BILL ANALYSIS

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Mistaken eyewitness identification is the leading cause of wrongful convictions in Texas and the United States. The accuracy and reliability of eyewitness identification procedures would improve by requiring all Texas law enforcement agencies in the state to adopt written eyewitness identification policies based on best practices proven effective by social science and law enforcement agencies in other parts of the country.

C.S.S.B. 117 requires the Bill Blackwood Law Enforcement Management Institute of Texas to develop and disseminate a model policy and associated training materials to local law enforcement agencies regarding eyewitness identification procedures and requires all Texas law enforcement agencies to adopt written eyewitness identification policies.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 38, Code of Criminal Procedure, by adding Article 38.20, as follows:

> Art. 38.20. PHOTOGRAPH AND LIVE LINEUP IDENTIFICATION PROCEDURES
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> > Sec. 1. Defines "institute."
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> > Sec. 2. Provides that this article applies only to a law enforcement agency (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.
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> > Sec. 3. (a) Requires each agency to 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. Authorizes an agency to adopt the model policy adopted under Subsection (b) or the agency's own policy that conforms to the requirements of the model policy adopted under Subsection (b).
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> > > (b) Requires the Bill Blackwood Law Enforcement Management Institute of Texas (institute), with the advice and assistance of agencies and specific experts in eyewitness memory research, to develop, adopt, and disseminate to all agencies a model policy and associated training material regarding the administration of photograph and live identification lineup procedures. Requires the model policy to be based on certain scientific research and certain policies and address certain topics.
> > >
> > > (c) Requires the model policy to be based on scientific research on eyewitness memory and relevant policies and guidelines developed by the federal government, other states, and other law enforcement organizations

and other relevant information as appropriate, and address certain topics related to live lineup procedures.

Sec. 4. Requires the institute to complete an annual review of the model policy and training materials adopted under this article and to modify the policy and materials as necessary.

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

(b) Provides that a failure to conduct a photograph or live lineup identification procedure in substantial compliance with the model policy adopted under this article, notwithstanding Article 38.23 (Evidence Not to Be Used), does not bar the admission of eyewitness identification testimony in the courts of this state.

SECTION 2. (a) Requires the Bill Blackwood Law Enforcement Management Institute of Texas to develop, adopt, and disseminate the model policy and associated training materials required under Article 38.20, Code of Criminal Procedure, as added by this Act, not later than June 1, 2010.

(b) Requires each agency to which Article 38.20, Code of Criminal Procedure, as added by this Act, applies, to adopt a policy as required by that article not later than September 1, 2010.

(c) Makes application of this Act prospective to September 1, 2010.

SECTION 3. Effective date: September 1, 2009.