OFFICE OF THE CHIEF OF POLICE

SPECIAL ORDER NO. 25 September 10, 2020

SUBJECT: **PHOTOGRAPHIC IDENTIFICATION OF A SUSPECT – REVISED; AND, PHOTO IDENTIFICATION REPORT, FORM 15.50.04 – RENAMED AND REVISED**

PURPOSE: The purpose of this Order is to revise Department Manual Section 4/738.05, *Photographic Identification of a Suspect*, to conform with California Senate Bill 923, which added Penal Code Section 859.7 to the California Penal Code. This Bill was enacted on January 1, 2020, and requires all law enforcement agencies to adopt regulations for conducting photographic line-ups and live line-ups with eyewitnesses. This Order also renames and revises the Photo Identification Report, Form 15.50.04.

PROCEDURE:

I. **PHOTOGRAPHIC IDENTIFICATION OF A SUSPECT – REVISED.** Attached is the revised Department Manual Section 4/738.05, *Photographic Identification of a Suspect*, with the revisions indicated in italics.

II. **PHOTO IDENTIFICATION REPORT, FORM 15.50.04 – RENAMED AND REVISED.** The Photo Identification Report, Form 15.50.04, has been revised and renamed, *The Photographic Identification Report*. This Form is located on the Department Local Area Network and a copy has been attached for reference. The use, completion, and distribution of this form remains the same.

AMENDMENT: This Order amends Section 4/738.05 of the Department Manual.

AUDIT RESPONSIBILITY: The Commanding Officer, Audit Division, shall review this directive and determine whether an audit or inspection shall be conducted in accordance with Department Manual Section 0/080.30.

MICHEL R. MOORE
Chief of Police

Attachments

DISTRIBUTION "D"

738.05 PHOTOGRAPHIC IDENTIFICATION OF A SUSPECT. *Prior to conducting the procedure for identifying a suspect, the investigating officer shall obtain the description of the suspect from the victim or witness as close as possible to the time of the incident.* An investigating officer who intends to show a suspect's photograph to a victim or witness for the purpose of identification shall *use* ***blind administration*** *or* ***blinded administration.***

> ***Note:*** *Investigating officers may refer to Robbery Special Section, Robbery-Homicide, for guidance.*

Blind administration – Defined. *The administrator (i.e., officer or investigating officer) of an eyewitness identification procedure does not know the identity of a suspect.*

Blinded administration – Defined. *The administrator of an eyewitness identification procedure may know the identity of the suspect but does not know where the suspect's photograph, as applicable, has been placed or positioned in the identification procedure.*

BLIND ADMINISTRATION.

Investigating Officer's Responsibilities. *The investigating officer who intends to conduct a photographic line-up using blind administration shall conduct the following:*

- Obtain the suspect's photograph;

  Note: *If practicable, the photograph should resemble his or her appearance at the time of the offense and should not unduly stand out.*

- *Assemble a photographic line-up containing the photograph of the suspect and five others that generally fit the eyewitness' description of the suspect;*
- *Only one suspected perpetrator shall be included in any identification procedure;*
- *Redact, or otherwise remove, all markings such as dates or booking numbers;*
- *Assemble the six photographs on a sheet of paper or print individual photographs, numbered one through six;*
- *Create a separate copy of the line-up for each eyewitness participating in the photographic line-up;*
- *Select a sworn member of the Department that does not know the identity or placement of the suspect to act as the Line-up Administrator; and,*
- *Attempt to obtain facts to corroborate an identification made by an eyewitness.*

BLINDED ADMINISTRATION.

Investigating Officer's Responsibilities. *An investigating officer who intends to show a photographic line-up through a blinded administration shall:*

- *State in writing why the presentation of the photographic line-up was not conducted using a blind administration;*

- *When feasible, use another sworn employee to assemble the photographic line-up and place it in a sealed envelope;*
- *Ensure the position of the suspect is not known to him or her prior to showing the photographic line-up;*
- *Continue with the line-up administrator's procedures, as described below; and,*
- *Present the eyewitness with the sealed envelope containing the photographic line-up.*

> ***Note:*** *The Investigating Officer should make reasonable efforts to avoid viewing the photographic line-up until the eyewitness has finished viewing the photographic line-up.*

- *If the eyewitness identifies a person he or she believes to be the suspect, all of the following shall apply:*

