Policy # 17.8 **Suspect Identification Procedure**	Related Policies:
This policy is for internal use only and does not enlarge an employee's civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only form the basis of a complaint by this department for non-judicial administrative action in accordance with the laws governing employee discipline.	
Applicable State Statutes:	
KACP Standard: 17.11	
Date Implemented: 09/15/2016	Review Date:

I. **Purpose:** The purpose of this policy is to outline the manner in which criminal suspects will be subjected to identification proceedings.

II. **Policy:** The policy of this agency is to respect the rights of all persons who officers come into contact with during any law enforcement operation in which witness identification will be conducted.

III. **Definitions:**

A. **Show-Up/Drive-by:** The process by which a complainant or witness is driven to a suspect who has been stopped in the area of the crime for purposes of excluding or verifying the suspect as the person responsible for the crime through recognition by the complainant or the witness.

B. **Photo-Array:** The process by which a complainant or witness is shown a series of photographs which may contain a suspect in the crime for purposes of excluding or verifying the suspect as the person responsible for the crime through recognition by the complainant or the witness.

C. **Single Photo Verification:** The process by which a complainant or witness is shown a single photograph due to the fact that they have thorough familiarity with the person who is suspected in the criminal activity and law enforcement is simply verifying that the suspect identified by the law enforcement is the same subject known to the witness.

D. **Line-up:** The process by which a complainant or witness is allowed to view a group of individuals, in person, for purposes of excluding or verifying the suspect as the person responsible for the crime through recognition by the complainant or the witness.

E. **Field View:** The exposure of an eyewitness to a group of people in a public place on the theory that the subject may be among the group. A field view differs from a show-up in that it may be conducted well after the commission of the crime, and may be conducted with or without a suspect in the group.

IV. **Procedure:** Where feasible the identification procedures will be recorded through the use of video and audio recording devices.

In all identification procedures, officers should take steps to ensure that the procedure is not suggestive by the manner in which it is carried out. If there are multiple witnesses they should be

separated; and all identification procedures should be done separately with each individual witness. Officers should use caution as to the manner in which suspects are presented such that a suspect may later claim that the officer influenced the witness' identification of the suspect. Each eyewitness who views a lineup or photo spread shall sign a form containing the following information:

- The suspect might not be in the lineup or photo spread and the eyewitness is not obligated to make identification.
- The eyewitness should be told the officer who is conducting the identification process does not know the identity of the suspect.
- Whether identification is made or not the investigation into the crime under investigation will continue.

A. The Validity of identification procedures rests on the following considerations:

a. Witness' opportunity to view suspect at the time of the crime.

b. Witness' focus of attention at time of crime.

c. Accuracy of witness' description of suspect prior to identification procedure.

d. Level of certainty exhibited by the witness in making the identification.

e. The length of time that has passed between the crime and the identification.

f. Note- Officers should document the existence/lack of existence of these points when compiling reports on identification procedures.

B. Show-Up/Drive-by identification- Although the United States Supreme Court has not affixed a duration of time within which these procedures are to be conducted, generally this type of identification occurs within a short period of the crime and within a reasonable proximity (geographically) from the crime.

a. Officers shall complete the eye witness show-up identification form prior to the identification procedure.

b. Unless an extreme emergency exists, the complainant or witness shall be taken to the location where the suspect has been stopped. The movement of the suspect to the witness' location may constitute an arrest for which probable cause is required. To the extent that probable cause is lacking without identification, movement may be determined to have been an unlawful arrest.

c. Suspects should not be brought into a crime scene as contamination may result. For the same reason, clothing articles found at the crime scene should not be placed on or in contact with a suspect. A suspect should not be brought back to the home of a victim or witness unless that was the scene of the crime.

d. Police officers must not do or say anything that might convey to the witnesses that they have evidence of the suspect's guilt. Officers should turn down their radios so that the witness they are transporting does not pick up information about the stop of the suspect.

e. To the extent that an officer may safely do so, the officer should take steps to minimize the suggestiveness of the identification. The following should be considered:

i. Have suspect standing outside of any law enforcement vehicle rather than in the vehicle.

