

MISSOURI STATE HIGHWAY PATROL
GENERAL ORDER

Subject SAFEGUARDING RIGHTS		Number 42-03-1324
Date of Issue April 3, 2012	Effective Date April 12, 2012	Distribution C*
Related Directives/Forms Sections 43.200, 542.266 to 291, 544.170, 544.193, and 542.296 RSMo.; General Orders 43-02, 44-01, 52-01, 54-01, 62-04, 66-04, 74-01, and 81-03; Officer's Report to Prosecuting Attorney, SHP-68; Record of Service of Legal Process, SHP-80; Consent to Search, SHP-184; Crime Scene/Search Warrant Inventory, SHP-254; Report of Arrest/Incident/Investigation of Crime, SHP-325; Notification of Rights (card), SHP-352; Notification of Rights (form), SHP-353; Waiver of Rights, SHP-354; Participatory Rights Advisement, SHP-991; Waiver and Consent to Monitor Private Communications, SHP-992; Motor Vehicle Offense Handbook		
Related CALEA Standards 1.1.4; 1.2.3; 1.2.4; 1.2.5; 1.2.8; 42.2.1		
Instructions Discard Rescinded General Order 42-03-1030 and E-Mail Orders 02-06, 19-06, 05-09, and 06-09 *Affected Clerical Personnel		

PURPOSE: To set forth procedures relating to the statutory and the constitutional rights of individuals.

POLICY: To act within this statutory authority and safeguard the rights of all persons.

DEFINITIONS:

- 1. Show-up:** An identification procedure in which an eyewitness is presented with a single suspect within a short time following the commission of a crime for the purpose of determining whether the eyewitness identifies this individual as the perpetrator.
- 2. Photo Lineup:** An identification procedure in which an array of photographs, including a photograph of the suspect of an offense and additional photographs of other persons not suspected of the offense, is displayed to an eyewitness either in hard copy form or via computer for the purpose of determining whether the eyewitness identifies the suspect as the perpetrator.
- 3. Physical Lineup:** An identification procedure in which a group of persons, including the suspect of an offense and other persons not suspected of the offense, is displayed to an eyewitness for the purpose of determining whether the eyewitness identifies the suspect as the perpetrator. Due to logistical limitations, physical lineups normally will not be conducted by the Missouri State Highway Patrol.
- 4. Filler:** Either a person or a photograph of a person who is NOT suspected of an offense and is included in an identification procedure.
- 5. Facial Composite:** A non-photographic pictorial representation such as a free hand sketch, Identi-Kit, or computer-program generated image.

I. CONFESSIONS AND ADMISSIONS

A. General Provisions

1. Right against self-incrimination

In Miranda v. Arizona, 384 U.S. 436 (1966), the Supreme Court held that where persons are **taken into custody** or otherwise deprived of their freedom of action in a significant way, and where they are to be **questioned** for evidence of their own guilt, certain procedural safeguards must be afforded to protect their Fifth Amendment privilege against self-incrimination.

2. Miranda rights advisement

Procedural safeguards will be employed to protect the rights of individuals against self-incrimination. Before persons who have been taken into custody or deprived of their freedom in any significant way are subjected to any questioning regarding their suspected criminal activity, the officer questioning such persons will ensure the individuals have been properly given the Miranda warnings. The Miranda warnings should be read to the subjects

from the Notification of Rights card, SHP-352, Notification of Rights form, SHP-353, or a Participatory Rights Advisement, SHP-991, to communicate that:

- a. Subjects have the right to remain silent
- b. Anything the subjects say can be used against them in a court of law
- c. The subjects have the right to the presence of an attorney
- d. If the subjects cannot afford an attorney, one will be appointed for them prior to questioning if they so desire
- e. The subjects may decide at any time to exercise these rights and not answer any questions or make any statements.

3. Questionable circumstances

When officers are undecided about what is custody and what would be interrogation, officers should always resolve doubt in favor of giving the Miranda warnings and securing the waiver.

