

 Lexington Police Department	Subject: Interviewing Victims and Witnesses					Policy Number: <h1>41J</h1>	
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By Order of: Mark J. Corr, Chief of Police							

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GENERAL CONSIDERATIONS AND GUIDELINES

The interviewing of a victim or witness is a vital part of the criminal investigation procedure. It can lead directly to the identification, subsequent apprehension and conviction of the guilty offender. It is the task of a police officer to convince witnesses of the need for their testimony by appealing to their sense of civic responsibility and to their duty as a citizen to ensure that the purposes of justice are effectively achieved.

Eyewitness identification is not considered the most reliable form of evidence and will be closely scrutinized by the court. Mistaken identifications are not uncommon occurrences. Eyewitness identifications must be made under strict legal requirements and must avoid any suggestiveness by the police on impressionable witnesses. (See Department policy **41N-Eyewitness Identification, Show-ups and Photo Arrays.**)

Officers conducting the initial investigation and interviews should be aware that some criminals remain at the scene. If the officer begins to suspect that a person who claims to be only a witness or even a victim may actually be the perpetrator, the officer should be cautious in conducting any questioning. If the suspect is placed in custody, further questioning must be preceded by administration of the Miranda warnings. (See Department policies **41K- Interrogating Suspects and Arrestees** and **41L-Stop and Frisk and Threshold Inquiries.**)

Officers conducting the initial investigation should be aware that a victim/witness has the right to consent to or refuse to be interviewed.¹ Under M.G.L. 258B § 4, victims and witnesses of crimes, or in the event the victim is deceased, the family members of the victim, shall be afforded basic and fundamental rights, to the greatest extent possible and subject to appropriation and to available resources, with priority for services to be provided to victims of crimes against the person and crimes where

physical injury to a person results. (See Department policy **55B-Victim/ Witness Assistance.**)

It is the policy of the Lexington Police Department that:

- Officers shall attempt to identify and interview all witnesses and victims of crimes, and
- Officers shall obtain a complete and accurate record of the witness or victim's statement.

PROCEDURE

A. Definitions

1. **Victim:** Any person, business or entity of any kind that suffers direct or threatened physical, emotional, financial harm or property damage as the result of the commission or attempted commission of a crime.
2. **Victim-Witness Advocate:** An individual that works closely with prosecutors in ensuring that a victim or witness is provided with the necessary and essential services.
3. **Witness:** Any person who observed, heard or learned of information about an incident that may be investigated by the police.

B. Conducting the Interview

1. Immediately identify yourself or show your credentials (badge or identification) if not in uniform.
2. Interview witnesses and victims as soon as possible after the incident under investigation.
3. Interview each witness/victim separately, if possible, to ensure independent statements.
4. Record the date, time and location of each interview.
5. Obtain an interpreter if needed.
6. Establish a cooperative relationship with the witness/victim.
7. Consider and document the physical and emotional state of the witness/victim
8. Obtain a full description of the incident.
9. Take notes or tape record the interview.

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- a. If notes are taken, it should be accomplished in a manner that does not interrupt the interviewing process. Some interviewees are reluctant to talk if they notice that the officer is writing every word they say. Brief notes can be made without deterring or distracting the interviewee. If a statement appears highly informative due to its nature and content, a verbatim account should be made and/or recorded.
 - b. Before any interview is tape recorded, the interviewee must be told that the conversation will be recorded (G.L. c. 272, s. 99). If any legal or other questions arise pertaining to the tape recording of an interview, consult with the District Attorney's office.
10. Ask specific questions to clarify the statement or to fill in any omissions.
- a. Observe and note any emotional outbursts, inflections of the voice and nervous reactions which may indicate areas requiring further probing or clarification.
 - b. Assess each interviewee's objectivity or possible bias.
 - c. Note any relationship or connection the witness might have with the victim or perpetrator or the property or premises involved in the crime; the overall credibility of the witness/victim; his/her opportunity to make observations; and his/her ability to recall details as opposed to general impressions, etc.
11. Obtain a written statement from the witness/victim, if possible. Handwritten is preferred. If a witness elects to type a statement make sure that it is signed. Any errors or corrections should be initialed by the witness/victim.
- C. Interviews at the Scene
1. Witnesses/victims shall be instructed to remain at the scene until interviewed.
 2. Obtain the names, addresses and telephone numbers of all relevant persons present at the scene. A license or ID is a good way of confirming positive identification. The most current and up to date master name information for the computer is critical. Officers must check the master name file to see if the subject is in our system. If a subject is already in our system officers must check to make sure this information is current and updated before attaching them to report.
 3. Witnesses/victims shall be separated; if possible, to prevent them from discussing what has occurred among themselves, before they are interviewed, to prevent tainting individual recollections.

