# S T A T E OF C O N N E C T I C U T

## DEPARTMENT OF EMERGENCY SERVICES AND PUBLIC PROTECTION

### Police Officer Standards and Training Council
### Connecticut Police Academy

**November 8, 2012**

**Police Officer Standards and Training Council**

**Mandatory Uniform Policy**

**Eyewitness Identification Procedures**

**Purpose and Background:** **Public Act No. 12-111 provides that "Not later than February 1, 2013, the Police Officer Standards and Training Council and the Division of State Police within the Department of Emergency Services and Public Protection shall jointly develop and promulgate uniform mandatory policies and appropriate guidelines for the conducting of eyewitness identification procedures that shall be based on best practices and be followed by all municipal and state law enforcement agencies."**

**The Act also provides among other things that "Not later than May 1, 2013, each municipal police department and the Department of Emergency Services and Public Protection 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.**

**Definitions:**

**Eyewitness:** means a person who observes another person at or near the scene of an offense;

**Photo lineup:** means 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;

**Live lineup:** means 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;

**Showup:** means a procedure in which a single person suspected as a perpetrator of an offense and maybe others are presented one at a time, to an eyewitness for the purpose of determining whether the eyewitness is able to identify the suspect as the perpetrator. Showup is also known as a Field Identification and/or One on One Identification. Showups typically occur shortly after the commission of a crime and/or when a suspect is apprehended at or near the crime;

**Field View:** means a procedure wherein 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 showup 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;

**Identification Procedure:** means a photo lineup, a live lineup or a showup;

**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;

**Sequential Photo Line-up or Live Line-up:** means whenever a specific person is suspected as the perpetrator of an offense, the photographs included in a photo lineup or the persons participating a live lineup shall be presented sequentially so that the eyewitness views one photograph or one person at a time;

**Double Blind Procedure:** means that the identification procedure shall be 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 of the offense;

**Blind Administration** (*other than Folder Shuffle, below)***:** means 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;

**Folder Shuffle Method:** means that when the conduct of the Double Blind Procedure is not practicable, the photo lineup shall be 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;

**Lap:** means a single completed cycle to view all the photos in a photo lineup or all persons participating in a live lineup;

**Confidence Statement:** means a statement from the victim/witness, in his or her own words, on how certain they are of the identification which is taken immediately after identification is made. The Confidence Statement should be recorded in writing and signed by the victim/witness or otherwise memorialized;

**<u>Policy – Eyewitness Identifications</u>**:

**Photographic Lineups and Live Lineups**:

**A.** Whenever a specific person is suspected as the perpetrator of an offense, the photographs included in a photo lineup or the persons participating in a live lineup shall be presented sequentially so that the eyewitness views one photograph or one person at a time.

**B.** The identification procedure shall be 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 of the offense, i.e. double blind procedure, except that, if it is not practicable to conduct a

photo lineup in such a manner, the photo lineup shall be conducted by the use of a folder shuffle method, computer program or other comparable method so that the person conducting the procedure does not know which photograph the eyewitness is viewing during the procedure.

**Conduct of Lineups:**

**A.** Prior to the identification procedure, the eyewitness shall be instructed;

- **a.** That the eyewitness 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.
- **b.** That it is just as important to exclude innocent persons as it is to identify the perpetrator.
- **c.** That 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.
- **d.** That the perpetrator may or may not be among the persons in the photo lineup or live lineup;
- **e.** That the eyewitness should not feel compelled to make an identification.
- **f.** That the eyewitness should take as much time as needed in making a decision.
- **g.** That the police will continue to investigate the offense regardless of whether the eyewitness makes an identification.
- **h.** Prior to the identification procedure, the eyewitness should be instructed that, after the identification procedure, he/she will be asked how certain he/she was that the perpetrator was or was not in the lineup.
- **i.** That 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;
- **j.** 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;
- **k.** 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;
- **l.** 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;
- **m.** If the eyewitness does not select someone, the police will continue to investigate;

**B.** While conducting the photo or live lineup, nothing shall be said to the eyewitness about the suspect or his/her location in the lineup.

**C.** Nothing shall be said to the eyewitness that might influence the eyewitness's selection of the person suspected as the perpetrator.

**D.** In a live lineup, any identification actions, such as speaking or making gestures or other movements, shall be performed by all lineup participants.

**E.** In a live lineup, all lineup participants shall be out of view of the eyewitness at the beginning of the identification procedure.

**F.** Only one suspect may be present in a single lineup.

**G.** If the eyewitness identifies a person as the perpetrator, the eyewitness shall not be provided any information concerning such person.

**H.** A written **Standard Identification Form and Record** of the identification procedure shall be completed by the Police Officer(s) conducting the identification procedure upon conclusion of the procedure that includes the following information;

- **a.** All identification and non-identification results obtained during the identification procedure, signed by the eyewitness, including the eyewitness's own words regarding how certain he or she is of the selection, i.e. a confidence or certainty statement.
- **b.** The names of all persons present at the identification procedure.
- **c.** The date and time of the identification procedure.
- **d.** In a photo lineup, the photographs presented to the eyewitness or copies thereof.
- **e.** In a photo lineup, identification information on all persons whose photographs were included in the lineup and the sources of all photographs used and
- **f.** In a live lineup, identification information on all persons who participated in the lineup.
- **g.** Record Collection and Retention – Each agency shall maintain as a separate and distinct record set copies of Standard Identification Forms and Records completed by said agency. This form shall be retained by calendar year for the purpose of facilitating analysis and reporting by outside persons or agencies tasked with same.

