

Annapolis Police Department



GENERAL ORDER

Number: L.11

Issue Date: May 2014

TO: All Personnel

SUBJECT: Eyewitness Identification

PURPOSE

The purpose of this General Order is to outline guidelines for eyewitness identification.

POLICY

It shall be the policy of the Annapolis Police Department to conduct fair and impartial one-on-one and photo lineup eyewitness identifications. The Department strives to ensure that eyewitness identifications are performed as outlined in United State's Department of Justice (DOJ) guidelines.

Maryland State law requires that all law enforcement agencies adopt written policies pertaining to eyewitness identification and file these policies with the Maryland State Police. These policies must be available for public inspection. The policies must comply with the United State's Department of Justice (DOJ) standards on obtaining accurate eyewitness identification.

DEFINITIONS

1. **Sequential Photographic Lineup** – The supplying of six or more photographs to a victim/witness, in randomly numbered folders, stacked on top of each other. The photograph of the suspect, if known, is secreted within the stack. This type of lineup may be shown separately to multiple victims and witnesses.
2. **One-on-One Identification (show-ups)** – An attempt to determine if a suspect is the perpetrator being sought by means of having the victim(s)/witness (es) view the suspect in person without conducting a formal multi-person lineup. **Note:** It is not necessary for the suspect to be able to see the victim/witness making the identification, but the victim/witness must be able to clearly see the suspect.

3. **Filler** – A person or photograph of a person who is not suspected of the offense being investigated and is included in the identification procedure. The filler has some of the basic characteristics of the person believed to be the suspect.
4. **Eyewitness** – A person who observes another person at or near the scene of an offense.

I. Police Communications Operators

- A. The information obtained from a witness is critical to the safety of those involved in an incident and may be important to the investigation. The manner in which facts are elicited from a caller can influence the accuracy of the information obtained.
- B. As the initial point of contact for the witness/victim, the Police Communications Operator (PCO) must obtain and disseminate, in a non-suggestive manner complete and accurate information from the caller. This information can include the description or identity of the suspect.
- C. During a call for service, the PCO after obtaining preliminary information and dispatching an officer should:
 1. Assure the caller officers are on the way.
 2. When applicable, inquire about weapons.
 3. Ask open-ended questions (e.g., "What can you tell me about the car?"). Augment with closed-ended questions (e.g., "What color was the car?").
 4. Avoid asking suggestive or leading questions (e.g., "Was the car red?").
 5. Ask if anything else should be known about the incident.
 6. Relay information to the responding officer(s).
 7. Update officer(s) as more information comes in.

II. Investigating the Scene

- A. The preliminary investigation at the scene forms a sound basis for the accurate collection of information and evidence during the follow-up investigation.
- B. Preservation and documentation of the scene including information from witnesses and physical evidence are necessary for a thorough preliminary investigation. The methods used by the preliminary investigating officer have a direct impact on the amount and accuracy of the information obtained throughout the investigation.
- C. After securing the scene and attending to any victims and injured persons, the preliminary investigating officer should:
 1. Identify the suspects.
 - a. Determine the location of the suspect(s).
 - b. Detain or arrest the suspect(s) if still present at the scene.

General Order L.11 (continued)

2. Determine what crime or incident has occurred.
3. Broadcast updated description of the incident, suspect(s) and/or vehicle(s), as applicable.
4. Verify the identity of the witness(es).
5. Separate witnesses and instruct them to avoid discussing details of the incident with other witnesses.
6. Canvass the area for other witnesses.

III. Eyewitnesses

- A. Information obtained from the witness(es) can corroborate other evidence (e.g., physical evidence, accounts provided by other witnesses) in the investigation. Therefore, it is important that this information be accurately documented in writing.
- B. The manner in which the preliminary investigating officer obtained information from a witness has a direct impact on the amount and accuracy of that information.
- C. When interviewing a witness, the preliminary investigating officer should:
 1. Inquire about the witness' condition.
 2. Establish a rapport with the witness.
 3. Use open-ended questions (e.g., "What can you tell me about the car?"). Augment with closed-ended questions (e.g., "What color was the car?"). Avoid leading questions (e.g., "Was the car red?").
 4. Clarify the information received with the witness.
 5. Whenever possible, have the witness write a written statement.
 6. Document the information obtained from the witness, including the witness' identity in a written report.
 7. Encourage the witness to contact investigators with any further information.

