

# TELEMASP BULLETIN

## TEXAS LAW ENFORCEMENT MANAGEMENT AND ADMINISTRATIVE STATISTICS PROGRAM

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### Investigative Hypnosis

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In January 1988, Senate Bill 929 authorized Texas law enforcement agencies to use hypnosis as a tool in criminal investigations to enhance memory recall of victims or witnesses regarding crime details. In 1999, investigative hypnosis training and certification became the responsibility of the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE). Texas is the only state which mandates minimum training standards, testing and certification of police officers who use investigative hypnosis.

#### Brief History of Investigative Hypnosis

In the first documented use of hypnosis in a criminal case (*People v. Ebanks*, 49 P. 1049; 1053 [CAL. 1897]), Ebanks denied under hypnosis that he was guilty of a homicide. Subsequently, the hypnotist was called to testify about the defendant's innocence. The California court held the expert hypnotist's testimony as inadmissible given that hypnotism was not considered reliable or recognized under United States law. Seventy-one years later, the California Supreme Court allowed hypnotically refreshed testimony of a witness in *Harding v. State* (1968) and ruled that the technique was no different than any other method of refreshing a witness's memory. Additionally, it was the court's opinion that a witness's truthfulness and reliability would be further subjected to cross-examination and expert testimony (Webert, 2003).

In *State v. Hurd* (1981), New Jersey's Supreme Court decision recognized four prong dangers associated with hypnotically enhanced memory recall and established procedural safeguards. The court decided that hypnotically refreshed testimony would be, "... generally accepted as a reasonably reliable method of restoring a person's memory ..." if the session was properly conducted and only in appropriate cases (Webert, 2003). However, in *People v. Shirley* (1982), one of the most influential decisions against

hypnosis, the California Supreme Court rejected the New Jersey Supreme Court's procedural safeguards and reversed the previous decision of *Harding*. In the *Shirley* decision, the court determined that a witness under hypnosis would be rendered incompetent and unable to testify in court to any hypnotically refreshed recall. Based upon the perceived incompetence, *Shirley* excluded California's use of investigative hypnosis by law enforcement. During the same year, a revision to *Shirley* by the California Supreme Court allowed the defendant's previous hypnotically refreshed recall testimony as admissible, although the revision was not provided to defense witnesses (Schefflin & Shapiro, 1989).

In 1986, the Supreme Court of Arkansas ruled that a defendant's hypnotically refreshed testimony was inadmissible. On appeal, the United States Supreme Court reversed the lower court's decision in *Rock v. Arkansas* (1987) and ruled that the denial of all hypnotically refreshed testimony had the effect of violating the right of defendants to testify on their own behalf. The United States Supreme Court stipulated that the admissibility of hypnotically refreshed testimony should be corroborated with ancillary evidence and conducted professionally and ethically (Niehaus, 1998).

*Texas v. Zani* (1988) established the use of investigative hypnosis for Texas law enforcement. In 1980, investigators asked Texas Ranger Carl Weathers to conduct a hypnosis interview with a witness thirteen years after the 1967 murder of a north Austin convenience store clerk. Although prior to the hypnosis session the witness was only able to recall seeing a white male in the store, while under hypnosis, he gave a description of a man he had seen behind the counter on the morning of the murder and also assisted a police artist in preparing a sketch of this person. After the session, the witness identified Zani from a photo lineup as the man he had seen behind the counter. The Texas Court of Criminal Appeals acknowledged that the hypnosis session had avoided

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deliberate and inadvertent suggestions through recognition of the four prong dangers and observance of the procedural safeguards. The court ruled the witness's testimony in *Zani v. Texas* was uncompromised and admissible. Table 1 provides a brief outline of the history of investigative hypnosis.

