



SB 923 / PC 859.7

**Criminal investigations: eyewitness
identification**

Effective January 1, 2020



FIELD SHOWUPS

NO CHANGES

LIVE LINEUPS

SAME STANDARD AS PHOTO LINEUPS

SENATE BILL NO. 923

ESTABLISHES

“BEST PRACTICES”

“EVIDENCE BASED PROCEDURES”

CREATES

PENAL CODE 859.7

WHY THE CHANGE?

SB 923

“(a) Valid eyewitness identifications are an important piece of evidence for solving crimes and securing rightful convictions. Compliance with best practices improves the reliability of the identification, whereas failing to comply with these recommendations increases the risk of a misidentification and also will make even positive identifications more likely to be rejected in court.

(b) Eyewitness misidentification is the leading contributor to wrongful convictions proven with DNA evidence nationally. In California, eyewitness misidentification played a role in 12 out of 13 DNA-based exonerations in the state.

(d) Over the past 30 years, a large body of peer-reviewed research has demonstrated that simple systematic changes in the administration of eyewitness identification procedures by law enforcement agencies can greatly improve the accuracy of identifications. These evidence-based practices.....”

WHAT THE LAW SAYS?

PENAL CODE 859.7

(a) All law enforcement agencies and prosecutorial entities shall adopt regulations for conducting photo lineups and live lineups with eyewitnesses. The regulations shall be developed to ensure reliable and accurate suspect identifications. In order to ensure reliability and accuracy, the regulations shall comply with, at a minimum, the following requirements:

REQUIREMENTS

PRIOR TO PROCEDURE AND AS CLOSE IN TIME TO THE INCIDENT AS POSSIBLE THE EYEWITNESS **SHALL** PROVIDE THE DESCRIPTION OF THE PERPETRATOR OF THE OFFENSE (EVERYONE WHO MAY BE ASKED TO ID A SUSPECT MUST PROVIDE A DESCRIPTION)

A BLIND ADMINISTRATION OR BLINDED ADMINISTRATION PROCEDURE USED

PROVIDE ADMONISHMENT

ALL WITNESSES SHALL BE SEPERATED WHEN VIEWING AN IDENTIFICATION

IF AN IDENTIFICATION IS MADE THE INVESTIGATOR WILL IMMEDIATELY INQUIRE TO THE LEVEL OF CONFIDENCE OF THE WITNESS WITH THEIR RESPONSE RECORDED VERBATIM

AN ELECTRONIC RECORDING SHALL BE MADE THAT INCLUDES BOTH AUDIO AND VIDEO REPRESENTATION OF THE IDENTIFICATION

CREATING THE LINEUP

SHALL

- ▶ Composed of fillers that fit the eyewitness' description of suspect
- ▶ Information concerning any previous arrest of the suspect shall not be visible
- ▶ Include only one suspect

IF PRACTICABLE:

- ▶ Suspect should resemble appearance at time of offense

**FOR PHOTO LINEUPS*

- ▶ Not unduly stand out

BLIND ADMINISTRATION

Means the administrator of an eyewitness identification procedure DOES NOT KNOW THE IDENTITY OF THE SUSPECT.

EXAMPLE

Officer creates lineup and hands lineup to officer who does not know the ID of the suspect and they administer the lineup.

* May use six pack format

BLINDED ADMINISTRATION

The administrator of an eyewitness identification procedure MAY KNOW WHO THE SUSPECT IS, BUT DOES NOT KNOW WHERE THE SUSPECT, OR HIS OR HER PHOTO, AS APPLICABLE, HAS BEEN PLACED

6 Single Images Used For The Photo Lineup/ 6 Folders

Example

- Officer(a) Creates The Lineup

- Officer(a) Hands The Photos And Folders To Officer(b)

- Officer(b) Places The Photographs Into The Folders

- Officer(b) Shuffles folders

- Any Officer Other Than Officer(b) Administers The Lineup

The entire procedure may be completed by one officer if necessary and documented accordingly (If the officer shuffles the folders so they do not know which folder the suspect is in)

BLINDED ADMINISTRATION

6 Single Images Used For The Photo Lineup/ 1 Envelope
Two officer needed if using 1 envelope

Example

- Officer(a) creates the lineup

- Officer(a) hands the photos and an envelope to officer(b)

- Officer(b) shuffles the photos and places them into the envelope

Any Officer Other Than Officer(b) Administers The Lineup

*Any procedure which achieves neutral administration and prevents administrator from knowing where the suspect is.

ADMONISHMENT

Best practice is to read from the Department provided card.

- ▶ **The perpetrator may or may not be among the persons in the identification procedure.**
- ▶ **You should not feel compelled to make an identification.**
- ▶ **An identification or failure to make an identification will not end the investigation. (New and required by law)**

IDENTIFICATION

IF A WITNESS MAKES AN ID:

The officer shall **immediately** inquire as to the witness' confidence level.

Avoid asking for a statistical percentage.

HOW CONFIDENT ARE YOU?

You must document **verbatim** what the victim says

You cannot validate or invalidate the identification

IF NO ID IS MADE YOU MAY ASK THE VICTIM IF ANYBODY IN THE LINEUP LOOKS LIKE THE SUSPECT TO HELP FURTHER THE INVESTIGATION

PHOTO LINEUP PROCEDURE

- ▶ Use blind or blinded administration (state in writing why not if applicable)
- ▶ Record both audio and visual (state in writing why not if applicable)
- ▶ All eyewitnesses separated
- ▶ Nothing said that might influence the witness's identification
- ▶ Administer admonishment
- ▶ Take a position where you cannot see the photographs when viewed by witness
- ▶ Advise the witness to NOT show the photographs when they are viewing them
- ▶ If identification is made inquire to level of confidence and document verbatim
- ▶ Do not validate or invalidate the identification
- ▶ Officers should clearly document in report how the procedure was blind(ed) and in compliance with PC 859.7