IV. Photographic Lineups**A. Investigative Procedures**

In those cases where a suspect has been developed and a photograph of the suspect is shown the following procedures for preparing the lineup will be adhered to:

1. The lineup will consist of at least six photographs.
2. The photographs used are to be unmarked and where practical the same type and size.

General Order L.11 (continued)

3. The subjects in the photographs should be of the same race, skin tone, approximate build, age and dress. Complete uniformity is not required.
4. Avoid using photographs of those who so closely resemble the suspect that a person familiar with the suspect might find it difficult to distinguish the suspect from the fillers.
5. When two or more suspects are being considered, the investigating officer will show a separate lineup for each suspect. Investigating officers will not place two suspects in the same lineup. Ensure nothing about the suspect makes him/her stand out.
6. No information about a previous arrest shall be visible to the victim/witness.
7. Officers are prohibited from providing feedback to any victim/witness.

B. Showing the Lineup

1. Officers who do not know the identity of the suspect will present the lineup to the witness(es). This method is known as the “double blind” and creates an additional layer of impartiality. When the double blind is not feasible, single blind will be utilized.
2. The single blind requires the presenter to randomly sort/shuffle the photos, in numbered folders, so the order is not known. The photos/folders will then be presented sequentially to the witness. The officer does not know the order of the photos or when the witness is viewing a photograph of the suspect.
3. Prior to showing the line-up, the officer will prepare the sequence viewing form. (Appendix B). The investigating officer will show the lineup separately to the victim(s)/witness(es). Any statements or identifications made are to be made out of the presence of other victims or witnesses.
4. An officer shall not mention to a victim or witness that a suspect has been developed and that the suspect’s photograph is in the lineup.
5. Before presenting the lineup, the investigating officer shall record in his/her notes the information relating to the location where the lineup is being conducted and the lighting conditions.
6. Before the lineup is presented to the victim or witness, the officer will follow the instructions on the photo/live line-up form. (Appendix A)

General Order L.11 (continued)

7. The displaying officer shall record the time the lineup is presented and the position/numbered folder in which the suspect is secreted.
8. The displaying officer shall record any oral statement by the victim/witness while they view the lineup and after they have viewed the lineup. The displaying officer should also record the demeanor, conduct and any other relevant observations pertaining to the victim/witness' level of confidence while making or not making an identification.
9. If an identification is made, the displaying officer will ask the victim/witness to turn over the photograph of the person they identified, and date and sign their name on the back. If the photographs are in folders, the victim/witness will date and sign the folder as well as sign/initial and place the date next to the photograph which the victim/witness picked.
10. The exact time the lineup was returned to the displaying officer shall be recorded.
11. If a video or audio record of the identification procedure captures all of the information listed on the form, a written record is not required.

C. Multiple Victims and Witnesses

1. A sequential lineup is the best type of photographic lineup when dealing with multiple victims and/or witnesses.
2. After each victim/witness is interviewed and views the lineup, they shall be instructed not to discuss their statements, feelings or any part of the conversation they had with any officer with any other person involved in the case.
3. Before the displaying officer interviews the next victim/witness the position of the suspect's photograph will be changed in the lineup. The new position will be recorded.

D. Storage of Lineups

All lineups that are shown become part of the official investigative report and file. Original lineups, regardless of identification, will be submitted as evidence and processed accordingly. A copy may be kept in the investigation file.