**Table 1. The History of Investigative Hypnosis**

1897	<b><i>People v. Ebanks</i></b> : U.S. law did not recognize hypnosis as a reliable method of memory recall.
1962	<b>First approved</b> : Law enforcement hypnosis course conducted in Ridgefield, New Jersey.
1968	<b><i>Harding v. State</i></b> : California Supreme Court was the first to allow hypnotically refreshed memory.
1976	<b>Chowchilla, California</b> : Kidnapped school bus driver and 25 children buried in a van underground for 16 hours. Under hypnosis, the bus driver was able to recall all but one number on the license plate of a van driven by the kidnappers. The hypnosis session was conducted by a medical doctor.
1976	<b>Dr. Martin Reiser</b> : Established the Law Enforcement Hypnosis Institute at the Los Angeles Police Department.
1981	<b><i>State v. Hurd</i></b> : The Supreme Court of New Jersey ruled that hypnotically refreshed testimony was admissible if the session was conducted properly, only in appropriate cases, and procedural safeguards were utilized.
1982	<b><i>People v. Shirley</i></b> : The California Supreme Court reversed the decision of <i>Harding v. State</i> and discontinued California law enforcement's use of investigative hypnosis.
1987	<b><i>Rock v. Arkansas</i></b> : The U.S. Supreme Court ruled a defendant's use of pre-trial hypnosis was admissible as a method of refreshed memory to protect the defendant's constitutional rights under the Fifth, Sixth, and Fourteenth Amendments.
1988	<b>Texas</b> : Senate Bill 929 authorized hypnosis as a law enforcement investigative tool.
1988	<b><i>Texas v. Zani</i></b> : Hypnotically refreshed witness testimony was admissible based upon the four prong dangers and ten procedural safeguards.

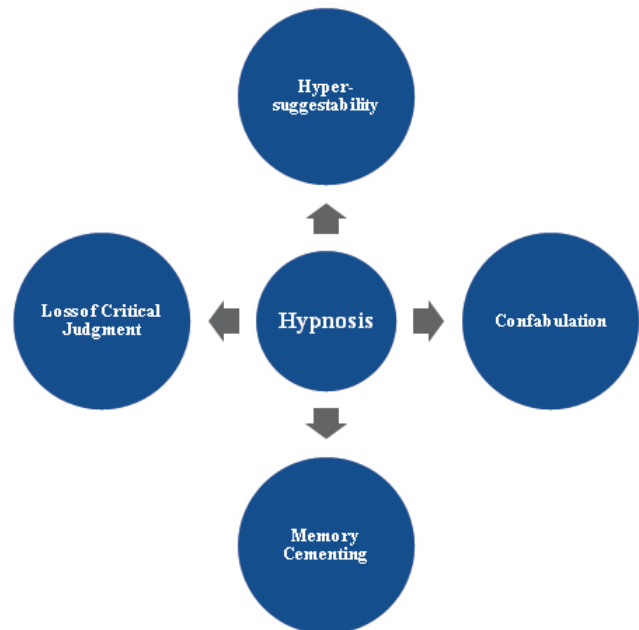
### Myths, Misconceptions, and Realities

Although similarities have been observed in the brain activity of a person who has experienced hypnosis versus one who is awake (Kihlstrom, 1998), common perceived myths and misconceptions linked with the use of hypnosis include that the subject is under the hypnotist's complete mental control, has an occurrence of amnesia, divulges secrets, or is being forced to tell the truth. Rather, hypnosis is an altered state of consciousness that many individuals may have experienced during the moments prior to falling asleep and suddenly becoming fully awake or when driving on a long stretch of highway. During an investigative hypnosis session, individuals are aware of their surroundings and are capable of opening their eyes and ending the session at any time (Garner, 2002). When conducted properly, hypnosis as an investigative tool can refresh a subject's recollection of an event and facilitate a clear memory with the opportunity to

examine details not previously recognized and recall events without distortion (Yager, 1997).