4. Waiver of rights

Persons about to be interrogated may verbally waive their rights to talk with an attorney or to remain silent. A signed waiver of these rights may add credence to any evidence obtained. A Waiver of Rights, SHP-354, or a Participatory Rights Advisement, SHP-991, may be used to document such waiver.

5. Juvenile suspects

Additional restrictions and other forms apply when interrogating juveniles as outlined in General Order 44-01, "Juvenile Procedures."

6. Volunteered statements

Volunteered statements may be received without giving the Miranda warnings. There is no requirement for officers to give the Miranda warnings to persons who contact them and wish to confess to crimes, as long as there is no custodial interrogation. Miranda warnings will be given when the situation becomes custodial and before the person is questioned about the crime.

7. Non-custodial interviews

Persons need not be advised of the Miranda warnings if they have not been taken into custody or deprived of their freedom in any way. If an interview becomes custodial, where the person is no longer free to leave, the Miranda warnings will be given.

8. Applicability in misdemeanor traffic cases

Miranda warnings are required in misdemeanor traffic cases when the officer takes the arrested person to a law enforcement facility or jail and continues the questioning process.

9. Applicability in internal investigations

The rights and procedures outlined in this order may not be applicable in certain internal investigations. Internal investigations will be conducted in accordance with General Order 52-01, "Complaint Reporting and Internal Investigations" and the Professional Standards Division Policy and Procedures Manual.

B. Interrogation Procedures

1. Questioning prohibited

Officers will not question subjects regarding their alleged criminal activity if, after being given the Miranda rights advisement, the subjects state they do not want to answer any questions.

2. Questioning to end

If the subjects state they want to consult with an attorney prior to being questioned, officers will not attempt to question the subjects until an opportunity to do so has been allowed, unless the subject reinitiates the interview. If the subject does reinitiate the interview, a clarification of the subject's desire to discuss the crime under investigation without consulting an attorney should be obtained.

3. Questioning over extended periods

Subjects who are questioned for an extended period of time will be afforded food, water, rest periods, and access to a rest room at reasonable intervals.

4. Frequency of giving Miranda warnings

Officers should repeat Miranda warnings to subjects:

- a. after a significant break in questioning.
- b. if the subjects indicate they did not understand the previous warnings.
- c. if the officer realizes an earlier warning was not properly given.

5. Attorney-client confidentiality

Subjects requesting to consult an attorney will be allowed to do so in a confidential setting as may be reasonably practicable considering control and custody needs, or on a telephone which is not audibly monitored or recorded.

6. Recording of Interrogations

- a. Per Section 590.701, RSMo., custodial interrogations of persons suspected of committing or attempting to commit the following crimes will be recorded, when feasible, through the use of audiotape, videotape, motion picture, or digital recording:
 - 1) Murder in the first degree
 - 2) Murder in the second degree
 - 3) Assault in the first degree
 - 4) Assault of a law enforcement officer in the first degree
 - 5) Domestic assault in the first degree
 - 6) Elder abuse in the first degree
 - 7) Robbery in the first degree
 - 8) Arson in the first degree
 - 9) Forcible rape
 - 10) Forcible sodomy
 - 11) Kidnapping
 - 12) Statutory rape in the first degree
 - 13) Statutory sodomy in the first degree
 - 14) Child abuse
 - 15) Child kidnapping.

b. Recording custodial interrogations is not required in the following circumstances:

- 1) Situations in which a person voluntarily agrees to meet with a member
- 2) Detention that has not risen to the level of an arrest
- 3) Routine arrest-processing questions
- 4) Questioning pursuant to the completion of an Alcohol Influence Report
- 5) Questioning during the transportation of a suspect
- 6) When the suspect requests the interrogation not be recorded
- 7) Interrogation occurring outside the state
- 8) During exigent public safety circumstances that prevent recording
- 9) When a suspect makes spontaneous utterances
- 10) Upon the failure of recording equipment
- 11) When recording equipment is not available.

c. Recordings of interrogations may be conducted with or without the knowledge or consent of the suspect.