VI. One-on-One Identification (show-ups)

- A. A one-on-one identification may be used by any officer investigating any reported crime in the following situations:

General Order L.11 (continued)

1. When a possible suspect is located in close proximity to the location where the perpetrator was last seen, a short time after the crime occurred.
2. When there is not sufficient time to assemble a photographic lineup before the suspect being held will have to be released.
3. When there is some characteristic of the suspect's appearance so unique that:
 - a. It is unlikely that someone else other than the perpetrator would have the same characteristic; and
 - b. It would be extremely difficult to include the suspect in a lineup of any kind due to the inability to locate other subjects with a similar appearance.

Note: Officers are prohibited from conducting multi-person physical live lineups.

B. Investigative Procedures

1. If a suspect is located within a reasonable distance from where the offense occurred or where the suspect was last seen, within a reasonable time period and the victim/witness indicates they can identify the perpetrator if seen again, an attempt should be made to have the victim/witness do so. Reasonableness will be determined by the circumstances.
2. Unless the suspect is already under arrest the officer should explain the reason why they are being detained. The victim/witness should then be taken to the location where the suspect is being detained for a one-on-one identification. If the victim/witness refuses to go, the suspect should be transported to the victim's/witness' location. Any transportation provided will only be done by sworn personnel.
3. Before the victim/witness views the suspect, the officer should state to the victim/witness, "The person being detained may or may not have committed the offense. Please look at the person and tell me if you recognize him/her." Should the victim/witness indicate they recognize the person ask them about the circumstances. Officers will not provide any feedback to the victim/witness regarding the results of the identification.
4. If the suspect is handcuffed, the suspect will be displayed while the handcuffs are behind their back to avoid influencing the victim/witness. Only one officer should stand next to the suspect when possible.
5. If there is more than one victim/witness, the one-on-one must be conducted separately for each person. Victims/witnesses shall not be permitted to communicate among themselves before or after the identification process. The same suspect should not be presented to the same victim/witness more than once.

General Order L.11 (continued)

6. All statements made by the victim/witness shall be recorded in the officer's notes. In addition, the officer should note the victims'/witnesses' level of confidence during the identification process. The information shall be included in a supplement report.
 7. Determine whether the victim/witness normally wears corrective lenses and if so, whether they were wearing them during the incident and whether they are wearing them at the time they view the suspect.
- C. No specific rule exists regarding what constitutes a reasonable amount of time between when the incident occurred and when the one-on-one identification takes place or under what conditions the lineup is conducted. The closer together the crime and the identification occur the more difficult it is to challenge an identification in court.

Consider the following circumstances when attempting to determine whether to do a one-on-one identification:

- a. What was the level of certainty of the victim/witness that they could identify the perpetrator again?
- b. How thorough was the initial description of the perpetrator from the victim/witness?
- c. How suggestive would a one-on-one identification be?
- d. Is there an alternative way to do the one-on-one that would be less suggestive?
- e. Under what conditions and time period did the victim/witness have contact with the perpetrator?
- f. How much time has passed since the crime was committed?

VII. Reporting Requirements

The following information must be included in the Incident Report for the one-on-one:

- A. How, when and where the suspect was located and the reasonable suspicion that led to the suspect being detained.
- B. Who located and detained the suspect.
- C. Date, time, lighting conditions, weather and the names of all of the officers present when the victim/witness observed the suspect for identification
- D. Condition of the suspect at the time of viewing.
- E. Clothing the suspect was wearing at the time of the one-on-one.
- F. Any statements made by the suspect.

General Order L.11 (continued)

- G. A description of the conditions in which the victim/witness viewed the suspect.
- H. Any statements made by the victim/witness.
- I. If identification is made, determine and record why the victim/witness is making the identification and what it is about the suspect the person recognizes.
- J. All information is to be recorded whether or not an identification is made.
- K. Information must be provided to the ASA prior to trial.

Michael Pristoop
Chief of Police

References
1. Accreditation Standards: 42.2.11, 42.2.12 2. U.S. Department of Justice Eyewitness Evidence: A Guide for Law Enforcement 3. House Bill 103

Revision: This General Order replaces General Order L.11 Eyewitness Identification dated January 2014.