

Model Policy on Eyewitness Identification

Frequently Asked Questions

1. Do I have to adopt the LEMIT model policy?
 - a. No. Article 38.20 § 2 of the Texas Code of Criminal Procedure requires that any “law enforcement agency of this state or of a county, municipality, or other political subdivision of this state that employs peace officers who conduct photograph or live lineup identification procedures in the routine performance of the officers' official duties” to “adopt, implement, and as necessary amend a detailed written policy regarding the administration of photograph and live lineup identification procedures.”
 - b. The LEMIT model policy was drafted in response to § 3(b) of the Texas Code of Criminal Procedure, which required LEMIT to “develop, adopt, and disseminate to all law enforcement agencies in this state a model policy... regarding the administration of photograph and live lineup identification procedures.”
 - c. Thus, agencies are required to adopt a policy pursuant to § 2 and LEMIT was required to develop a model policy, pursuant to § 3.
2. Some witnesses may refuse to be recorded out of fear for their safety and some victims may be too fragile to be video recorded. Won't this policy put them at risk or further traumatize them?
 - a. No. The welfare of victims and witnesses is paramount. If the victim or witness refuses to be recorded or recording would place the victim or witness at risk, then the procedure can be documented in writing. Under these circumstances, the model policy indicates that “the reason for not video or audio recording should be documented.”
 - b. Because actual recordings are very persuasive, reluctant victims--who clearly have a stake in the successful prosecution of guilty offenders-- should be informed that actual recordings will likely carry greater weight in court.
3. Our resources are so limited we don't have sufficient personnel to conduct sequential lineups and photo arrays. Is the sequential method that important?

- a. Yes. First, conducting an eyewitness identification procedure sequentially (one at a time), as opposed to simultaneously (all at once), requires no additional personnel.
 - b. Second, the research is quite clear that sequential procedures are less likely than simultaneous ones to result in selecting the wrong person. Insofar as the chief purpose of the legislation leading to this policy was to reduce false identifications, we have expressed a clear preference for sequential methods.
4. Our resources are so limited we do not have sufficient personnel to conduct blind administrations of lineups and photo arrays. Is blind administration that important?
 - a. Yes. Decades of research have made it quite clear that people “leak” information. Despite their best efforts, administrators who are not blind may inadvertently communicate information about the suspect. Although we typically are not aware of subtle cues, even animals are able to pick up on these unintentional cues (see the “Clever Hans effect”).
 - b. Photo arrays are much more common than live lineups and, if resources are limited, a properly conducted blinded procedure is just as effective as a blind procedure and it requires no additional resources.
 - c. If the procedure will be a live lineup, then consider using non-sworn personnel or getting assistance from or working in partnership with another agency.
5. Our detectives go to great lengths to establish good rapport with witnesses and victims. Isn’t “handing off” our witness or victim to a blind administrator, whom they don’t know or trust, insensitive to their needs?
 - a. No. The administrator of a blind procedure will be just as sensitive to the witness’s needs as the detective is. Victims and witnesses regularly interact with criminal justice professionals other than detectives, including physicians and nurses who collect evidence for rape kits; Child Protective Service workers in cases involving children who have been abused; Assistant District Attorneys who must prepare witnesses for court; and a host of others. The decision to conduct a non-blind administration in the interest of maintaining rapport should be undertaken with the knowledge that doing so may sacrifice the validity of the procedure.

6. Do we have to use a court-certified interpreter every time we conduct an eyewitness identification procedure with someone who speaks a language other than English?
 - a. No. We realize that different communities have varying levels of interpretation resources. Moreover, even in communities where court-certified interpreters are abundant, they may not be easily accessible for a show-up conducted at 3:00 am. Consequently, the policy allows for some flexibility. Administrators should be thoughtful about whom to use for this purpose.

7. Why do we have to allow defense attorneys to attend certain lineups when the policy says nobody should be present who knows which person is the suspect?
 - a. The United States Supreme Court decided the issue that way (see *Gilbert v. California*, 388 U.S. 263, 1967).

8. How did LEMIT develop the policy?
 - a. LEMIT convened a working group that canvassed existing policies and research on eyewitness identification to develop a working draft which was then submitted to various stakeholders including: (a) prosecuting attorneys, (b) defense attorneys, (c) a sitting Judge from the Texas Court of Criminal Appeals, (d) non-governmental organization stakeholders, (e) researchers and scholars who have studied the issue for decades, and (f) law enforcement agencies of various sizes. We received written feedback from many of these stakeholders and many attended a day-long meeting in September at LEMIT. Feedback from this meeting led to revisions of the policy and the revised policy went back out for public review and comment which included a public hearing in Austin on December 1. Based on that round of comments, the policy was revised again and the revised policy was sent to a number of working detectives to provide feedback on clarity and consistency. That feedback led to the final draft.