Brett P. Smiley
Mayor

Colonel Oscar L. Perez
Chief of Police

Department of Public Safety, Police Department
"Building Pride in Providence"

September 9, 2025

Ferenc Karoly, Esq.
Executive Director
Providence External Review Authority
400 Westminster Street, Suites 201-202
Providence, Rhode Island 02903

Dear Director Karoly:

The Providence Police Department (PPD) is in receipt of your letter dated March 18, 2024 regarding the Providence External Review Authority's (PERA) proposed policy changes. Please find our responses to your recommendations outlined in the same order as is outlined in your letter.

General Order 360.08 Eyewitness Identification: Photographic Line-Ups, Physical Line-Ups & Show-Ups

1) PERA first recommends that all PPD officers be trained in both administering and understanding the limitations of eyewitness identification as well as recommending all officers undergo a refresher training on such topics. We appreciate PERA's recommendation regarding enhanced training for Providence Police Department personnel on the administration and limitations of eyewitness identification.

It is important to clarify that patrol officers do not conduct photo arrays or physical lineups. These procedures are handled exclusively by trained detectives, who receive specialized instruction on administering such identifications in accordance with legal standards and best practices. In fact, in regards to physical line-ups, the PPD generally does not conduct them anymore.

Nevertheless, all recruits at the Providence Police Academy are thoroughly trained on the procedures and legal considerations related to physical lineups, photo arrays, and field show-ups. This foundational training ensures that all officers, regardless of assignment, understand the critical importance of proper identification procedures and their limitations.

In situations where a physical show-up may be necessary in the field, this process is always conducted under the direction of a supervisor and/or a detective—both of whom typically respond to the scene to ensure the process is conducted properly and in accordance with department policy.

2) PERA next recommends a requirement that all photo and physical line-ups utilize blind administration, meaning the officer conducting the line-up does not know who the suspect is to avoid any subtle and unintentional clues. Presently, blind administration is optional for officers regarding photo line-ups. See G.O. 360.08, Eyewitness Identification, at pg. 4. The overwhelming majority of our photo line-ups are done by a blind administrator. While the concept of blind administration—where the detective conducting the line-up is unaware of the suspect's identity—is intended to reduce the risk of suggestiveness during eyewitness identification, mandating its use in all photo line-ups may not be practical or necessary in every case. Our position does not dispute the value of blind administration as a best practice but emphasizes the importance of operational flexibility and the sufficiency of existing safeguards when it is not used.

The following points highlight our reasoning:

1. Operational Limitations and Resource Constraints: Even within a large department, requiring blind administration for all photo line-ups can present logistical challenges and impact operational efficiency. Investigations often involve multiple time-sensitive tasks, and requiring another detective to conduct blind line-ups in every case could divert personnel from critical duties. Allowing some discretion in how line-ups are administered ensures resources are used effectively without compromising investigative integrity.
2. Professional Training and Accountability: Detectives receive extensive training on how to conduct neutral and non-suggestive line-ups, including the use of standardized instructions, controlled environments, and clear documentation. When these protocols are followed, the potential for inadvertent influence is significantly minimized—even in non-blind scenarios.
3. Discretion and Case-Specific Needs: Law enforcement should retain the discretion to select the most appropriate method based on the specific facts and circumstances of each investigation. A rigid requirement could undermine investigative efficiency without a corresponding increase in reliability, particularly in cases where the risk of suggestiveness is already low.

Conclusion:
While blind administration is a valuable tool for minimizing potential bias in eyewitness identification, requiring it in all photo line-up cases imposes significant practical challenges without necessarily improving outcomes across the board. Maintaining it as a recommended—but not mandated—option allows departments to balance investigative integrity with operational realities and resource constraints.

The PPD agrees to modify the section to read as follows:

When circumstances warrant, it is strongly recommended Department personnel use ~~may consider using~~ an independent administrator to present the photographic line-up. See G.O. 360.08, Eyewitness Identification, at pg. 4.

This same or similar language will be added to the sections of the policy pertaining to the other types of eyewitness identification, specifically, in-person line-ups and show-ups.

3. PERA is further seeking standardized instructions for photo and physical line-ups. Currently, for both, there are instructions to be provided to those doing the identifications, however, in the case of both if the instructions are unavailable, the policy allows for "similar documented verbal instructions." While standardized instructions are essential for promoting consistency, fairness, and the integrity of identification procedures, it is important to recognize that rigid standardization may not be feasible or appropriate in all circumstances. Permitting the use of "similar documented verbal instructions" allows law enforcement personnel to adapt to practical challenges while still preserving the core principles of due process and reliability.

Some of the key reasons for maintaining this flexibility include:

1. Operational Realities: In dynamic field situations or time-sensitive investigations, access to printed or scripted standardized instructions may not always be immediately available. Allowing comparable verbal instructions ensures that identification procedures can still be conducted lawfully and effectively without unnecessary delay.
2. Contextual Sensitivity: Certain situations may require tailoring the instructions to the specific needs or comprehension levels of the witness (e.g., due to language barriers, cognitive impairments, or trauma-related factors). Flexibility allows officers to adjust the delivery while preserving the intent and content of the standard protocol.
3. Legal Sufficiency: The use of documented verbal instructions still provides a verifiable and reviewable record of compliance with identification procedures. So long as the substance mirrors that of the standard guidance, the integrity of the process remains intact.
4. Training and Accountability: Officers are trained on the content and purpose of standardized instructions, ensuring that even when verbal variations are necessary, the key safeguards—such as neutrality, non-suggestiveness, and witness awareness of their rights—are upheld.