II. ARREST AND ARRAIGNMENT

A. Steps to Meet 24-Hour Law

Members who arrest and incarcerate persons on probable cause will ensure the appropriate official is notified to ensure the timely issuance of warrants or arraignment prior to the expiration of 24 hours from the time of arrest in accordance with Section 544.170, RSMo. If required by the local prosecuting authority or court, members will prepare and submit an Arrest Warrant Request using the Officer's Report to Prosecuting Attorney, SHP-68.

B. Responsibility of Arresting Officer

The arresting officer will ensure the warrant is served and a copy provided to the official having custody of the individual.

C. Members to Notify Official

1. Prisoner condition/circumstances

Members incarcerating subjects will personally transfer custody of the subjects to the person having control of the facility and inform that person of any medical conditions or known problems about the subjects at the time of incarceration.

2. Prisoner access to telephone/advocate

As soon as practicable, members will notify the sheriff or other appropriate official when an arrested person requests the use of a telephone or other means to contact a bail bondsman, an attorney, other pretrial release agency, or anyone acting on their behalf.

III. SEARCH & SEIZURE AUTHORITY SUMMARY

A. Statutory Summary

1. Section 43.200, RSMo., grants members the authority to search and seize, including:

- a. search and seizure on a public highway.

- b. searching for and seizing weapons from any person incident to arrest anywhere in the state, including arrests for infractions.
 - c. search and seizure off a public highway as an incident to an arrest following a hot pursuit from a public highway.
 - d. search and seizure authority equal to that of a sheriff when ordered to a civil disorder by the governor.
 - e. search and seizure authority through a valid search warrant.
2. State statutes do not grant members authority to search or seize on private property without a warrant or some other specific exception to search and seizure powers.

B. Quick Reference Available

Search and seizure authority of Patrol members, including authority granted by case law, will be summarized in the Motor Vehicle Offense Handbook, and members will comply with the guidelines provided.

IV. CONSENT SEARCHES

A. Exception to Warrant Requirement

Consent in any form is a recognized exception to the constitutional requirement for obtaining a search warrant.

B. Voluntariness and Scope

The consent must be voluntary, and the person consenting to the search must have the authority to grant consent. The consenting individual can limit the scope of the search and can withdraw consent at any time.

C. Consent Form

A Consent to Search, SHP-184, may be used to document a person's consent to search. Although written consent is not required, such documentation may add credence to subsequent testimony that consent was knowingly and voluntarily given.

V. VEHICLE SEARCHES

Members who conduct a vehicle search as defined in this item will report that search and specific information about the driver of the searched vehicle in the Automated Field Reporting system (AFR). The reporting requirement will be based on whether a search took place, not whether any contraband or evidence was actually found. A "vehicle search," for the purposes of this item, will be any physical search based upon consent or probable cause to believe a vehicle initially stopped for a violation of any motor vehicle statute contains seizable evidence of a crime. The term does not apply to a member simply looking from outside the vehicle for any contraband or evidentiary items which may be in plain view in the passenger compartment (with or without the aid of artificial light).

VI. CRIME SCENE SEARCHES

Crime scenes will be searched based on the appropriate authority for conducting a search of the scene. Where no exigent circumstances, valid consent, or other valid exception to the requirement to have a search warrant would permit an adequate search of a crime scene, the officer in charge of the investigation will ensure the scene is secured and promptly apply for a search warrant.

VII. SEARCH WARRANTS

A. Seeking Statutory and Professional Guidance

Members not familiar with specific requirements for applying for or serving search warrants and needing to do so should review Section 43.200 and Sections 542.266 through 542.291, and 542.296, RSMo., or contact the Division of Drug and Crime Control for guidance.

B. Permissible Uses for Search Warrants

Search warrants may be issued to search for, seize, copy, photograph, or record evidence of a crime, stolen property, contraband, instrumentalities of a crime, or persons.

C. Application Requirements

1. Content

Members applying for search warrants will contact the appropriate prosecuting attorney and will:

- a. specifically identify the person, place, or thing to be searched and type(s) of objects or persons to be seized.
- b. provide relevant facts and circumstances showing probable cause for the search.
- c. request authorization for "no knock" service if the need for that type of service is anticipated. Justification for "no knock" service must be included in the initial warrant application. "No knock" service must be specifically authorized by the search warrant.
- d. submit additional affidavits as appropriate and/or determined by the prosecutor, since the issuing judge may rule only on the written information, not oral testimony.
- e. if a federal search warrant is sought, provide information showing good cause for night time service of the warrant if such service is foreseen.

