies and procedures of the East Haven Police Department regarding witness identification, consistent with Connecticut Public Act # 12-111 and Connecticut General Statutes § 54-1p.

II. POLICY

- A. It is the policy of the East Haven Police Department, in the pursuit of justice and public safety, that procedures will be instituted and followed to eliminate any officer influence on identification of suspects by eyewitnesses.
- B. Officers will refrain at all times from actions or words that might in any way influence identification of suspects by eyewitnesses.

III. DEFINITIONS

- A. **Eyewitness:** A person who observes another person at or near the scene of an offense.
- B. **Photo Lineup:** A procedure in which an array of photographs, including a photograph of the person suspected as the perpetrator of an offense and additional photographs of other persons not suspected of the offense, is presented to an eyewitness for the purpose of determining whether the eyewitness is able to identify the suspect as the perpetrator.
- C. **Live Lineup:** A procedure in which a group of persons, including the person suspected as the perpetrator of an offense and other persons not suspected of the offense, is presented

to an eyewitness for the purpose of determining whether the eyewitness is able to identify the suspect as the perpetrator.

- D. Show-Up: A procedure in which a person or persons suspected as perpetrators are presented one at a time to an eyewitness. Show-Up is also known as a Field Identification and/or One-on-One Identification. Show-Ups typically occur shortly after the commission of a crime and/or when a suspect(s) is apprehended at or near the crime.
- E. Field View: A procedure in which the eyewitness views a group of people in a public place on the theory that the suspect may be among the group. A field view differs from a show-up in that it may be conducted well after the commission of the crime and may be conducted with or without a suspect in the group.
- F. Identification Procedure: A photo lineup, a live lineup or a show-up.
- G. Filler: Means either a person or a photograph of a person who is not suspected of an offense and is included in an identification procedure.
- H. Sequential Photo Lineup or Live Lineup: The photographs included in a photo lineup or the persons participating in a live lineup are presented sequentially so the eyewitness views one photograph or one person at a time.
- I. Double-Blind Procedure: An identification procedure conducted in such a manner that the person conducting the procedure does not know which person in the photo lineup or live lineup is suspected as the perpetrator.
- J. Blind Administration (other than Folder Shuffle, below): The conduct of an identification procedure in which the administrator of the procedure is unaware of which photograph the witness is viewing during the procedure. This procedure is intended to ensure that the eyewitness does not interpret a gesture or facial expression by the officer (administrator) as an indication as to the identity of the suspect.
- K. Folder Shuffle Procedure: When the conduct of the Double-Blind Procedure is not practicable, the photo lineup is conducted by inserting each of the required photographs into separate, unmarked folders, shuffling them and allowing the eyewitness to remove the photographs, one at a time to view them. A computer program in which a software program is used to administer any lineup, wholly or in part, shall comport to the procedures contained within this policy. If the eyewitness is able to make an identification of a photograph, that person should sign and date the identified photograph.
- L. Lap: Means a single completed cycle to view all the photos in a photo lineup or all persons participating in a live lineup.
- M. Confidence Statement: Means a statement taken from the victim/witness immediately after identification, in his/her own words, on how certain he/she is of the identification.

IV. GENERAL GUIDELINES AND CONSIDERATIONS

A. Public Act No. 12-111 provides that "...each municipal police department...shall adopt procedures for the conducting of photo lineups that are in accordance with the policies and guidelines developed and promulgated by the Police Officer Standards and Training Council and the Division of State Police within the Department of Emergency Services and Public Protection pursuant to subsection (b) of this section and comply with" a number of requirements.