    - *Direct the eyewitness to circle the specific photograph, initial the photographic line-up, and record the date and time;*
    - *Direct the eyewitness to write comments regarding his or her identification in the Statement of Witness portion of the Photographic Identification Report;*
    - *Direct the eyewitness to sign the Photographic Identification Report and record the date and time;*
    - *Immediately inquire as to the eyewitness' confidence level of the identification and record in writing, verbatim, what the eyewitness says;*
    - *Information concerning the identified person shall not be given to the eyewitness prior to obtaining the eyewitness' statement of confidence level and documenting the exact words of the eyewitness; and,*
    - *The Administrator shall not validate or invalidate the eyewitness' identification.*

Line-up administrator – Defined. *Any sworn member of the Department assigned the task of showing a photographic line-up.*

Although a blind administration is the preferred method to be used when conducting a photographic line-up, a blinded administration of photographic line-ups may be appropriate in certain cases. Three examples where a blinded administration may be appropriate are:

1) *When the eyewitness has been so traumatized by the events of a crime, that the introduction of another investigator to conduct the blind administration may cause unreasonable emotional hardship to the eyewitness;*
2) *The eyewitness refuses to meet with another sworn member to conduct a photographic line-up using blind administration; or,*
3) *When there is limited personnel or resources available during the time of the photographic line-up.*

Note: *In the event that a blind administration is not used, the investigator shall state in writing the reason the presentation of the photographic line-up was not conducted using blind administration.*

Line-up Administrator's Responsibilities. *Any sworn member of the Department assigned the task of showing a photographic line-up shall:*

- *Ensure the suspect and the position of the suspect's photograph is not known to him or her;*
- *Separate all eyewitnesses taking part in the identification procedure;*
- *Record the procedure;*
    - *An electronic recording shall be made that includes both audio and visual representations of the identification procedures when feasible; and,*
    - *When audio recording without video recording is used, the investigator shall state in writing the reason that video recording was not feasible.*

- *Read the Photographic Show-up Admonition printed on the Photographic Identification Report, Form 15.50.04, to the eyewitness;*
- *Have the witness sign the admonition acknowledgement;*
- *Show the photographic line-up to the eyewitness; and,*
- *Nothing shall be said to the eyewitness that might influence the eyewitness' identification of the suspect.*

Commanding Officer's Responsibilities. *Commanding Officers whose personnel conduct a photographic procedure shall be responsible for compliance with this section.*

Note: *This section does not affect current field show up procedures. Live line-ups shall continue to be conducted by Robbery-Homicide Division as outlined in Department Manual Section 4/735.05, Scheduling and Location of Formal Show-ups for Adult Suspects. Robbery-Homicide Division live line-up procedures shall be outlined and conducted in accordance with California Penal Code Section 859.7.*

PHOTO*GRAPHIC* IDENTIFICATION REPORT

☐ *BLIND ADMINISTRATION* ☐ *BLINDED ADMINISTRATION*	*Lineup No.:*	*Recording No.:*	*DR No.:*

LINEUP ADMINISTERED BY:	*LINEUP ASSEMBLED BY:*

NAME OF WITNESS:	*DATE:*	*TIME:*	*LOCATION:*

PHOTOGRAPHIC SHOW-UP ADMONITION

"In a moment, I am going to show you a group of photographs. This group of photographs may or may not contain a picture of the person who committed the crime now being investigated. Keep in mind that hair styles, beard, and moustaches may easily be changed. Also, photographs may not always depict the true complexion of a person – it may be lighter or darker than shown in the photograph. Pay no attention to any markings or numbers that may appear on the photographs or any other difference in the type or style of the photographs. When you have looked at all of the photographs, tell me whether you see the person who committed the crime. Do not feel compelled to make an identification. An identification or failure to make an identification will not end the investigation. Do not tell other witnesses that you have or have not identified anyone."

ADMONITION ACKNOWLEDGEMENT: I FULLY UNDERSTAND THE ADMONITION READ TO ME REGARDING THE VIEWING OF THESE PHOTO*GRAPHS*. THE ADMONITION WAS READ TO ME BEFORE BEING SHOWN THESE PHOTO*GRAPHS*.

SIGNATURE OF WITNESS: _____

STATEMENT OF WITNESS:

THE ADMINISTRATOR SHALL INQUIRE THE EYEWITNESS' CONFIDENCE LEVEL OF THE IDENTIFICATION AND RECORD IN WRITING, VERBATIM, WHAT THE EYEWITNESS SAYS.

*LINEUP ADMINISTRATOR NOTES (INCLUDE REASONS WHY A BLIND ADMINISTRATION WAS **NOT** USED):*

SIGNATURE OF WITNESS:	DATE:	TIME:
SIGNATURE OF LINEUP ADMINISTRATOR:	*DATE:*	*TIME:*