2. Verification

Members applying for search warrants will verify by oath that information contained in the application is true to the best of their knowledge.

3. Jurisdiction

Members will ensure that applications for search warrants properly identify the jurisdiction in which the area to be searched is located and the application is submitted to the proper authority. By statute, the application must be signed by the affected prosecuting attorney.

4. Record of Legal Process

The member applying for a search warrant will complete and submit a Record of Service of Legal Process, SHP-80, as outlined in the SHP-80 Manual.

D. Notification of Sheriff

Members, upon making application for a search warrant, will notify the sheriff (or designee) of the county in which the warrant is to be served.

E. Service

Members serving search warrants will take necessary action to ensure the proper location is searched. Search warrants should be served as soon as reasonably possible.

1. State search warrants must, by statute, be served and the return made within ten days of making the application and may be served at night without specific authorization in the warrant if good cause exists to do so.
2. The execution of a federal search warrant at night requires specific authorization in the warrant.
3. The sheriff (or designee) of the county where a state search warrant issued on application of a member is served must participate in the service. The sheriff may select any certified peace officer (including a member) as designee.

F. Inventory

1. Forms

Members serving search warrants will use the search warrant return, a Property Record, SHP-48, a Crime Scene/Search Warrant Inventory, SHP-254, or a combination of those forms, to list any items seized as a result of the service. Submission of the SHP-254 will not take the place of the forms and requirements outlined in other general orders relating to property control.

2. Photographs/Copies

Pursuant to Section 542.276, RSMo., members serving a state search warrant may photograph or copy any property, article, material, substance, or person described on the warrant when physical seizure is not practicable.

G. Return

Members having served a search warrant will record the date served and sign in the appropriate locations on the warrant. If all items seized are not shown on the warrant return form, copies of any SHP-254 or SHP-48 necessary to provide a complete listing of items seized will be included as an attachment to the search warrant return. Section 542.276, RSMo., requires that "A search warrant shall be executed as soon as practicable and shall expire if it is not executed and the return made within ten days after the **date of the making of the application.**" Effective August 28, 2005, Section 542.276, RSMo., eliminated the requirement that photographs and/or copies of all items seized during execution of a state search warrant be filed with the issuing court as part of each warrant return. Filing of such articles with the affected circuit clerk may still be made under the statute. Members should contact their local prosecutor and/or judge for additional guidance on the local preference regarding such filings.

H. Copies

A member serving a search warrant should retain copies of the warrant and any attachments to the warrant return listing items seized as a result of the service. The member also will ensure that copies are:

1. left with the owner or possessor of items seized, or at the site of the search if not available.
2. submitted as attachments with a supplemental report to the appropriate Report of Arrest/Incident/Investigation of Crime, SHP-325.

VIII. STRIP AND BODY CAVITY SEARCHES

A. General Statutory Provisions

Section 544.193, RSMo., prohibits strip and body cavity searches of persons arrested or detained for a traffic offense or an offense which does not constitute a felony unless there is probable cause to believe that the person is concealing a weapon, evidence of the commission of a crime, or contraband. Strip searches and body cavity searches conducted by or at the direction of law enforcement officers will be performed by persons of the same sex as the person being searched and will be conducted where the search cannot be observed by anyone other than the persons physically conducting the search and, if requested by the person being searched, another readily available person to whom the person has given consent to be present.

B. Search Warrant Requirements

1. No search warrant is required for a strip search or body cavity search when the person to be searched is detained or arrested as the result of a felony offense.
2. No search warrant is required for a **strip search** when there is probable cause to believe the person to be searched is concealing a weapon, evidence of the commission of a crime, or contraband.
3. A search warrant is required to conduct the **body cavity search** of a person who is detained or arrested for a traffic or non-felony offense. The body cavity search may only be conducted under sanitary conditions and by a physician, registered nurse, or practical nurse.