V. PROCEDURES

- A. Officers shall use the Sequential Photo Lineup or Sequential Live Lineup so that the eyewitness views one photograph or one person at a time.
- B. Officers shall use the Double-Blind Procedure when presenting a photo lineup or live lineup. If the Double-Blind Procedure is not practicable, the officer shall employ the Folder Shuffle Procedure.
- C. Officers shall say nothing to the eyewitness that might influence the eyewitness's selection of the person suspected as the perpetrator.
1. While conducting the photo or live lineup, nothing shall be said to the eyewitness about the suspect or his/her location in the lineup.
 2. Should the eyewitness identify a person as the perpetrator, the eyewitness shall not be provided any information concerning such person.
- D. Prior to the start of the identification procedure, the eyewitness shall be instructed as follows.
1. He/she will be asked to view an array of photographs or a group of persons, and that each photograph or person will be presented one at a time.
 2. It is just as important to exclude innocent persons as it is to identify the perpetrator.
 3. The persons in a photo lineup or live lineup may not look exactly as they did on the date of the offense because features like facial or head hair change.
 4. The perpetrator may or may not be among the persons in the photo lineup or live lineup.
 5. The eyewitness should not feel compelled to make an identification.
 6. The eyewitness should take as much time as needed in making a decision.
 7. The police will continue to investigate the offense regardless of whether the eyewitness makes an identification.
 8. After the identification procedure, he/she will be asked how certain he/she was that the perpetrator was or was not in the lineup.

9. Even if the eyewitness is able to make an identification, he/she will be asked to finish the procedure by looking at all the photographs or all of the individuals until he/she has completed looking at each one.
10. If there are other witnesses, the eyewitness must not indicate to them that he/she has or has not made an identification of a suspect.
11. The officer administering this procedure either does not know whether any of the people in the photographic array or in the lineup were involved in the crime or does not know the sequence in which the eyewitness is viewing the photographs.
12. If the eyewitness selects a person or photograph, he/she will be asked to provide a statement about the identification. If the eyewitness doesn't recognize someone, he/she must say so.
13. If the eyewitness does not select someone, the police will continue to investigate.

E. Record Collection and Retention

1. Officers shall complete an Eyewitness Identification Procedure Form and Record of the identification procedure upon conclusion of a photo lineup or a live lineup.
 - a. The form is available via the Department's computer system.
2. The Records Division shall maintain as a separate and distinct record a set of copies of completed Eyewitness Identification Procedure Forms and Records.
 - a. Forms shall be retained by calendar year for the purpose of facilitating analysis and reporting by outside persons or agencies tasked with same.
3. The following information shall be recorded and retained in the investigative file.
 - a. The Confidence Statement should be recorded in writing and signed by the victim/witness or otherwise memorialized.
 - b. The names of all persons present at the identification procedure.
 - c. In a photo lineup, the photographs presented to the eyewitness or copies thereof.
 - d. In a photo lineup, identification information on all persons whose photographs were included in the lineup and the sources of all photographs used.
 - e. In a live lineup, identification information on all persons who participated in the lineup.

F. Preparation of Photographic Lineups

1. The suspect and filler photographs should resemble the witness's description in significant features such as race, sex, facial features, profile, height, weight, build, specific item of clothing, etc. to the extent applicable to the photo being used of the suspect.

- a. The officer preparing the photo lineup shall confirm that the suspect's photo used is not subject to erasure due to dismissal, nolle, or by other order of the court.
2. If multiple photographs of the suspect are available, lineup administrators should select the photograph that most resembles the suspect description or appearance at the time of the incident.
3. Attention should be paid to unusual identifying marks described by the witness that are visible on the suspect's photo.
 - a. In these cases, photos containing a similar feature should be included when possible or the area of the feature may be covered on all photographs to be included.
4. All photos should be of the same size and no single photo should unduly stand out from the others.
5. If the eyewitness has previously viewed a photo lineup or live lineup with the suspect's photo or with the suspect in it, steps must be taken to ensure that the suspect does not stand out in the new lineup.
6. A minimum of five (5) fillers must be used in photo lineups in addition to the suspect.
7. In a photo lineup, no information concerning any previous arrest of the suspect shall be visible to the eyewitness.
8. If multiple suspects are involved, a separate photo lineup must be prepared for each suspect to be presented to the witness.
9. In cases where one witness will view multiple lineups, containing different suspects, the person administering the lineup will ensure that different filler photographs are used in each individual photo lineup.
10. In cases where multiple witnesses will be viewing photo lineups, separate photo lineups should be prepared for each witness.
 - a. The person administering the lineup may use the same filler photographs for each witness.
 - b. When possible, the suspect should be placed in a different position.
11. In the case of multiple witnesses, every effort should be made to prevent communication between witnesses once one (1) witness has viewed a photographic lineup.
12. The administrator shall record the order in which the folders were presented.
13. Should the witness request a second "lap," the lineup will be presented in the same ordered sequence as the initial lap.

