

By: Ellis

S.B. No. 117

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 and

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

14           (2) address the following topics:

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

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

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

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

26                   (E) procedures for assigning an administrator  
27 who, as applicable:

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

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

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

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

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

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

25         SECTION 2. (a) Not later than June 1, 2010, the Bill  
26 Blackwood Law Enforcement Management Institute of Texas shall  
27 develop, adopt, and disseminate the model policy and associated

1 training materials required under Article 38.20, Code of Criminal  
2 Procedure, as added by this Act.

3 (b) Not later than September 1, 2010, each law enforcement  
4 agency to which Article 38.20, Code of Criminal Procedure, as added  
5 by this Act, applies shall adopt a policy as required by that  
6 article.

7 (c) The change in law made by Section 5, Article 38.20, Code  
8 of Criminal Procedure, as added by this Act, applies only to a  
9 photograph or live lineup identification procedure conducted on or  
10 after September 1, 2010, regardless of whether the offense to which  
11 the procedure is related occurred before, on, or after September 1,  
12 2010.

13 SECTION 3. This Act takes effect September 1, 2009.