ii. Have the suspect standing without handcuffs or with handcuffs not visible to the witness.

iii. Any steps taken which give the appearance that the suspect is free to leave will undercut suggestiveness.

iv. If items taken or used in the crime have been recovered, do not allow the witness to view or become aware of the recovery until after the identification proceeding is complete.

v. The witness' failure to recognize the subject stopped must be documented and included in any materials forwarded to the prosecutor who ultimately handles the case. Such evidence may be exculpatory to the suspect who is charged with the crime. As such, it must be forwarded to the prosecutor. Additionally, if the witness identifies a suspect in the future, this failure to identify the first subject presented to them may add credibility to their identification.

vi. Officers shall complete the eye witness show-up identification form prior to the identification procedure.

C. Photo-Array

a. Officers shall complete the eyewitness identification form prior to the identification procedure.

b. The array must contain six or more photographs including some persons who are similar in appearance i.e. facial hair, glasses, age etc. The array should be based on descriptions provided by any eyewitness.

c. All photos must include persons of the same race and sex as the suspect.

d. Photos should be presented in a way that does not suggest that the subjects in the photos are criminals i.e. mug-shot with numbers (Mug shots may be used, but portions of photo that would indicate that photo is mug-shot should be cropped or hidden from the witness.)

e. Avoid fillers who so closely match the suspect that a person familiar with the suspect would have difficulty distinguishing the filler.

f. Change the order of photos from one witness to the next and document the location of the suspect for every viewing. Change the order of the photos and document the location of the suspect when a witness asks to see the array a second time.

g. When showing a witness an array containing a new suspect, avoid using fillers from a previous array.

h. During the process officers shall not, in any way, prompt the witness toward a particular photo.

i. **Double-blind presentation:** The officer who conducts the photo-array shall be someone who is not aware of which photo in the array is that of the suspect in the case. The witness should be told the officer conducting the photo-array does not know who the suspect is. The

investigating officer should leave the room while the array is being shown by the administrator.

j. Witness instruction. The person viewing the photo-array should be told that the perpetrator may or may not be in the photo-array and that the investigation will continue regardless of whether identification is made or not.

k. If there are multiple witnesses, the suspect should be placed in a different position in the photo-array for each witness. Witnesses should be segregated before, during and after the procedure and instructed not to discuss the identification process with each other.

l. Photos will not be shown at the same time as in a six-pack, instead the officer shall show the photographs to a witness one at a time as if dealing a deck of cards and ask the witness whether or not he/she recognizes the person.

m. When the witness signals for the next photograph, the officer should move the first photograph so that it is out of sight and ask the witness whether he/she recognizes the next photograph.

n. The procedure should be repeated until the witness has viewed each photograph. If the witness identifies a subject before all the photographs have been viewed, the officer should remind the witness that he/she is required to show the rest of the photographs.

o. If the witness fails to make identification, but asks to view the array a second time, the officer administering the identification should ask the witness if he/she was able to make identification from the original viewing. If the witness is unable to make identification, but feels that it would be helpful to repeat the procedure, then it is permissible to show the entire array a second time. The order of the photographs should be shuffled before the array is shown for the second time. An array should not be shown more than twice.

p. If more than one witness is to view an array and a witness has already marked one of the photos, a separate unmarked array shall be used for each subsequent witness.

q. If an independent administrator is not available, the investigative officer shall follow the following procedures:

I. Place the suspect photo and filler photos in separate folders. Include four (4) blank folders that contain no photograph for a total of ten (10).
II. Shuffle the folders before giving them to the witness.
III. The officer administering the array should position himself or herself so that he or she cannot see inside the folders.
IV. Allow the eyewitness to open the folders one at a time to view the single photograph.

r. At the time of the identification, the eyewitness should provide a statement in his/her own words indicating their level of confidence in the identification.

s. The presentation/order of presentation must be documented. The witness who selects a photo as the suspect should sign and date the photo they have selected with a full signature and initial and date the other photos presented to them.

t. The time and date shall be recorded from the moment the witness begins to view the photographs until identification is made. If no identification is made the beginning and end times of the entire procedure shall be documented.

u. The witness' selection of a photo that is not the suspect must be documented and included in any materials forwarded to the prosecutor who ultimately handles the case. Such evidence may be exculpatory to the suspect who is charged with the crime. As such, it must be forwarded to the prosecutor.

v. All photographs, video and audio recordings, written warnings/instructions and statements made by witnesses whether identification is made or not are evidence. As such, all materials related to the identification procedures and investigation will be properly documented and stored with appropriate chain of custody documentation in accordance with department policy and procedures related to storage of crime scene evidence.