**<u>Procedures and Best Practices</u>:**

**A.** Preparation of Photographic Lineups

- **a.** 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.
- **b.** 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.
- **c.** Attention should be paid to unusual identifying marks described by the witness that are visible on the suspect's photo. 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.
- **d.** All photos should be of the same size and no single photo should unduly stand out from the others.
- **e.** 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.
- **f.** A minimum of five fillers must be used in photo lineups and at least four in live lineups in addition to the suspect.
- **g.** In a photo lineup, no information concerning any previous arrest of the suspect shall be visible to the eyewitness.
- **h.** If multiple suspects are involved, a separate photo lineup must be prepared for each suspect to be presented to the witness.
- **i.** 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.
- **j.** In cases where multiple witnesses will be viewing photo lineups, separate photo lineups should be prepared for each witness. The person administering the lineup may use the same filler photographs for each witness. When possible the suspect should be placed in a different position.

**k.** In the case of multiple witnesses, every effort should be made to prevent communication between witnesses once one witness has viewed a photographic lineup.
**l.** The administrator shall record the order in which the folders were presented.
**m.** Should the witness request a second "lap," the lineup will be presented in the same ordered sequence as the initial lap.

**B.** Administration of Double Blind Photographic Lineups

**a.** No information regarding the identification of the suspect will be revealed to the person administering the lineup.
**b.** 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.
**c.** The assigned investigator or anyone with knowledge of the suspect should not be allowed in the room at the time of the lineup administration.
**d.** The lineup administrator should give instructions to the witness by verbally reading the Witness Instruction Form to the witness and determine if they understand. The witness will then be asked to sign and date the form.
**e.** 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.
**f.** 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.
**g.** Even if someone is identified, all of the photographs in the series will be shown.
**h.** The lineup administrator shall not provide any feedback about the lineup results to the witness.
**i.** Once the sequential lineup process is complete, the lineup administrator should generate a 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. The original photographs should be secured as any other evidence with the originals being maintained as evidence and one complete copy placed into the case file.
**j.** Laps – The administrator should not offer nor suggest that the eyewitness engage in another "lap," or viewing of the photographs. If the eyewitness should request a second lap of the photographs, one additional lap is permissible but in any event should not exceed two laps. 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 or she requests to see just one photograph.

**C.** Blind Folder Shuffle Procedure

**a.** When implementation of the Double Blind Photographic procedure is not practicable due to lack of manpower resources, limited number of officers on duty, a major crime where many officers are aware of the identity of the suspect or any other such circumstance, a Blind Folder Shuffle must be used. The photograph of the suspect and the five 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. The eyewitness should be instructed to remove each photograph, one at a time and view the single photograph. At no time should the lineup administrator be able to determine which particular photograph is being viewed by the witness at a particular time. If the blind method is not practicable, then the administrator must position himself or herself so as not to be able to give cues, consciously or subconsciously to the eyewitness such as his or her standing somewhere

behind the eyewitness. 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. Even if the eyewitness identifies a suspect part way through the entire series, he/she should be instructed to continue viewing the remaining photographs. 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.

**D.** Administration of Live Lineups

- **a.** A suspect cannot be compelled to participate in a line-up without probable cause to arrest. If the suspect refuses to participate in a lineup, the officer should contact their State's Attorney Office.
- **b.** Before a suspect participates in a lineup, he or 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. Unless a knowing and voluntary waiver is made, in writing if possible, no procedure may proceed without an attorney present.
- **c.** Four fillers should be selected who fit the description of the suspect as provided by the eyewitness(s).
- **d.** All persons in the lineup should carry cards that identify him or her by number only and they should be referred to only but that number.
- **e.** The administrator of the lineup should carefully instruct the eyewitness by reading from the instruction form. The eyewitness should be asked to sign the form indicating that they understand the instructions and the administrator should sign and date the form.
- **f.** The lineup should be conducted so that the suspect and fillers are not viewed by the eyewitness as a group but rather are displayed to the eyewitness one at a time.
- **g.** If the eyewitness makes an identification of a suspect, a statement must be taken as to the certainty of that identification.
- **h.** 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.

**E.** Administration of Showups

- **a.** Showup 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.
- **b.** Every showup must be as a fair and non-suggestive as possible. If the suspect is handcuffed, he/she should be positioned so that the handcuffs are not visible to the eyewitness. Unless necessary for the safety of the officers or others, the suspect should not be viewed when he/she is inside a police cruiser, in a cell or in jail clothing.
- **c.** Detaining a person who fits the description of a suspect in order to arrange a showup is lawful when the officer has reasonable suspicion that a suspect has committed a crime.
- **d.** 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.
- **e.** When a suspect is stopped under showup circumstances, he or she should be detained at the scene of the stop and the witness(s) transported to that location to view the suspect.
- **f.** 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. They should never be transported to a police station absent probable cause to arrest.
- **g.** Officers must not say nor do anything that would convey to the eyewitness that they have evidence of the suspect's guilt.

**h.** A suspect should be viewed by one eyewitness at a time out of the presence and hearing of other eyewitnesses. Witnesses who have viewed a suspect should not be permitted to communicate with those who have not.

**i.** If an eyewitness makes identification, a statement should be obtained from the eyewitness including the level of certainty of that identification.

**j.** When a showup 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 hospital, and the circumstances are such that an immediate confrontation is imperative, the emergency identification procedure shall be conducted in a non-suggestive manner.

**F.** Field Views

**a.** Employing a procedure known as Field View may be appropriate depending on the facts of an individual investigation.

**b.** 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. 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 ability to observe the group.