### Four Prong Dangers and Procedural Safeguards

Admissibility of hypnotically refreshed recall requires strict adherence in avoiding the four prong dangers established by the New Jersey Supreme Court (*Hurd*) and accepted by the Texas Court of Appeals (*Zani*). As shown in Figure 1, the potential for compromising a subject's recall can result from hypersuggestibility, loss of critical judgment, confabulation, and memory cementing. Hypersuggestibility is the phenomenon of the victim or witness who, in a relaxed state of mind, is susceptible to suggestions from the hypnotist or others present during the hypnosis interview session. Loss of critical judgment can occur if an individual is influenced by the hypnotist's verbal or non-verbal cueing which may convey that hypnotically refreshed recall will be perceived as successful. Confabulation is the creation of details or filling in the gaps to create a complete memory. Whether true or false, an individual's increased belief in the hypnotically recalled facts is referred to as memory cementing. According to critics, the four prong dangers of hypnotically refreshed recall have the potential for making cross-examination of witnesses and victims more difficult (Webert, 2003).



**Figure 1. Four prong dangers of hypnotically refreshed recall**

The procedural safeguards established by TCLEOSE to overcome the dangers associated with hypnotically refreshed recall include training and certification, the hypnotist's independence from the investigation, prosecution, and defense, and a record of the hypnotist's knowledge of the case facts prior to the hypnosis session. It is imperative that all contact between the hypnotist and the subject, the subject's comprehension of the interview session's purpose, and the location of the session be audio or video recorded, or both. Additional safeguards include a record of

all persons present anytime during the hypnosis session, a written or recorded statement of the subject’s recall of the facts prior to the hypnosis session, and avoidance of verbal and non-verbal cueing by applying an appropriate hypnosis induction technique. Following the hypnosis interview, recalled memories must be corroborated, and a record of the interview session for submission into evidence must be available reflecting that the hypnotist avoided leading the subject (*Zani v. Texas*, 1988).

### Investigative Hypnosis Certification

TCLEOSE’s responsibility for investigative hypnosis oversight was established by the Texas Occupations Code §1701.403. The minimum requirements for investigative hypnotists include experience as an investigator and completion of a minimum 40-hour TCLEOSE basic investigative hypnosis course consisting of the background of hypnosis, dynamics of the human mind, nature and theories of hypnosis, appropriate induction techniques for use during an investigative hypnosis session, and legal aspects. Successful TCLEOSE certification is dependent upon completion of the basic course and a minimal score of 70 on an examination containing 100 questions. Until all requirements are met and certification is achieved, a peace officer may not conduct an interview utilizing hypnotic induction techniques. The penalty for the appointment or retention of a peace officer who is not certified to conduct an investigative hypnosis interview is a misdemeanor punishable by a fine of not less than \$100 and not more than \$1000 (Texas Occupations Code, 2007).

### The TELEMASP Survey

Forty-eight Texas law enforcement agencies participated in a 25-item survey designed to determine the extent that investigative hypnosis is employed, officer assignment and educational status, types of hypnosis interview sessions, location of sessions, recording methods, and induction techniques. The Houston Police Department represented the largest agency with 5,114 sworn officers, and the White Settlement Police Department was the smallest agency having 31 sworn officers.

### Results

Twenty-four percent of the agencies had used forensic hypnosis as an investigative tool, while 46% reported forensic hypnosis was **not** routinely utilized to augment criminal investigations. The remainder of the agencies (30%) reported it was unknown whether forensic hypnosis had ever been utilized. See Figure 2. Among agencies that had not used forensic hypnosis in the past, 56% indicated that they would employ in the future only in special circumstances, while 38% indicated their agency would never consider the application of forensic hypnosis, and 6% were uncertain as to the future use of hypnosis. See Figure 3.