D. **Single-Photo Verification:** This process shall only be used where the witness is thoroughly familiar with the suspect and the officer is merely attempting to ensure that the witness and the officer are both referring to the same person.

E. **Line-Ups:**

a. Officers shall complete the eye witness identification form prior to the identification procedure.

b. A line-up must be conducted with at least six persons and include at least some persons who are similar in appearance to the suspect i.e. facial hair, glasses, general age etc.

c. All persons in the line-up must be of the same race and sex of the suspect.

d. Double-blind presentation: The officer who conducts the line-up shall be someone who is not aware of which person in the line-up is the suspect in the case. The witness should be told the officer conducting the Line-up does not know who the suspect is.

e. Because line-ups will be administered by an officer who does not know the identity of the suspect, the fillers selected should not be known to the officer administering the line-up. In selecting line-up fillers, abide by the guidelines for photo array fillers as described above.

f. All persons in the line-up should carry cards that identify them only by number and should be referred to only by their number. As with photo arrays, each witness must view the line-up independently, out of the presence and hearing of the other witnesses.

g. The investigating officer should explain to the witness that a second officer (the line-up administrator) will be conducting the line-up, and that he/she does not know the identity of the people in the photographs.

h. The investigating officer should carefully instruct the witness by reading from a departmental Line-up Instruction Form, and the witness should be asked to sign the form

indicating that he/she understands the instructions. The officer should also sign and date the form.

i. The investigating officer should leave the room while the line-up administrator conducts the line-up.

j. The line-up should be conducted so that the suspect and fillers do not actually line up, but rather so that they are displayed to the witness one at a time. This can be accomplished either by having them stand with their back to the witness and then face the witness one at a time, or by having them enter the room individually and leave before the next one enters.

k. The procedure for showing the participants to the witness and for obtaining a statement of certainty is the same as for photo arrays. If practicable, the officer should record the procedure through the use of audio and video.

l. During the process officers in any way, shall not, prompt the witness toward a particular subject in the line-up.

m. Although suspects do not have a right to refuse to stand in a line-up, a line-up should not be conducted where the suspect's resistant conduct will set him or her apart from the other participants in the line-up.

n. Suspects may be required to speak during a line-up for comparison purposes only. If officers are going to require a suspect to speak, they must require all persons participating to speak the same words in turn.

o. Suspects may be required to put on clothing recovered from the crime for identification purposes. If officers are going to require the suspect to put on the recovered clothing, they must require all persons participating in the line-up to put on the clothing in turn.

p. All line-ups must be documented by photographing or video-taping the line-up as presented to the witness. The photo will document positions of the participants as well as the inclusion of the participants.

q. At the time of the identification, the eyewitness should provide a statement in his/her own words indicating their level of confidence in the identification.

r. The witness' selection of a person that is not the suspect must be documented and included in any materials forwarded to the prosecutor who ultimately handles the case. Such evidence may be exculpatory to the suspect who is charged with the crime. As such, it must be forwarded to the prosecutor.

s. Attorneys:

i. A suspect does not have a right to counsel at a line-up, which is conducted before the suspect has reached a "critical stage" in the justice process. A critical stage is reached when the suspect is arraigned, indicted, or otherwise formally charged with a crime.

ii. A suspect has the right to counsel at a line-up if the suspect has reached a critical stage in the justice process.

iii. If the suspect has an attorney but has not yet reached a critical stage, officers should consider allowing the attorney's presence at the identification proceeding. The presence

of an attorney undercuts later claims that the process was somehow suggestive with respect to the suspect.

iv. In any case, where an attorney is present they serve only as a witness to ensure the fairness of the procedure.