

By: Ellis, et al.

S.B. No. 121

A BILL TO BE ENTITLED

AN ACT

relating to photograph and live lineup identification procedures in criminal cases.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 38, Code of Criminal Procedure, is amended by adding Article 38.20 to read as follows:

Art. 38.20. PHOTOGRAPH AND LIVE LINEUP IDENTIFICATION PROCEDURES

Sec. 1. In this article, "institute" means the Bill Blackwood Law Enforcement Management Institute of Texas located at Sam Houston State University.

Sec. 2. This article applies only to a 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.

Sec. 3. (a) Each law enforcement agency shall adopt, implement, and as necessary amend a detailed written policy regarding the administration of photograph and live lineup identification procedures in accordance with this article. A law enforcement agency may adopt:

- (1) the model policy adopted under Subsection (b); or
- (2) the agency's own policy that, at a minimum, conforms to the requirements of Subsection (c).

1 (b) The institute, in consultation with large, medium, and
2 small law enforcement agencies and with law enforcement
3 associations, scientific experts in eyewitness memory research,
4 and appropriate organizations engaged in the development of law
5 enforcement policy, shall develop, adopt, and disseminate to all
6 law enforcement agencies in this state a model policy and
7 associated training materials regarding the administration of
8 photograph and live lineup identification procedures. The
9 institute shall provide for a period of public comment before
10 adopting the policy and materials.

11 (c) The model policy or any other policy adopted by a law
12 enforcement agency under Subsection (a) must:

13 (1) be based on:

14 (A) credible field, academic, or laboratory
15 research on eyewitness memory;

16 (B) relevant policies, guidelines, and best
17 practices designed to reduce erroneous eyewitness identifications
18 and to enhance the reliability and objectivity of eyewitness
19 identifications; and

20 (C) other relevant information as appropriate;
21 and

22 (2) address the following topics:

23 (A) the selection of photograph and live lineup
24 filler photographs or participants;

25 (B) instructions given to a witness before
26 conducting a photograph or live lineup identification procedure;

27 (C) the documentation and preservation of

1 results of a photograph or live lineup identification procedure,
2 including the documentation of witness statements, regardless of
3 the outcome of the procedure;

4 (D) procedures for administering a photograph or
5 live lineup identification procedure to an illiterate person or a
6 person with limited English language proficiency;

7 (E) for a live lineup identification procedure,
8 if practicable, procedures for assigning an administrator who is
9 unaware of which member of the live lineup is the suspect in the
10 case or alternative procedures designed to prevent opportunities to
11 influence the witness;

12 (F) for a photograph identification procedure,
13 procedures for assigning an administrator who is capable of
14 administering a photograph array in a blind manner or in a manner
15 consistent with other proven or supported best practices designed
16 to prevent opportunities to influence the witness; and

17 (G) any other procedures or best practices
18 supported by credible research or commonly accepted as a means to
19 reduce erroneous eyewitness identifications and to enhance the
20 objectivity and reliability of eyewitness identifications.

21 Sec. 4. (a) Not later than December 31 of each
22 odd-numbered year, the institute shall review the model policy and
23 training materials adopted under this article and shall modify the
24 policy and materials as appropriate.

25 (b) Not later than September 1 of each even-numbered year,
26 each law enforcement agency shall review its policy adopted under
27 this article and shall modify that policy as appropriate.

1 Sec. 5. (a) Any evidence or expert testimony presented by
2 the state or the defendant on the subject of eyewitness
3 identification is admissible only subject to compliance with the
4 Texas Rules of Evidence. Evidence of compliance with the model
5 policy or any other policy adopted under this article or with the
6 minimum requirements of this article is not a condition precedent
7 to the admissibility of an out-of-court eyewitness identification.

8 (b) Notwithstanding Article 38.23 as that article relates
9 to a violation of a state statute, a failure to conduct a photograph
10 or live lineup identification procedure in substantial compliance
11 with the model policy or any other policy adopted under this article
12 or with the minimum requirements of this article does not bar the
13 admission of eyewitness identification testimony in the courts of
14 this state.

15 SECTION 2. (a) Not later than December 31, 2011, the Bill
16 Blackwood Law Enforcement Management Institute of Texas shall
17 develop, adopt, and disseminate the model policy and associated
18 training materials required under Article 38.20, Code of Criminal
19 Procedure, as added by this Act.

20 (b) Not later than September 1, 2012, each law enforcement
21 agency to which Article 38.20, Code of Criminal Procedure, as added
22 by this Act, applies shall adopt a policy as required by that
23 article.

24 (c) The change in law made by Section 5, Article 38.20, Code
25 of Criminal Procedure, as added by this Act, applies only to a
26 photograph or live lineup identification procedure conducted on or
27 after September 1, 2012, regardless of whether the offense to which

S.B. No. 121

1 the procedure is related occurred before, on, or after September 1,
2 2012.

3 SECTION 3. This Act takes effect September 1, 2011.