As depicted in Figure 4, 16 respondents reported that the regular duty assignment of the majority of investigative hypnotists was that of investigator or detective (86%), and the remainder was assigned to administration or support staff (14%). Respondents also indicated that investigative hypnotists were trained in other specialties including statement analysis (50%), handwriting analysis (25%), and facial composite drawing (25%) (see Figure 5). The

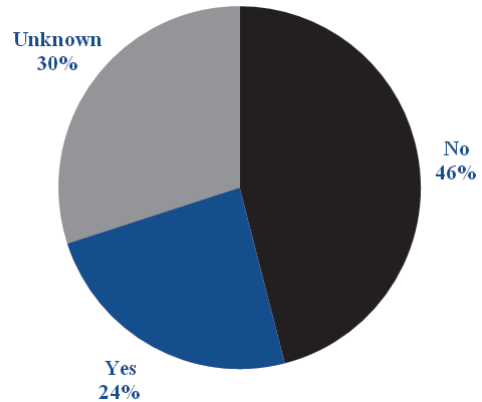


Figure 2. Agencies that have employed investigative hypnosis

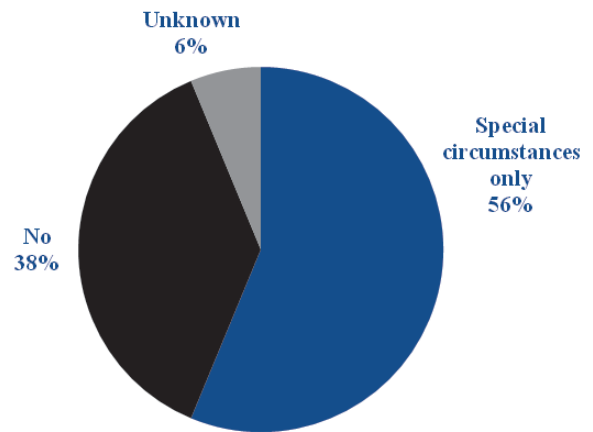


Figure 3. Future use of investigative hypnosis by agencies not already having employed investigative hypnosis

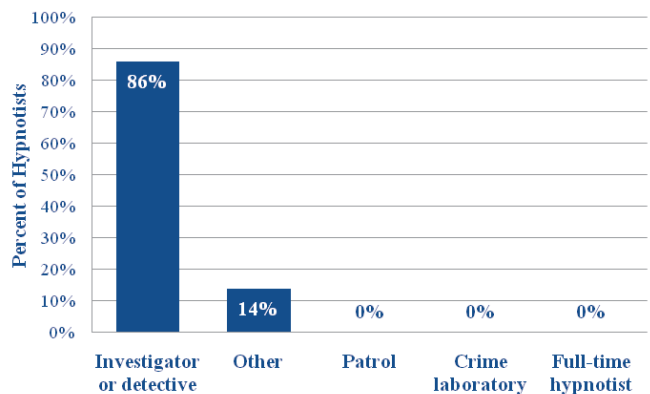


Figure 4. Regular duty assignments of investigative hypnotists

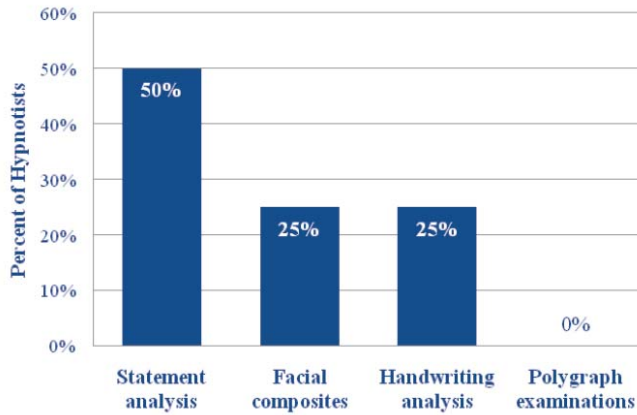


Figure 5. Additional investigative specialties

educational backgrounds varied from a master’s degree (35%), a bachelor’s degree (29%), some college (18%), an associate’s degree (12%), or a high school diploma (6%) (see Figure 6).

