

STOCKTON POLICE DEPARTMENT

GENERAL ORDER

SUSPECT IDENTIFICATION
SUBJECT

DATE: March 28, 2019

NO: P-22

FROM: CHIEF ERIC JONES

TO: ALL PERSONNEL

INDEX: **Confrontations**
Identification
Lineups
Photograph Showing
In-Field Show-Ups

I. POLICY

Officers of the Stockton Police Department will conduct in-field showups, photo lineups, and live lineups for (incustody) establishing identity according to law.

II. LAW

- A. Penal Code Section 859.7 sets forth procedures for utilizing a photo lineup or a live lineup.
- B. Court decisions (Example: Simmons vs. United States) set out specific guidelines regarding use of photos, lineups, and confrontations, which this procedure follows.

III. PROCEDURE

- A. In-Field Show-ups
 - 1. In-field showups between suspects and witnesses and/or victims normally will take place within a reasonably brief time after the incidents.
 - 2. If the suspect is located and not arrestable at the time, he/she can be detained, and the victim/witness must be transported to the stop scene for viewing.
 - 3. If the suspect is located and there is probable cause to arrest for a charge, he/she may be transported to the victim's location for viewing.
 - a. If there is any doubt as to whether probable cause to arrest exists, do not move the suspect unless consent is obtained, or it is impractical to bring the witness to the stop site.
 - b. Exceptions:
 - (1) Suspect demands to be taken to the victim (only use on rare occasions).
 - (2) Victim is incapacitated and unable to move.
 - (3) If the detention is made under circumstances where there is a reasonable possibility of imminent danger to officers or suspects, the suspect may be moved for security reasons. Must be objectively reasonable.
 - c. The courts have referred to this means of identification as "In the Field Show-Up" "or

“Field Confrontation”.

d. The witness/victim must be provided with a Simmons Admonishment (refer to Section D). There must be no suggestive statement on the part of the officer which might influence the witness/victim.

(1) An officer who is a witness or a victim will be handled in the same manner as a private citizen.

4. An in-field showup delayed beyond a reasonable period of time is permissible provided the suspect agrees to the confrontation.

B. Photo Lineups

1. Officers utilizing photographs will adhere to the following procedures:

a. Prior to conducting any photo lineup, a description of the suspect shall be obtained from each Witness/Victim who is to view the lineup. Each description collected in this way shall be documented in a report.

b. The photographs must show subjects of the same race, sex, approximate age, and same general characteristics (hair style, hair color, facial hair, facial features, and complexion). The photograph chosen of the suspect should, if practicable, resemble his/her appearance at the time of the offense and not unduly stand out.

c. If the investigator has a particular subject as a suspect, there must be photos of at least five other individuals shown to the witness/victim. Only one such particular subject believed to be a suspect may be included in a single line-up.

d. Photographs shown must be similar in color, type, and size.

(1) All dates, prior arrest information, and booking numbers shall be blocked out on photos.

(2) There will be no extraneous markings on the photos such as boxes, arrows, etc.

e. The officer who generated the photo lineup shall not be the one to show the lineup to the Witness/Victim. Another officer without knowledge as to which subject in the lineup is the suspect shall be used instead.

f. Each Witness/Victim shall view the lineup outside of the presence of any other Witness/Victim.

g. The officer administering the photo line-up shall record the lineup with his/her Body Worn Camera or via another camera system with audio capabilities. A copy of any such video collected on a system other than a Body Worn Camera shall be collected and booked as evidence.

h. Prior to showing the photographs, the witness/victim must provided with a Simmons Admonishment (refer to Section D).

i. The administering officer shall not validate or invalidate the Witness/Victim's identification.

j. If identification of the suspect is accomplished, the administering officer shall ask the Witness/Victim as to their confidence level in the accuracy of the identification.

His/her answer will be documented in a report verbatim. No information concerning the identified person shall be given to the Witness/Victim prior to obtaining their confidence level.

- k. If identification of the suspect is accomplished, a photocopy of the lineup will be taken and submitted to the Records Section for scanning as an attachment. The copy must have the DR.# written in the upper right-hand corner of the copy. The original photos are to be booked as evidence along with a page(s) that contains the names, photograph I.D. number and date of photographs (if applicable).
 - (1) If no identification is accomplished, the photo lineup and a page(s) containing the names, photograph I.D. number and date of the photographs will be attached to the appropriate report.

