

ORDINANCE # 2011-02

AN ORDINANCE AUTHORIZING LINEUP IDENTIFICATION POLICY

WHEREAS, The Village of Hamersville, Brown County, Ohio believes it's in the Village's best interest to adopt the following policy to comply with lineup requirements in S.B. 77, codified in R.C. 2933.83.

LINEUP IDENTIFICATION POLICY

I. Purpose

The purpose of this policy is to comply with R.C. 2933.83. This policy sets specific procedures for conducting live and photo lineups that assure that lineups are composed in such a manner that the suspect does not unduly stand out thereby enabling the witness to provide a more accurate identification or nonidentification; that lineups are conducted by "blind" or "blinded" administrators; and that the identification procedure is conducted in a manner that promotes the reliability, fairness and objectivity of the witness' identification and is conducive to obtaining accurate identification or nonidentification decisions.

II. Definitions

"Administrator" means the person conducting a photo lineup or live lineup.

A "blind" administrator is one that does not know the identity of the suspect.

A "blinded" administrator is one that may know who the suspect is, but does not know which lineup member is being viewed by the eyewitness.

"Impracticable" means incapable of being put into practice with the available means.

III. Blind or Blinded Administrators

Unless impracticable, a live or photo lineup shall be conducted by a blind or blinded administrator. If it is impracticable for a blind administrator to conduct the lineup, the administrator shall state in writing the reason. If it is impracticable for a blind or blinded administrator to conduct the lineup, the administrator shall state in writing the reason.

IV. Recording Results

The administrator should use the attached Lineup Reporting Form. Doing so will assure that all of the following, required information is reported.

The administrator shall make a written record of all of the following:

1. All identification and non-identification results obtained during the lineup, signed by the eyewitnesses, including the eyewitnesses' confidence statements made immediately at the time of the identification;
2. The names of all persons present at the lineup;
3. The date and time of the lineup;
4. Any eyewitness identification of one or more fillers in the lineup;
5. The names of the lineup members and other relevant identifying information, and the sources of all photographs or persons used in the lineup.

V. Photo Lineups

A. Composing the Photo Lineup

In composing a photo lineup, the investigator should:

1. Consider using either the Ohio Law Enforcement Gateway's lineup feature or another database of mugshots to assemble the suspect and filler photos. Consider assuring that the backgrounds of all photos are similar. Assure that all individuals have the same type of jail uniform or that all have non-jail clothing.
2. Include only one suspect in each identification procedure.
3. If multiple photos of the suspect are reasonably available to the investigator, select a photo that resembles the suspect description or appearance at the time of the incident.
4. Include a minimum of five fillers (nonsuspects) per identification procedure. Select fillers who generally fit the witness' description of the perpetrator. When there is a limited/inadequate description of the perpetrator provided by the witness, or when the description of the perpetrator differs

significantly from the appearance of the suspect, fillers should resemble the suspect in significant features.

5. Organize the photos on one sheet of paper. Assure that each individual is label in a non-sequential manner. OHLEG already does this with a 9-digit Lineup ID#. If this is not already done, consider labeling each individual with a random 3-digit number boldly printed under each photo.

6. Create a consistent appearance between the suspect and fillers. Consider that complete uniformity of features is not required. Avoid using fillers who so closely resemble the suspect that a person familiar with the suspect might find it difficult to distinguish the suspect from the fillers.

7. Consider placing suspects in different positions in each lineup, both across cases and with multiple witnesses in the same case. Position the suspect randomly in the lineup.

8. When showing a new suspect, avoid reusing fillers in lineups shown to the same witness.

9. Ensure that no writings or information concerning previous arrest(s) will be visible to the witness.

10. View the spread, once completed, to ensure that the suspect does not unduly stand out.

11. Preserve the photo lineup in its original condition.

B. Instructing the Witness Prior to Viewing the Photo Lineup

Consider using the attached *Photo Lineup Checklist* and *Photo Lineup Witness Instructions*. Doing so will assure that the following procedure is satisfied.

Prior to presenting a photo lineup, the administrator should:

1. If applicable, instruct the witness that the administrator does not know who the suspect is.

2. Instruct the witness that he/she will be asked to view a set of photographs.

3. Instruct the witness that individuals depicted in lineup photos may not appear exactly as they did on the date of the incident because features such as head and facial hair are subject to change.

4. Instruct the witness that the person who committed the crime may or may not be in the set of photographs being presented.

5. Assure the witness that regardless of whether an identification is made, the police will continue to investigate the incident.

6. Instruct the witness that the procedure requires the investigator to ask the witness to state, in his/her own words, how certain he/she is of any identification.

C. Conducting the Photo Lineup

1. Prior to seeing the witness, conceal the photo array in a folder such that the witness cannot see the photos until the folder is opened.

2. Avoid saying anything to the witness that may influence the witness' selection.

3. Provide instructions to the witness as outlined in the preceding section.

4. Confirm the witness understands the instructions.

5. Hand the folder to the witness and leave the room.

6. When the witness alerts that he/she is finished, re-enter the room and ask the witness if he/she is able to identify the person who committed the crime.

