5-09/530.20 - Photo Arrays

The following applies to photo array procedures in compliance with Penal Code section 859.7:

- Prior to conducting the identification procedure, and as close in time to the incident as possible, the eyewitness shall provide the description of the suspect of the offense. Detectives shall confirm this step prior to any of the following procedures;
- The deputy conducting the identification procedure shall use blind administration or blinded administration. In the event blind administration is not used, the deputy shall document the reason;
    - “Blind administration” is when the deputy administering the identification procedure does not know who the suspect is; and
    - “Blinded administration” is when the deputy administering the identification procedure knows who the suspect is; but, does not know what position the suspect will be placed in;
- A photo array shall contain only one suspect and be arranged so the “filler” subjects generally fit the suspect description provided by the eyewitness. Deputies shall make every attempt to use suspect and “filler” photos in the photo array which depict the suspect at the time the crime occurred (if practicable) and not unduly cause the suspect photo to stand out;
- Deputies showing photo arrays shall not make any comments or gestures that could influence the witness or prejudice the investigation. Suggesting one suspect over any other (before or after viewing the photo array) in any manner, shape or form, either by body language, verbal articulation, or other communication to the witness are unacceptable and will likely render the identification inadmissible in court;
- Deputies shall document a witness’ response, verbatim, anytime a witness is shown a photo array in any format. Any effort at identification must be fully documented, whether an identification is made or not;
- The deputy conducting a photo array where someone has been identified, shall immediately inquire as to the eyewitness’ confidence level in the identification and the deputy shall record, verbatim, the eyewitness’ response. No information regarding the identified person in the photo array shall be given to the eyewitness prior to their response;
    - Documenting an eyewitness’ response shall be in writing in case notes or records; but should include an audio or video recording as well;
- The showing of photo arrays in the presence of more than one witness is not appropriate, unless the witness is so distraught that the witness requests the presence of another person for emotional support. If the witness and the accompanying person are both witnesses to the same crime, then measures must be taken to separate each individual while the actual showing of the photo is conducted. A lack of separation of the witnesses may result in the inadmissibility of either person’s identification;
- Prior to being shown a photo array, witnesses shall be admonished regarding the procedures (form SH-R-628 Witness Admonition – Photo Array);
- All witnesses shall be admonished that the suspect may or may not be among the photo presented and the witness is not required to make any identification;
- All witnesses shall be admonished that an identification or failure to make an identification will not end the investigation;
- Records, writings, or information concerning any previous arrests of the suspect in the photo array shall not be visible to the eyewitness;
- When photo arrays are shown to multiple witnesses who may communicate with each other (e.g., family

members, friends, associates, coâ€‘workers, etc.), deputies shall present the suspect's photo in different, random positions within the photo arrays. This procedure reduces the possibility of one witness telling another witness the position or number of a suspect in a photo array;

- Deputies who show photo arrays to witnesses are prohibited from confirming or denying, in any manner, including verbally, hand signs, body language, facial expressions, or otherwise, whether or not they have identified the correct individual;
- All persons present during a photo array shown to a witness, including other sworn personnel, interpreters, or those present to support the witness, shall be identified and documented in writing; and
- Witnesses shall be admonished not to discuss the case with others, nor indicate that they have or have not made an identification, unless directed to do so by law enforcement personnel or during the judicial process.