C. Authorization Procedure

Members may conduct or direct a strip search or body cavity search only after obtaining the written permission of the person in command of the law enforcement agency in which the strip search or body cavity search is to be conducted. If conducted in a Patrol facility or in a location not under the control of a law enforcement agency, the member will obtain the permission of their troop commander or division director, who will notify their bureau commander and prepare a written authorization for the search which will be included and filed with the requesting member's report.

D. Reporting

A report will be prepared regarding the strip search or body cavity search. A copy of the report will be provided to the individual searched and to the person authorizing the search. A copy of the report will be included with the appropriate SHP-325 or supplemental investigation report. The report will include:

1. A copy of the written permission
2. Name of the person searched
3. Name of the person conducting the search
4. Time, date, and place of the search
5. Results of the search.

IX. COMMUNICATIONS MONITORING

A. General Provisions

The monitoring of communications, e.g., body transmitters, recorders, telephones, etc., is regulated by both the state and federal governments. Monitoring of communication by Patrol employees will comply with all applicable laws and General Order 43-02, "Technical Surveillance Equipment."

B. Consent

Consensual monitoring, where at least one party to the conversation has knowledge of, and consents to, the monitoring, does not require a court order. A Waiver and Consent to Monitor Private Communications form, SHP-992, may be used to document such consent.

X. OTHER INDIVIDUAL RIGHTS

A. Deaf Persons

Chapter 546, RSMo., provides rights for deaf persons and states in part that "the services of a qualified interpreter shall be made available to any deaf person immediately upon the involuntary detention or arrest of that deaf person, and before any attempts are made . . . to interrogate or otherwise secure information." Further details and procedures for obtaining an interpreter are contained in General Order 62-04, "Enforcement Policy."

B. Language

Language interpreter services needed to inform persons who do not speak English of their rights, etc., are available within the guidelines established in General Order 81-03, "Over the Telephone Foreign Language Interpretation."

C. Public Information Restrictions

Rules to safeguard the rights of suspects relating to the release of information and pretrial publicity are contained in General Order 54-01, "Public Information and Media Relations."

D. Foreign Persons

The detention or arrest of foreign nationals and handling of diplomats and consulars are subject to specific guidelines provided by the United States Department of State as outlined in General Order 62-04, "Enforcement Policy."

XI. EYEWITNESS IDENTIFICATION**A. General Eyewitness Identification Procedures**

1. Avoiding member and witness suggestion

- a. Members must not, by word or gesture, suggest opinions to any witness concerning the guilt or innocence of a suspect in any identification procedure. Witnesses making inquiries about a member's opinion will be informed of this restriction.
- b. A witness who has taken part in an identification procedure must not be permitted to state conclusions within earshot of another person who is about to be, or has been, a viewer of the identification procedure.

2. Multiple witnesses/suspects

- a. Each witness is to view any identification procedure separately. Witnesses will not be permitted to communicate with each other until all identification procedures are completed and should be instructed not to discuss their identifications with anyone else.
- b. When there are multiple suspects, each identification procedure will include only one suspect.

3. Video and/or audio recording and documentation

- a. When practicable, members are encouraged to video and/or audio record any witness identification procedure from start to finish. Any such recordings will be saved onto appropriate storage media and processed as evidence in accordance with General Orders 83-01, "Collection and Preservation of Evidence," 83-02, "Audio and Video Recordings," and 84-03, "Property Control."
- b. All information regarding any identification procedure will be documented with the Report of Arrest/Incident/Investigation of Crime, SHP-325, to include:
 - 1) all identification and non-identification results.
 - 2) confidence or certainty statements made by the witness (these should be quoted).
 - 3) names of all persons present.
 - 4) date, time, and location.
 - 5) names of all persons and/or photos used, and source of the photos.
 - 6) any significant remarks made by a member, lawyer, or suspect.