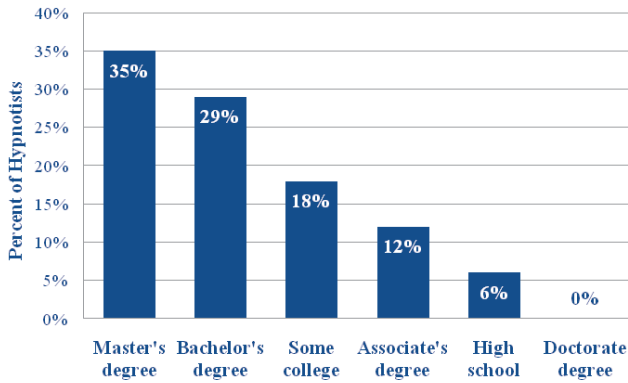


Figure 6. Educational background

Beyond TCLEOSE’s minimum 40-hour basic course requirement, additional training is not mandatory. However, investigative hypnotists attend training for the purpose of obtaining legislative updates, practicing induction techniques with peers, and preparing expert witness testimony. As illustrated in Figure 7, 42% of the investigative hypnotists were reported to attend training every two to three years followed by 25% who attend annual training, and 8% who undergo training two to three times a year. The remaining 25% were reported as having no training beyond the basic investigative hypnosis course.

One of the procedural safeguards utilized is the hypnotist’s independence from the investigation. Larger agencies, namely the Houston Police Department and the Texas Department of Public Safety can easily satisfy this requirement due to the larger number of investigators employed. Other responding agencies reported the reliance on other department hypnotists to assist with investigations that require a hypnosis interview. However, suspects typically do not undergo hypnosis in order

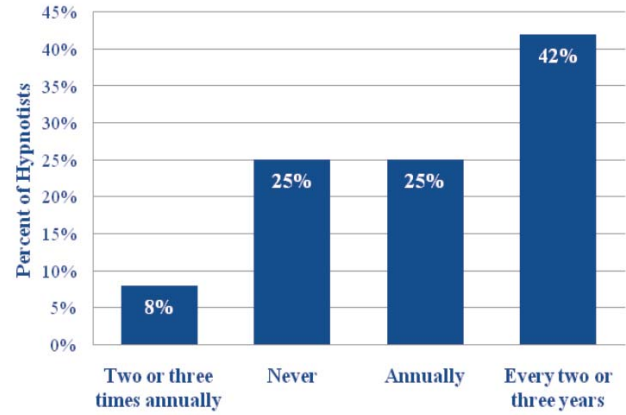


Figure 7. Additional hypnosis training

to avoid a violation of the Fifth Amendment constitutional right against self-incrimination. As shown in Figure 8, respondents reported that agencies use other departments when conducting investigative hypnosis interviews with witnesses (40%) and victims (21%). Of those agencies that employ their own investigative hypnotists, 27% were conducted with victims and 12% with witnesses.

Important for both the subject and the hypnotist, the location of the investigative hypnosis interview should be large enough to facilitate a table, a minimum of three chairs, and a video camera. To avoid distraction and non-verbal cueing, the room should be in a quiet setting equipped with climate control, a clock, and bare walls. Depending upon whether there is a hidden video recorder, it may be necessary to use lapel microphones in order to capture the voices of the subject as well as the investigator. Additional efforts must be made to ensure that all recording equipment is in excellent operational condition complete with a sufficient supply of tapes and batteries. Another investigator who is out of sight from the subject should be available to take notes and change batteries and tapes when necessary. Figure 9 provides the locations selected by the surveyed agencies.

The main purpose for recording the investigative interview is to identify the hypnotist and the date, time and location of the interview as well as the type of information the case investigator has requested. Second is to reflect the separation between the subject and the hypnotist prior to beginning the interview. As shown in Figure 10, 52% of the agencies that utilize hypnosis video record the session with the remaining 48% using audio recorders.

To avoid verbal cueing or suggestions to the subject, a portion of the basic hypnosis course consists of learning induction techniques through the application of a well-modulated voice and strict adherence to a script. The investigative hypnotist’s experience and confidence will determine the application used during an interview. As Figure 11 depicts, a combination of memory and a written script was the most preferred method (60%) reported followed by the use of a prepared script (20%), rote memory (13%), and other (7%).