7. If an identification is made:

A. Avoid reporting to the witness any information regarding the individual he/she selected prior to obtaining the witness' statement of confidence level.

B. Ask the witness how certain he/she is about the identification.

C. Have the witness circle the identified individual on the photo lineup and sign that area of the sheet.

8. Record any identification results as outlined in Section IV. See forms.

9. Instruct the witness not to discuss the identification procedure or results with other witnesses involved in the case and discourage contact with the media.

VI. Live Lineups

A. Composing the Live Lineup

In composing a live lineup, the investigator should:

1. Assure that a prosecutor is present.
2. For visual identifications arrange for utilization of the Live Lineup room at the Tuscarawas County Jail or a substantially similar facility with a two way mirror.
3. Include only one suspect in each identification procedure.
4. Select fillers who generally fit the witness' description of the perpetrator. When there is a limited/inadequate description of the perpetrator provided by the witness, or when the description of the perpetrator differs significantly from the appearance of the suspect, fillers should resemble the suspect in significant features.
5. Do not place the suspect in the first position (from witness' left). Position the suspect randomly in the remaining positions, unless, where circumstances allow, the suspect or the suspect's attorney requests a particular position.
6. Include a minimum of four fillers (nonsuspects) per identification procedure.
7. Label each suspect in a non-sequential manner. Consider taping a sheet of white copy paper to the chest of each lineup member with random 3-digit numbers boldly printed on each sheet.
8. Consider placing suspects in different positions in each lineup, both across cases and with multiple witnesses in the same case. When showing a new suspect, avoid reusing fillers in lineups shown to the same witness.

9. Consider that complete uniformity of features is not required. Avoid using fillers who so closely resemble the suspect that a person familiar with the suspect might find it difficult to distinguish the suspect from the fillers.

10. Create a consistent appearance between the suspect and fillers with respect to any unique or unusual feature (e.g., scars, tattoos) used to describe the perpetrator by artificially adding or concealing that feature.

B. Instruction the Witness Prior to Viewing the Live Lineup

Consider using the attached Live Lineup Checklist and Live Lineup Witness Instructions. Doing so will assure that the following procedure is satisfied.

Prior to presenting a live lineup, the administrator should:

1. If applicable, instruct the witness that the administrator does not know who the suspect is.

2. Instruct the witness that he/she will be asked to view a group of individuals.

3. Instruct the witness that individuals present in the lineup may not appear exactly as they did on the date of the incident because features such as head and facial hair are subject to change.

4. Instruct the witness that the person who committed the crime may or may not be present in the group of individuals.

5. Assure the witness that regardless of whether an identification is made, the police will continue to investigate the incident.

6. Instruct the witness that the procedure requires the investigator to ask the witness to state, in his/her own words, how certain he/she is of any identification.

C. Conducting the Live Lineup

1. Instruct all those present at the lineup not to suggest in any way the position or identity of the suspect in the lineup.

2. Avoid saying anything to the witness that may influence the witness' selection.

3. Consider video/audio recording the entire lineup procedure, starting with the instruction to the witness and keeping the camera focused on the individuals in the lineup.
4. Before the witness is permitted to see the lineup, provide instructions to the witness as outlined in the preceding section.
5. Confirm the witness understands the instructions.
6. Ideally, this should involve two administrators: a primary administrator to accompany the witness throughout the procedure, and a secondary administrator to instruct the lineup members during the viewing. Unless impracticable, both should be blind. If the primary administrator is not blind, then he/she shall leave the viewing room while the witness is viewing the lineup.
7. During the viewing, ensure that all identification actions (e.g., speaking, moving) are performed by all members of the lineup. Consider the following:
 - A. Starting from witness' left to right, have each individual step up (for approximately five seconds), turn to show right profile (for five approximately seconds), then turn to show left profile (for five approximately seconds), then step back.
8. When the witness alerts that he/she is finished, ask the witness if he/she is able to identify the person who committed the crime.
9. If an identification is made:
 - A. Avoid reporting to the witness any information regarding the individual he/she selected prior to obtaining the witness' statement of confidence level.
 - B. Ask the witness how certain he/she is about the identification.
10. Record any identification results as outlined in Section IV. See Forms.
11. Instruct the witness not to discuss the identification procedure or results with other witnesses involved in the case and discourage contact with the media.

NOW, THEREFORE, BE IT ORDAINED, by the Council of the Village of Hamersville, Brown County, Ohio:

Section 1: The Village of Hamersville, Brown County, Ohio, shall follow the policy to comply with the lineup requirements as outlined above.

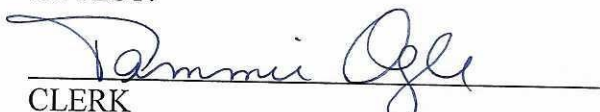
Section 2: This ordinance shall take effect at the earliest time permitted by law.

DATED:

2-14-2011


MAYOR

ATTEST:


CLERK

Ordinance reviewed and approved as to form:


Cecelia J. Potts, Village Solicitor Date