4. When identification procedures may be unnecessary

The use of an identification procedure may be unnecessary under the following conditions:

- a. The witness knows the identity of the suspect before the offense occurred or learned the suspect's identity without police assistance after the offense. In such circumstances, a single photograph of the suspect named by the witness may be shown to the witness for confirmation that the person named is the perpetrator, or a photo lineup can be performed to establish additional probable cause.
- b. The witness would be unable to recognize the suspect of the offense, such as when a suspect's face is completely covered during the commission of a crime.

B. Show-up Procedures

1. Show-ups are permissible when all of the following conditions are met:

- a. A potential suspect is located and detained within a reasonable length of time
- b. The potential suspect is located in proximity to the location of the crime, and
- c. The potential suspect fits the specific description of the perpetrator given by the witness.

2. If a member has reasonable suspicion to detain a suspect under the above circumstances, the member may use such force as is reasonably necessary to stop the suspect from leaving, or to cause the suspect to remain in the member's presence. If probable cause to arrest develops during the detention, an arrest should be made.

3. Conducting the show-up

A suspect cannot be detained for longer than a reasonable period of time to confirm or refute whether the suspect is the perpetrator. When conducting a show-up, members will use the following guidelines:

- a. Personnel in contact with the witness, whether on the scene or by telephone, will obtain a detailed description of the perpetrator before the suspect is shown to the witness. The witness must advise they will be able to recognize the person who committed the crime prior to the show-up.
- b. A suspect should not be taken to a law enforcement facility for a show-up. The suspect should be detained at the place the suspect was located in the least restrictive manner possible that will ensure the suspect remains with the member. When the incident involves crime of a serious nature, the witness should be transported to the suspect's location for the show-up. Suspects should not be transported to the witness' location unless exigent circumstances exist, transportation of the witness to the area of apprehension is logistically prohibitive, and/or the violation is a misdemeanor, i.e., leaving without paying for fuel.
- c. Members conducting a show-up should minimize suggestiveness. If possible, the suspect should not be shown handcuffed or seated in a patrol vehicle. If the suspect is handcuffed, measures should be taken to conceal that fact from the witness. Suspects may not be required to put on clothing worn by the perpetrator; however, they may be asked, but not required, to speak words uttered by the perpetrator or perform other actions of the perpetrator. Advise the witness that the person detained may or may not be the perpetrator and that the witness should not feel compelled to make an identification. If the witness makes an identification, do not confirm or corroborate the identification.
- d. Show-ups should not be conducted with more than one witness present at a time. If there is more than one witness, the show-up must be conducted separately for each witness, and witnesses should not be permitted to communicate before or after any show-up regarding the identification of the suspect. The same suspect should not be presented to the same witness more than once.
- e. Members conducting show-ups must assess witness confidence in the identification immediately following the show-up identification. Witness confidence remarks should be included in the member's report.
- f. If there are multiple suspects, the suspects must be separated and subjected to separate show-up procedures.
- g. Consideration should be given to photographing the suspect(s) in the field as documentation.
- h. In emergency circumstances, such as when a witness is in danger of imminent death or blindness or when a suspect is in danger of imminent death, an immediate show-up may be arranged if medical authorities permit. In such situations, previously noted time and location limitations may be disregarded. If there is any doubt about an emergency show-up, members should contact a member of their troop or division staff and/or the prosecutor for guidance.
- i. These guidelines do not prohibit the common procedure of transporting a witness in a Patrol car to patrol the general area in which a crime has occurred in an attempt to find the perpetrator and arrange a show-up identification procedure.
- j. No person has a right to have a lawyer present at any show-up procedure.
- k. If the detained suspect is not identified by a witness as the perpetrator and members lack any other probable cause for an arrest, basic information should be obtained and the suspect released.

- C. Creating and Conducting Photo Lineups

The Missouri Information Analysis Center (MIAC) has extensive experience in creating photo lineups for law enforcement agencies. Members will contact the MIAC for assistance when contemplating use of a photo lineup.