G. Administration of Double-Blind Photo Lineups

1. No information regarding the identification of the suspect will be revealed to the person administering the lineup.
2. The lineup administrator will conduct the lineup following the sequential protocol, numbering each photo with the order in which it was presented to the witness.
3. The assigned investigator or anyone with knowledge of the suspect shall not be allowed in the room at the time of the lineup administration.
4. The lineup administrator shall give instructions to the witness by verbally reading the Eyewitness Instructions Form to the witness and determine if they understand.
 - a. The witness will then be asked to sign and date the form.
5. The lineup administrator will avoid any actions or comments that could be construed as an attempt to influence a witness to select a particular photo or to validate, invalidate or reinforce a selection that has been made by a witness.
6. If the witness identifies someone, the lineup administrator will then ask the witness to describe in their own words how confident they are of the identification.
7. Even if someone is identified, all of the photographs in the series will be shown.
8. The lineup administrator shall not provide any feedback about the lineup results to the witness.
9. Once the sequential lineup process is complete, the lineup administrator should generate an incident/supplemental report with the results of the sequential lineup, initial the back of each photograph for lineup verification in court and preserve the photo lineup as evidence.
 - a. The lineup administrator shall also complete an Eyewitness Identification Procedure Form and Record of the identification procedure upon conclusion of the lineup.
10. The original photographs should be secured as any other evidence with the originals being maintained as evidence and one (1) complete copy placed into the case file.
11. The administrator should not offer nor suggest that the eyewitness engage in another lap of the photographs.
12. If the eyewitness should request a second lap of the photographs, one additional lap is permissible, but in any event shall not exceed two (2) laps.
 - a. If a witness requests a second lap, the entire series of photographs must be viewed by the witness in the same order in which they were shown originally. The witness must not be permitted to view just one photograph of the selection even if he/she requests to see just one photograph.

H. Folder Shuffle Procedure

1. When implementation of the Double-Blind Photographic procedure is not practicable, a Folder Shuffle must be used.
2. The lineup administrator shall give instructions to the witness by verbally reading the Eyewitness Instructions Form to the witness and determine if they understand.
 - a. The witness will then be asked to sign and date the form.
3. The photograph of the suspect and the five (5) or more fillers are each placed into separate, unmarked folders and shuffled by the administrator, who will number each folder according to the sequence in which they were shown to the witness.
4. The eyewitness shall be instructed to remove each photograph, one at a time and view the single photograph.
 - a. At no time should the lineup administrator be able to determine which particular photograph is being viewed by the witness at a particular time.
5. If the blind method is not practicable, then the administrator must position himself or herself away from the eyewitness so as not to be able to give cues, consciously or subconsciously.
6. When the eyewitness concludes viewing a particular photograph, it should be placed back in the folder and returned to the administrator before viewing the next one.
7. Even if the eyewitness identifies a suspect part way through the entire series, he/she shall be instructed to continue viewing the remaining photographs.
 - a. If the eyewitness requests a second lap, the folders should be shown to the witness in the same manner and in the same sequence as the first lap.
8. Once the lineup process is complete, the lineup administrator shall generate an incident/supplemental report with the results of the lineup, initial the back of each photograph for lineup verification in court and preserve the photo lineup as evidence.
 - a. The lineup administrator shall also complete an Eyewitness Identification Procedure Form and Record of the identification procedure upon conclusion of the lineup.

I. Administration of Live Lineups

1. A suspect cannot be compelled to participate in a lineup without probable cause to arrest.
 - a. If the suspect refuses to participate in a lineup, the officer should contact his/her State's Attorney Office.
2. Before a suspect participates in a lineup, he/she must be informed of his/her right to have an attorney present at the lineup and of his/her right to be provided with an attorney without costs if he/she is unable to afford such legal counsel.