C. Live Lineups (In Custody)

- 1. Live lineups are to be considered formal in nature and will normally take place at the San Joaquin County Jail with the suspect in custody.
 - a. Prior to conducting any live lineup, a description of the suspect shall have been obtained from each Witness/Victim who is to view the lineup. Each description collected in this way shall be documented in a report.
 - b. The suspect has a right to have a private attorney or the Public Defender present at the lineup.
 - c. The District Attorney also has the right to be present.
 - (1) The investigating officer conducting the live lineup, shall contact the District Attorney assigned to the case and the suspect's lawyer to set up a reasonable time and place for the lineup.
 - d. When defense counsel is present, counsel will be permitted to observe all proceedings and listen to any statements made by the witnesses.
 - (1) Defense Counsel is an observer only and has no right to interfere with the process or advise a client not to participate in the lineup.
 - (2) Defense Counsel may talk with witnesses or victims, but witnesses or victims are not obligated to talk to the defense counsel.
 - e. There must be at least six subjects in the lineup. Only one of the subjects may be a suspect in the crime being investigated.
 - f. The subjects should be of the same approximate height, weight, dress, age, and physical characteristic, and be the same race and sex. Hair style and color, facial hair, facial features, and complexion should be approximately the same. The suspect shall not be made to unduly stand out.
 - g. Participants in the lineup will be provided with numbered identification of sufficient size to be readable by the Witness/Victim.
 - h. The investigating officer who arranged for the live lineup shall not be the one to administer the lineup to the Witness/Victim. Another officer without knowledge as to which subject in the lineup is the suspect shall be used instead.
 - i. Each Witness/Victim shall view the lineup outside of the presence of any other

Witness/Victim.

- j. The officer conducting the photo line-up shall record the lineup with his/her Body Worn Camera or via another camera system with audio capabilities. A copy of any such video collected on a system other than a Body Worn Camera shall be collected and booked as evidence.
- k. Prior to showing the lineup, the Witness/Victim must be provided with a Simmons Admonishment (refer to Section D).
- l. Witnesses may be given an identification form (PD 444 revised 6/88) which will be used for the victim or witnesses to write down any conclusion. This form will be available through Investigations Division.
- m. The administering officer shall not validate or invalidate the Witness/Victim's identification.
- n. If identification of the suspect is accomplished, the administering officer shall ask the Witness/Victim as to their confidence level in the accuracy of the identification. His/her answer will be documented in a report verbatim. No information concerning the identified person shall be given to the Witness/Victim prior to obtaining their confidence level.
- o. Photographs will be taken of all lineups.

D. Simmons Admonishments:

- 1. The courts have ruled it is a violation of due process under the Fifth and Fourteenth Amendments for police to suggest in any way, that a suspect to be observed at a lineup or showup committed the crime.
- 2. To avoid being suggestive, officers should admonish the witness(s) and or victim(s) prior to viewing the suspect.
- 3. The following are samples of Simmons Admonishments in reference to in-field showups, photo lineups, and live lineups (in custody). These samples are provided as guidelines only, but any admonishment given shall minimally advise that the perpetrator may or may not be among the persons in the identification procedure, the Witness/Victim should not feel compelled to make an identification, and that an identification or failure to make an identification will not end the investigation.
 - a. In-Field Showups
 - (1) You will be asked to look at a person or persons. The fact the person/persons are shown to you should not influence your judgment. You should not conclude or guess the person/persons have committed the crime. You are not obligated to identify anyone. It is just as important to free innocent persons from suspicion as to identify parties. Neither an identification or a failure to make an identification will end the investigation. Please do not discuss the case with other witnesses nor indicate in any way that you have or have not identified someone.
 - b. Photo Lineups
 - (1) You will be asked to look at a group of photographs. The fact the photographs are shown to you should not influence your judgment. You should not conclude or guess the photographs contain the picture of the

person who committed the crime. You are not obligated to identify anyone. It is just as important to free innocent persons from suspicion as to identify guilty parties. Neither an identification or a failure to make an identification will end the investigation. Please do not discuss the case with other witnesses nor indicate in any way that you have or have not identified someone.

c. Live Lineups (In Custody)

- (1) You will be asked to look at a group of people. The fact the people are shown to you should not influence your judgment. You should not conclude or guess the group of people contain the person who committed the crime. You are not obligated to identify anyone. It is just as important to free innocent persons from suspicion as to identify guilty parties. Neither an identification or a failure to make an identification will end the investigation. Please do not discuss the case with other witnesses nor indicate in any way that you have or have not identified someone.