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4. Paper or a voluntary statement forms may be given to each person so that they may begin writing their descriptions of the incident before their interview. Officers are encouraged to carry statement forms with them.
5. When a written statement is completed, officers shall read the statement and ask for clarification from the victim/witness if needed.
6. If a situation dictates, a victim or witness should be encouraged to choose to be interviewed at the police station, this will allow for the following:
 - a. The victim or witness may feel more comfortable to provide information if removed from the scene.
 - b. Written statements can be completed and information can be quickly verified.
 - c. The officer has the option of recording the interview if deemed necessary.
 - d. The station is environmentally controlled and as a result more comfortable as it is removed from extreme heat, cold, rain, ice and snow.

D. Interviews at Other Locations

1. At Station: A separate area to interview victims/witnesses must be identified to ensure privacy and a minimum of interruptions.
2. By Telephone: Officers are discouraged from conducting telephone interviews for major crimes or cases that will be prosecuted.
3. Interviews that occur in other locations must provide a safe environment, be as comfortable as possible without distractions and in private.

E. Terminating the Interview

1. Interviews shall be ended in a courteous manner without abrupt termination or dismissal of the witness or victim. This helps to assure future cooperation, particularly when witnesses or victims may be needed to testify at a later date.
 - a. Summarize what has been covered. Ask the witness or victim if there is anything they wish to add or emphasize.
 - b. Request victims and witnesses to sign and date all written statement forms including the time and location where the document may have been prepared. The officer witnessing the writing should also sign, date and time stamp the writing. The witness or victim preparing the written statement should initial any corrections.

- c. Inform the witness or victim that it is very important to contact the police if [s]he recalls or uncovers additional information about the crime or the criminal/suspect at a later time.
- d. Provide information about victim and witness assistance. See Department policy **55B-Victim/Witness Assistance**.
- e. Where appropriate, inform the victim or witness of the phone number and location of the District Attorney's Victim/Witness Assistance office, especially if the victim or witness has questions of a legal nature.
- f. Inform the witness that it is a criminal offense for anyone to threaten or intimidate the witness into altering or changing their testimony or to not testify.ⁱⁱ If anyone attempts to do so, the witness should be told to contact the police immediately.

F. Report Writing

1. All information obtained from witnesses shall be passed on to the follow-up investigator, if any.
2. All pertinent data, including tapes, and written statements shall be included in the officer's official report and submitted in accordance with departmental practice and procedures. Statements will be added into the property field of the report as involved property and attached to the printed report and submitted for supervisory review.

INTERVIEW TECHNIQUES

A. Use of Interpreters

1. Interpreters may be needed at the scene when a situation involves a language barrier or the deaf or hard of hearing. Often times the deaf or hearing impaired can communicate through other mediums. When a situation necessitates the need for an interpreter the officer should be aware of the following concerns:
 - a. Before using any person at the scene as an interpreter for a foreign language or for the hearing impaired, make sure that the person chosen to interpret is reliable. See Department policy **41P-Dealing with Deaf & Hard of Hearing Persons**.
 - b. If a reliable interpreter is not available at the scene and one cannot respond quickly then officers should make arrangements to have all parties in need of an interpreter meet at the police station when and where proper interpreters can be provided.