- a. Unless a knowing and voluntary waiver is made, in writing if possible, no procedure may proceed without an attorney present.
3. Four (4) fillers should be selected who fit the description of the suspect as provided by the eyewitness(s).
4. All persons in the lineup should carry cards that identify him/her by number only and they should be referred to only by that number.
5. The administrator of the lineup should carefully instruct the eyewitness by reading from the instruction form.
 - a. The eyewitness should be asked to sign the form indicating he/she understands the instructions, and the administrator should sign and date the form.
6. The lineup should be conducted so the suspect and fillers are not viewed by the eyewitness as a group, but rather, displayed to the eyewitness one (1) at a time.
7. If the eyewitness makes an identification of a suspect, a statement must be taken as to the certainty of that identification.
8. During a lineup, each participant may be directed to wear certain clothing, to put on or take off certain clothing, to take certain positions or to walk, talk, or move in a certain way. All lineup participants shall be asked to perform the same actions.
9. In a live lineup, all lineup participants shall be out of view of the eyewitness at the beginning of the identification procedure.

J. Administration of Show-ups

1. Show-up identification procedures are employed soon after a crime has been committed, when a suspect is detained at or near the crime, or under exigent circumstances such as the near death of the eyewitness or victim.
2. Every show-up must be as fair and non-suggestive as possible. If the suspect is handcuffed, he/she should be positioned so the handcuffs are not visible to the eyewitness.
3. Unless necessary for the safety of the officers or others, the suspect should not be viewed when he/she is inside a police vehicle, in a cell or in jail clothing.
4. Detaining a person who fits the description of a suspect in order to arrange a show-up is lawful when the officer has reasonable suspicion that a suspect has committed a crime.
5. Prior to being allowed to view a suspect during a show-up, the officer shall read aloud the show-up identification instructions to the eyewitness as outlined on the Department-issued Officer's Field Card Witness.

6. If the eyewitness fails to make a positive identification and sufficient other evidence is not developed to establish probable cause to arrest, the suspect must be permitted to leave.
7. When a suspect is stopped under show-up circumstances, he/she should be detained at the scene of the stop, and the witness(s) shall be transported to that location to view the suspect.
 - a. Suspects should not be transported back to the scene of the crime if avoidable or to any other location barring exigent circumstances such as an unruly crowd.
 - b. Unless an exigency exists, they shall not be transported to a police station absent probable cause to arrest.
8. Officers must not say nor do anything that would convey to the eyewitness that they have evidence of the suspect's guilt.
9. A suspect should be viewed by one (1) eyewitness at a time out of the presence and hearing of other eyewitnesses.
 - a. Witnesses who have viewed a suspect should not be permitted to communicate with those who have not.
10. If an eyewitness makes identification, a statement should be obtained from the eyewitness including the level of certainty of that identification.
11. When a show-up is arranged in an emergency situation, where either an eyewitness or a victim is in imminent danger of death or in critical condition in a medical facility, and the circumstances are such that an immediate confrontation is imperative, the emergency identification procedure shall be conducted in a non-suggestive manner.
12. Once the show-up process is complete, the officer conducting the show-up should generate an incident/supplemental report with the results of the show-up.

K. Field Views

1. Prior to being allowed to view a suspect or suspects during a field view, the officer shall read aloud the show-up identification instructions to the eyewitness as outlined on the Department-issued Officer's Field Card Witness.
2. The eyewitness may be accompanied to a public location where the suspect may or may not be present and is then permitted to view a group of people in an effort to identify a suspect.
3. The officer or investigator may not direct the eyewitness's attention to any particular person, make any suggestions to the eyewitness or otherwise attempt to influence the witnesses.
4. If an eyewitness makes identification, a statement should be obtained from the eyewitness including the level of certainty of that identification.

L. Assist Other Agency

1. If another law enforcement agency requests a photo lineup, a case number shall be generated and the officer preparing the photo lineup shall complete an incident report. The incident report shall include the names of the subjects who are in the photo lineup, and who the lineup was created for.