

By: Gallego

H.B. No. 215

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 conforms to the requirements of the model policy adopted under Subsection (b).

1 (b) The institute, with the advice and assistance of law
2 enforcement agencies and scientific experts in eyewitness memory
3 research, shall develop, adopt, and disseminate to all law
4 enforcement agencies a model policy and associated training
5 materials regarding the administration of photograph and live
6 lineup identification procedures.

7 (c) The model policy must:

8 (1) be based on:

9 (A) scientific research on eyewitness memory;

10 (B) relevant policies and guidelines developed
11 by the federal government, other states, and other law enforcement
12 organizations; and

13 (C) other relevant information as appropriate;

14 and

15 (2) address the following topics:

16 (A) the selection of photograph and live lineup
17 filler photographs or participants;

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

20 (C) the documentation and preservation of
21 results of a photograph or live lineup identification procedure,
22 including the documentation of witness statements, regardless of
23 the outcome of the procedure;

24 (D) procedures for administering a photograph or
25 live lineup identification procedure to an illiterate person or a
26 person with limited English language proficiency;

27 (E) procedures for assigning an administrator

1 who, as applicable:

2 (i) is unaware of which member of the live
3 lineup is the suspect in the case or, if that is not practicable,
4 alternative procedures designed to prevent opportunities to
5 influence the witness; or

6 (ii) is capable of administering a
7 photograph array in a blind manner or, if that is not practicable,
8 alternative procedures designed to prevent opportunities to
9 influence the witness; and

10 (F) any other procedures or best practices
11 supported by credible research or commonly accepted as a means to
12 reduce erroneous identifications and enhance the objectivity and
13 reliability of eyewitness identifications.

14 Sec. 4. The institute shall complete an annual review of the
15 model policy and training materials adopted under this article and
16 shall modify the policy and materials as necessary.

17 Sec. 5. (a) Evidence of compliance or noncompliance with
18 the model policy adopted under this article is relevant and
19 admissible in a criminal case but is not a condition precedent to
20 the admissibility of an out-of-court eyewitness identification.

21 (b) Notwithstanding Article 38.23, a failure to conduct a
22 photograph or live lineup identification procedure in substantial
23 compliance with the model policy adopted under this article does
24 not bar the admission of eyewitness identification testimony in the
25 courts of this state.

26 SECTION 2. (a) Not later than June 1, 2012, the Bill
27 Blackwood Law Enforcement Management Institute of Texas shall

1 develop, adopt, and disseminate the model policy and associated
2 training materials required under Article 38.20, Code of Criminal
3 Procedure, as added by this Act.

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

8 (c) The change in law made by Section 5, Article 38.20, Code
9 of Criminal Procedure, as added by this Act, applies only to a
10 photograph or live lineup identification procedure conducted on or
11 after September 1, 2012, regardless of whether the offense to which
12 the procedure is related occurred before, on, or after September 1,
13 2012.

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