



# ORANGE POLICE DEPARTMENT

## LAW ENFORCEMENT TRAINING BULLETIN

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### PC 859.7/SB 923 – Criminal Investigations: Eyewitness Identification

On January 1, 2020, Senate Bill 923 enacted Penal Code 859.7 which set the requirements on how law enforcement agencies are to conduct photo lineups and live lineups. At a minimum, law enforcement agencies are now required to do the following:

1. Have the eyewitness provide a description of the suspect before conducting the identification procedure and as close as possible to when the incident occurred.
2. The person conducting the identification procedure shall use: (1) blind administration or (2) blinded administration during the procedure.
  - a. Blind administration – means the administrator does not know the suspect's identity.
  - b. Blinded administration – means the administrator knows who the suspect is, but does not know where in the photo lineup the suspect's photograph is located
3. If the blind administration was not used, the investigator must provide a written statement as to why it was not conducted.

The eyewitness shall be provided with the following instructions prior to the identification procedure:

1. The suspect may or may not be one of the persons in the identification procedure.
2. The eyewitness should not feel compelled to make an identification.
3. An identification, or failure to do so, will not end the investigation.

Composition of the identification procedure

1. The fillers should generally fit the eyewitness' description of the suspect.
  - a. Filler – means persons used in the lineup other than the suspect.
2. For a photo lineup, if practical, the photograph of the person suspected of the crime, should resemble his/her appearance at the time of the offense and not unduly stand out.

In a photo lineup, information about the suspect's criminal history shall not be visible to the eyewitness.

Only one suspect shall be included in any identification procedure (a different photo lineup shall be generated for each suspect involved in the incident).

All eyewitnesses shall be separated when viewing an identification procedure.

Nothing shall be said to the eyewitness that might influence the eyewitness' identification of the suspect.

The following procedures shall apply if the eyewitness makes an identification:

1. The investigator shall immediately inquire as to the eyewitness' confidence level of his/her identification. What the eyewitness says shall be recorded in writing and verbatim.

2. No information about the identified person shall be given to the eyewitness prior to getting the witness' statement of confidence and documentation of it.
3. The officer shall not validate or invalidate the eyewitness' identification.

An electronic recording shall be made that includes both audio and visual representations of the identification procedures (This is done on a case-by-case assessment).

If both audio and video recording are not possible, audio may be used. The investigator must state, in writing, why video was not used.

**Nothing in Penal Code 859.7 and SB 923 affects field show up procedures.**

Blind administration options.

1. Use an automated computer program that prevents the administrator from seeing the photograph the eyewitness is viewing until after the identification procedure is completed.
2. Place each individual photograph in its own folder, randomly number the folders, shuffle the folders, then presenting the folders sequentially so that the administrator cannot see or track which photograph is being presented to the eyewitness until after the procedure is completed (The folder shuffle method).
3. Any other procedure that achieves neutral administration and prevents the administrator from knowing the suspect's position or placement in the identification procedure.

***Bottom Line: Photo lineups shall be administered by a "blind administrator;" specified admonitions must be given to witnesses, and the process must be audio/video recorded, if feasible. Does not apply to field show up identification procedures.***