1. Simultaneous photo lineup

The simultaneous photo lineup consists of showing a group of similar photographs to a witness all at the same time. Witnesses should be advised the perpetrator may or may not be present in the photo lineup. Photo lineups should be created and conducted using the following guidelines:

- a. A minimum grouping of six (6) photographs will be used to create the photo lineup and must include five (5) filler photographs with one (1) suspect.
- b. The photograph of the suspect must be contemporary, resemble as much as possible their appearance at the time of the offense, and reasonably resemble the witness' description of the perpetrator.
- c. All filler photographs should resemble the suspect photograph as much as possible including size, background, race and skin tone, facial features, weight, hair color and length, scars, tattoo, eyeglasses, etc.
- d. If there is more than one suspect, each suspect's photograph will be placed in the grouping of six separately from any other suspect, and the grouping will be changed so that the suspects' photographs are not always in the same position in the grouping.
- e. If there is more than one witness, each witness will be shown the lineup separately. The suspect's photograph will be placed in a different position in the grouping for each witness, and witnesses will not be permitted to communicate with each other until after the lineup procedure has been completed.
- f. If the witness has previously viewed a photo lineup in connection with the identification of another person suspected of involvement in the offense, the fillers in the lineup shall be different from the fillers used in any prior lineups.
- g. If an identification is made, the witness will be told to circle the identified photograph and write their initials and the date next to it. Do not confirm or corroborate the identification.
- h. If an identification is made, the member shall assess witness confidence immediately following the identification and clearly document witness confidence by quoting the witness' remarks in the police report. If no identification is made, this fact must also be clearly documented.
- i. Any and all photo lineups created, viewed, identified, or not identified, must be kept and secured with the member's case.
- j. No person has a right to have a lawyer present at any photo lineup whether it takes place before or after an arrest.

2. Sequential photo lineup


The sequential photo lineup consists of showing a group of similar photographs individually to a witness. Witnesses should be advised the perpetrator may or may not be present in the photo lineup. All sequential photo lineups shall be done using the following guidelines:

- a. A minimum grouping of six (6) individual photographs must be used to create the photo lineup and must include five (5) filler photographs with one (1) suspect.
- b. The photograph of the suspect must be contemporary, shall resemble as much as possible their appearance at the time of the offense, and shall reasonably resemble the witness' description of the perpetrator.
- c. All filler photographs should resemble the suspect photograph as much as possible including size, background, race and skin tone, facial features, weight, hair color and length, scars, tattoo, eyeglasses, etc.
- d. Each photograph will be placed in a separate folder; the folders will then be shuffled, and then each folder will be numbered from one (1) to six (6).
- e. If there is more than one suspect, each suspect's photograph will be placed in the grouping of six folders separately from any other suspect, and the grouping will be changed so that the suspects' photographs are not always in the same numbered folder in the grouping.

- f. If there is more than one witness, each witness will be shown the lineup separately. The suspect's photograph will be placed in a different numbered folder in the grouping for each witness, and witnesses will not be permitted to communicate with each other until after the lineup procedure has been completed.
- g. If the witness has previously viewed a photo lineup in connection with the identification of another person suspected of involvement in the offense, the fillers in the lineup will be different from the fillers used in any prior lineups.
- h. After explaining the procedure to the witness, give the witness one folder at a time starting with number one giving the witness sufficient time to look at each photograph. When finished viewing each folder, it should be handed back to the member before viewing the next one.
- i. If an identification is made, the member will assess witness confidence immediately following the identification and clearly document witness confidence by quoting the witness' remarks in the SHP-325. If no identification is made, this fact must also be clearly documented. If the witness makes identification, do not confirm or corroborate the identification.
- j. Any and all photo lineups created, viewed, identified, or not identified, must be kept and secured with the member's case.
- k. No person has a right to have a lawyer present at any photo lineup whether it takes place before or after an arrest.

D. Facial Composites and Sketches

When there is no suspect and the use of a photo lineup has been or is likely to be unsuccessful, a non-photographic pictorial representation such as a free hand sketch, Identi-Kit composite, or similar computer generated composite image may be used. Care must be taken not to unintentionally influence the description provided by a witness while developing such a composite image or sketch. Only composites created by individuals trained in the use of such techniques will be used by Patrol personnel for suspect identification purposes.


RONALD K. REPLOGLE, Colonel
Commanding Officer