In conclusion, while we fully support the use of standardized language whenever practicable, allowing for "similar documented verbal instructions" provides essential procedural flexibility without compromising the fairness or reliability of the identification process.

Additionally, the PERA is seeking a statement notifying the witness in the case of a photo line-up that in the event a suspect is not identified, the investigation will continue (which currently is only required in physical line-ups). We agree with the PERA's recommendation to inform witnesses, during photo line-ups, that the investigation will continue even if no identification is made. This language, already included in physical line-up procedures, reinforces that the investigation does not depend solely on a witness identification and helps reduce any undue pressure a witness may feel to make a selection. To promote consistency and support witness confidence, we will update our photo line-up instructions to include this notification as a standard part of the process.

4. PERA is additionally seeking a requirement that both photo and physical line-ups be video recorded. Currently, the policy as it pertains to physical line-ups states audio and video tape may be used if practical and there is no requirement or suggestion as it pertains to audio or video recording of photo line-ups. While the intent behind requiring video recording of photo and physical line-ups is to enhance transparency and accountability, a mandatory policy does not always reflect the practical realities and operational needs of a large, diverse department. Our

current policy—which allows for audio or video recording of physical line-ups *when practical*, and does not require recording of photo line-ups—strikes a more appropriate balance between documentation, feasibility, and investigative effectiveness.

Key reasons for opposing a mandatory video recording requirement include:

1. Operational and Logistical Constraints:
   Mandating video recording in all cases could significantly slow the investigative process, especially in fast-moving or high-volume investigations. For photo line-ups in particular—which are often conducted in the field, or in informal settings—ensuring access to appropriate recording equipment and secure storage is not always practical or feasible.
2. Privacy and Sensitivity Considerations:
   Recording may discourage some witnesses—especially vulnerable victims of violent or traumatic crimes—from participating in a line-up, or from speaking freely. Some may be uncomfortable being recorded, particularly in cases involving minors, domestic violence, or sexual assault. Preserving witness cooperation is critical, and blanket recording requirements may inadvertently hinder that.
3. Existing Documentation Protocols Provide Sufficient Accountability:
   Current procedures already require careful documentation of line-ups, including standardized witness instructions, documentation of results, and officer reports. These records, combined with audio or video recording *when practical*, offer sufficient safeguards to ensure transparency and accountability without imposing blanket requirements.
4. Maintaining Investigator Flexibility:
   Rigid recording mandates may limit an investigator's ability to adapt procedures to the specific needs of a case. Flexibility is crucial to responding effectively to unique circumstances and to ensuring timely progress in investigations without compromising the rights of the accused or the reliability of the identification process.

Conclusion:
While video recording can be a valuable tool, a one-size-fits-all mandate does not serve the practical, legal, or investigative needs of the department. Maintaining flexibility around established legal principles allows officers to apply sound judgment based on the context of each case, while still ensuring accountability through existing documentation and protocols.

5. PERA recommends that a confidence statement be included not only in physical line-up instructions as the current policy requires, but also in photo line-ups. A confidence statement requires an eyewitness to state in his or her own words how confident he or she is in the eyewitness identification they are making. We agree with PERA's recommendation to include a confidence statement in photo line-up procedures, consistent with the requirement already in place for physical line-ups. Our detectives routinely do obtain a confidence statement from the witness on the photo that they do select as a suspect. Capturing a witness's level of confidence at the time of

identification provides important context and supports the integrity of the investigative and judicial process. Accordingly, we will update our policy and procedures to require that, following any identification in a photo line-up, the witness is asked to provide a confidence statement in their own words, which will be documented as part of the official record.

6. Finally, PERA recommends that juveniles not be used in or participate in photo line-ups, physical line-ups, or field identifications without the *written* consent of their parent or guardian. We respectfully disagree with the recommendation to require written parental or guardian consent before a juvenile can participate in a photo line-up, physical line-up, or field identification. While we fully recognize the importance of protecting minors and ensuring they are not subjected to inappropriate or coercive procedures, the proposed requirement introduces significant operational and legal concerns, particularly when juveniles are involved as witnesses or victims.

Importantly, our department does not use juvenile fillers in photo line-ups when the suspect is an adult, thereby avoiding any risk of inappropriate or suggestive comparisons. The participation of juveniles in identification procedures is generally limited to situations where the juvenile is a witness or victim, and their identification may be crucial to the progress of a serious investigation.

Requiring written consent in all such cases could lead to delays that jeopardize the integrity and timeliness of an investigation, especially in circumstances where a suspect may flee, reoffend, or destroy evidence. In urgent or exigent cases—particularly those involving violent crimes or child victims—this requirement may obstruct the ability to take swift investigative action.

Instead, our approach emphasizes:

- Using trained detectives who are experienced in interacting with juveniles;
- Conducting identifications in a sensitive, non-coercive manner;
- Involving a responsible adult, where appropriate and feasible;
- Thoroughly documenting the procedure and circumstances under which it was conducted.

This approach strikes a more practical balance—protecting the rights and welfare of juveniles while preserving the department's ability to conduct timely and effective investigations. We remain open to discussing safeguards and best practices, but do not support a blanket written consent requirement that could hinder critical aspects of investigative work.

Thank you for your attention to these matters.

Sincerely,

Colonel Oscar Perez
Chief of Police