As shown in Figure 12, agencies use investigative hypnosis sessions as a source to obtain additional useful information

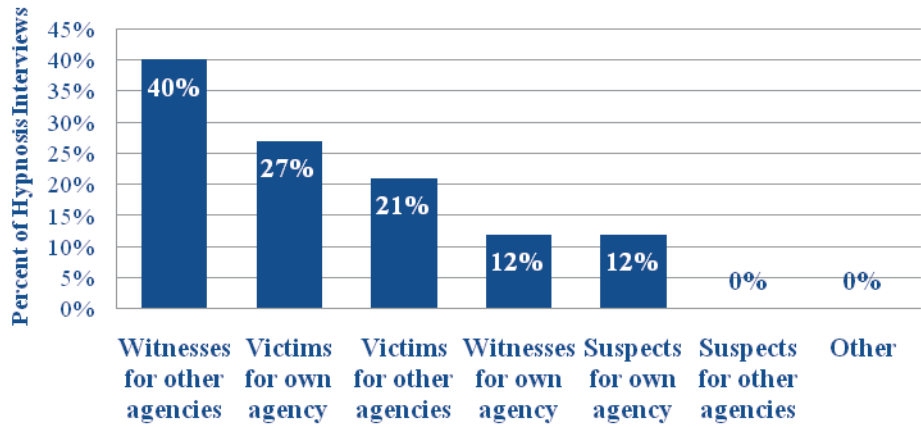


Figure 8. Types of investigative hypnosis interviews

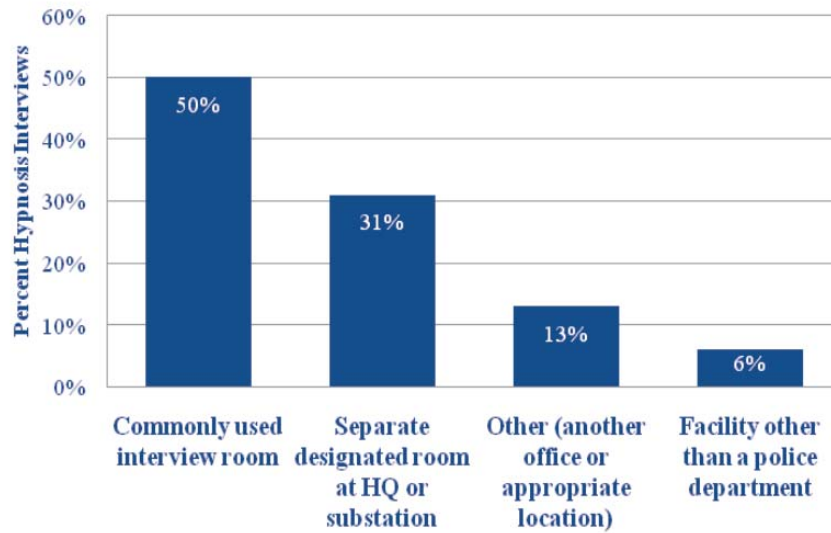


Figure 9. Location of investigative hypnosis interviews

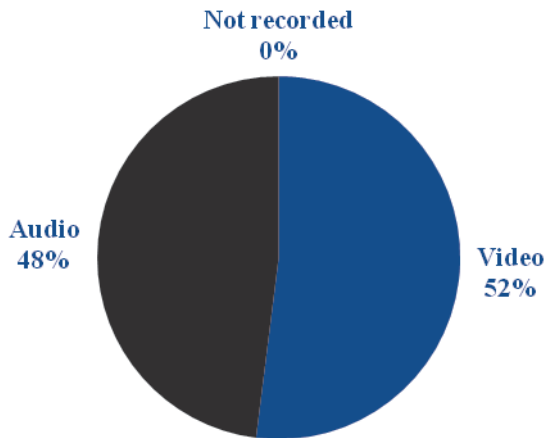


Figure 10. Recording method

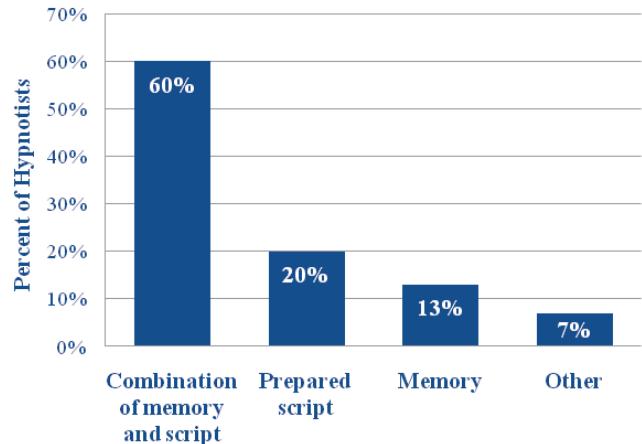
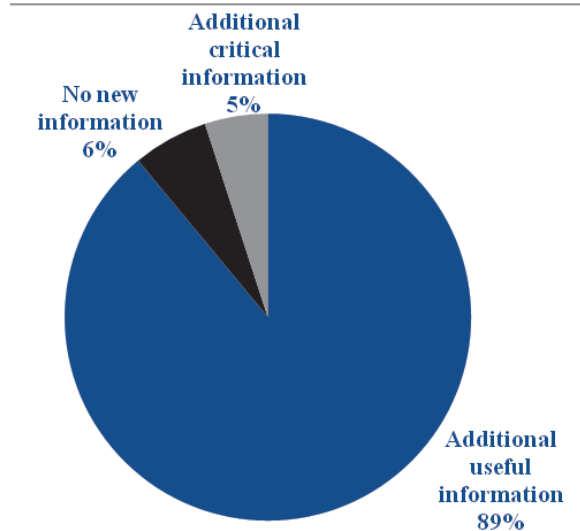


Figure 11. Induction technique



**Figure 12. Information obtained**

(89%) or critical information (5%) with 6% reported to have gained no new information. To ensure reliability, all information acquired through hypnotically refreshed recall is subject to corroboration. During an investigative hypnosis interview, only the subject and the hypnotist are allowed to speak. Any questions posed by other investigators present in the room are passed on to the hypnotist in written form and shielded from the victim or witness. To elicit a response and avoid inadvertent cueing of information, the hypnotist will ask the subject open-ended questions. Inadvertent cueing is avoided by limiting the hypnotist's knowledge of the case. Upon completion of the hypnosis interview, the victim or witness is advised to contact the case investigator if he or she recalls any additional information in the future.

