Identification Process	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 Vermont Statutes:	
Date Implemented:	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 department 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 police 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.

IV. **Procedure:** 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. Thus, officers should use caution as to the manner in which suspects are presented such that a suspect may not 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 an identification.
- The eyewitness should not assume that the person administering the lineup or photo spread knows which person is the suspect in the case.

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-Police 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. 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.

b. 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. The appearance that suspect maintains his or her freedom 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.

C. Photo-Array/Photo-Pack:

a. The array must contain at least six photos and include at least some persons who are similar in appearance i.e. facial hair, glasses, age etc.

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

c. 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.)

d. The officer who conducts the photo-array should be someone who is not aware of which photo in the array is that of the suspect in the case.

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

f. 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.

g. 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.

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. 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, age etc.

b. The line-up must include only persons of the same race and sex as the suspect.

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

d. 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.

e. 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.

f. 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.

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

h. 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.

Passed and Adopted by the Selectboard of the Town of Randolph, Vermont this 14th day of April, 2016.

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RANDOLPH TOWN CLERK'S OFFICE
Received for Filing
April 15 A.D. 2016
at 8 o'clock 30 minutes AM
Attests Joyce L Magnusson
Town Clerk