

## Summary of **2018 Act #466**, enacting La. C. Cr. P. Arts **251-253**, eff. 5.23.18

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**La. C. Cr. P. Art. 251. Summary by Legislature:** *LA has a problem with false identifications.*

### **La. C. Cr. P. Art. 252. Definitions**

- (1) "**Administrator**" means the person conducting the photo or live lineup.
- (2) "**Blind**" means conducted in such a way that the administrator does not know the identity of the suspect.
- (3) "**Blinded**" means conducted in such a way that the administrator may know who the suspect is, but does not know which lineup member is being viewed by the eyewitness.
- (4) "**Criminal justice entity**" means any government agency or subunit thereof, or private agency that, through statutory authorization or a legal formal agreement with a governmental unit or agency, has the power of investigation, arrest, detention, prosecution, adjudication, treatment, supervision, rehabilitation, or release of persons suspected, charged, or convicted of a crime.
- (5) "**Eyewitness**" means a person who observes another person at or near the scene of an offense.
- (6) "**Filler**" means either a person or a photograph of a person who is not suspected of an offense but is included in an identification procedure.
- (7) "**Folder shuffle method**" means a blinded procedure in which the suspect photos and nonsuspect or filler photos are each placed in separate folders for a total of six photographs and shuffled together along with four blank folders and handed to the eyewitness one at a time so that the administrator cannot see which photograph the eyewitness is viewing.
- (8) "**Live lineup**" means an identification procedure in which a group of persons, including the suspected perpetrator of an offense and other persons not suspected of the offense, is displayed to an eyewitness for the purpose of determining whether the eyewitness identifies the suspect as the perpetrator.
- (9) "**Photo lineup**" means an identification procedure in which an array of photographs, including a photograph of the suspected perpetrator of an offense and additional photographs of other persons not suspected of the offense, is displayed to an eyewitness either in hard copy form or via computer or similar device for the purpose of determining whether the eyewitness identifies the suspect as the perpetrator.
- (10) "**Suspect**" means a person believed by law enforcement to be the possible perpetrator of an offense.

**La. C. Cr. P. Art. 253. Eyewitness identification procedures**

**A.** (1) No later than **January 30, 2019**, any criminal justice entity conducting eyewitness identifications shall either adopt the LSEMI [**Drews note: Louisiana Sheriffs Executive Management Institute**] model policy or draft its own policy that minimally comports to key best practices as outlined in this Article.

(2) Each criminal justice entity that administers eyewitness identification procedures shall provide a copy of its written policies to the Louisiana Commission on Law Enforcement and Administration of Criminal Justice no later than **March 1, 2019**.

**B.** For any criminal justice entity that elects to draft its own policy on eyewitness identification procedures, these policies shall: \*\*\* [**Drews note: Long Laundry List – 99% of agencies will adopt LSEMI policy.**]

**C.** Not later than December thirty-first of each odd-numbered year, the institute shall review the model policy and training materials adopted under this article and shall modify the policy and materials as appropriate while maintaining the requirements outlined in Paragraph B of this Article.

**D.** Not later than **December thirty-first of each even-numbered year, each law enforcement agency shall review its policy** adopted under this Article and shall modify that policy as appropriate while maintaining the requirements outlined in Paragraph B of this Article.

**E.** Failure to conduct a photograph or live lineup identification procedure in substantial compliance with the model policy or any other policy adopted under this Article shall not bar the admission of eyewitness identification testimony.

**F.** A video record of identification procedures shall be made or, if a video record is not practicable, an audio record shall be made. If neither a video nor audio record are practicable, the reasons shall be documented in writing, and the lineup administrator shall make a full and complete written record of the lineup in accordance with Subparagraph (B)(2)(c) of this Article.

**G.** The written eyewitness identification procedures of a criminal justice entity shall be made available, in writing, to the public upon request.

**H.** Evidence of failure to comply with any of the provisions of this Article:

(1) May be considered by the district court in adjudicating motions to suppress an eyewitness identification. (2) May be admissible in support of any claim of eyewitness misidentification, as long as the evidence is otherwise admissible.