### Conclusion

Investigative hypnosis is not a method for determining the truthfulness of a statement provided by a victim or witness but rather is a tool that gives a person the ability to recall event details by concentrating without distractions while in a relaxed state. The four prong dangers to be avoided and the procedural safeguards established to overcome these dangers represent measures in which a successful hypnotically refreshed session can further assist in a criminal investigation and be admitted as testimony. Respondents who reported that their agencies use investigative hypnosis appeared cognizant regarding the procedural safeguards

as exemplified by employing hypnotists from other departments to conduct sessions. Strict observance of capturing the session's account through the use of a video or audio recorder was also reported by all agencies.

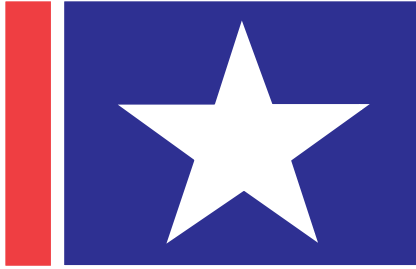
The standards set by TCLEOSE have not changed since 1999. In addition, obtaining certification as a forensic hypnotist has remained static, including a criminal penalty for utilizing a peace officer who has not fulfilled the requirements for conducting an investigative hypnosis session. Peace officers who are interested in certification as an investigative hypnotist may obtain training information at [www.tcleose.state.tx.us](http://www.tcleose.state.tx.us).

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