B. Consider Physical and Emotional Needs of Witnesses/Victims.

1. Calm the excited and emotionally upset witness or victim. (If necessary, delay the interview until the person has regained composure).

2. Create a favorable atmosphere for the witness or victim to talk freely.
3. Conduct the interview in a quiet area, if available.
4. Maintain privacy to the greatest degree possible.
5. Do not distract the interviewee or interrupt his/her story unnecessarily.
6. Only one officer should conduct the interview. Any other officers present should remain inconspicuous and not interfere with the interview.

C. Establish Cooperative Relationship

1. Display a sincere interest.
2. Be patient, tactful and respectful.
3. Control personal feelings. Do not exhibit surprise or dismay at anything said by a witness or victim.
4. Provide reassurance.
5. Encourage an un-talkative interviewee by asking appropriate, open ended, questions.
6. Encourage witnesses/victims to give a full description of everything that occurred with a minimum of interruption. When the conversation lags or stops, be patient and wait for the interviewee to volunteer additional information.

D. Conducting the Interview

1. Do not take anything for granted and do not jump to conclusions.
2. Listen for and note any obvious omissions or gaps in the statements made by a witness or victim, or for any conflicting or inconsistent statements.
3. Note any extreme nervousness or unusual behavior on the part of a witness or victim or any unguarded or spontaneous remarks.
4. It is important to not only listen to what is said, but also to how it is said. Emotional outbursts and inflections of the voice may give a clue to sensitive areas of the interview. Sudden silence, uncertainty or confusion, or the shifting of conversation to an unrelated subject may indicate that information is being withheld. Nervous bodily reaction or facial characteristics may also signal that a sensitive area has been reached. By noting these things, an officer will know what portions of the statement may require further probing or clarification.

E. Questioning Victims/Witnesses

Withhold any direct questioning until after the witness or victim has given a complete account, then ask specific questions to clarify earlier statements or to fill in omissions. Any information in a written statement should be clarified before the victim/witness leaves.

- Questions should be clear, definite and in plain language.
- Ask only one question at a time and wait for a complete reply.
- Avoid leading questions that imply or suggest a particular answer.
- Avoid rapid-fire questions that can confuse or bewilder.
- Avoid questions that can be answered by "yes" or "no" which limit response.
- Do not ask questions in a critical or derisive manner, which could deter previously cooperative witnesses or victims.
- Do not correct the grammar or the language of the witness or victim, which could cause resentment.
- Do not permit your own emotions, attitudes or opinions to distract the witness or victim or to interfere with your evaluation of his/her response to your questions.
- Get clear answers or descriptions. Some words are not clear enough to describe behavior. For instance a person is "drunk", "angry", "threatening" or "disrespectful" are conclusive and can be easily challenged. It is better to get descriptions that lead the investigator (and future jurors) to reach the same conclusion.

F. Recording Interviews

Most statements obtained by victims or witnesses will be documented by the use of notes and may be accompanied by a signed written statement, prior to being transposed to an incident report. Although not every statement obtained by a victim or witness to a crime will be audio or visually recorded, this is the best way of capturing a statement. If a situation arises and the officer believes a victim or witness of a crime may have some criminal involvement the interview should be recorded. When appropriate and when required by law, Miranda Warning must be afforded.

ⁱ *Commonwealth v. Adkinson*, 442 Mass. 410, 813 NE2d 506 (2004). Pursuant to G.L. c. 258B, s. 3(m), "victims and witnesses [shall have the right] to be informed of the right to submit to or decline an interview by defense counsel or anyone acting on the defendant's behalf, except when responding to lawful process, and, if the victim or witness decides to submit to an interview, the right to impose reasonable conditions on the conduct of the interview."

ⁱⁱ M.G.L c. 268 s. 13B