

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. (a) Each law enforcement agency in this state shall adopt and as necessary amend a detailed written policy regarding the administration of photograph and live lineup identification procedures that conforms to the requirements of Section 2. The policy must address the manner in which a photograph array or live lineup should be administered to an illiterate person or a person with limited English language proficiency.

(b) The Texas Commission on Law Enforcement Officer Standards and Education, in consultation with state and local law enforcement agencies and scientific experts, shall develop, adopt, and disseminate to all state and local law enforcement agencies in this state a model policy and associated training materials regarding the administration of photograph and live lineup identification procedures. The model policy must conform to the requirements of Section 2.

Sec. 2. (a) Before a photograph or live lineup

1 identification procedure, the person administering the procedure  
2 shall:

3 (1) inform the witness that:

4 (A) the offender may not be among those shown;

5 (B) the witness is not required to make an  
6 identification; and

7 (C) the investigation of the case will continue  
8 regardless of whether the witness makes an identification; and

9 (2) obtain from the witness a written acknowledgement  
10 of receipt of the instructions required by this subsection.

11 (b) If the witness identifies an individual as the offender,  
12 the person administering the photograph or live lineup  
13 identification procedure shall require the witness to characterize  
14 in writing, in the witness's own words, the degree of certainty of  
15 the witness that the individual identified is the offender. The  
16 person administering the procedure must obtain the statement  
17 required under this subsection before providing any information  
18 concerning the identified individual to the witness.

19 (c) If practicable, a photograph or live lineup  
20 identification procedure must be videotaped. If the procedure is  
21 not videotaped, the person administering the procedure shall  
22 document in writing the reason the procedure was not videotaped and  
23 if practicable shall audiotape the procedure instead. If the  
24 procedure is not audiotaped, the person administering the procedure  
25 shall document in writing the reason the procedure was not  
26 audiotaped. To the extent applicable, a videotaped or audiotaped  
27 recording of a photograph or live lineup identification procedure

1 must include, as applicable, a visual or audio representation of  
2 the entire procedure. Any documentation of a photograph or live  
3 lineup identification procedure shall be kept in the case file,  
4 regardless of the outcome of the procedure.

5 (d) Each member of a photograph array or live lineup must  
6 resemble the witness's description of the offender's significant  
7 features, such as the offender's facial features, weight, or build,  
8 including any unique or unusual features, such as a scar or tattoo.  
9 In a live lineup, each lineup member shall perform identifying  
10 actions, such as speech, gestures, or movements, specified by the  
11 witness in describing the offender. In a photograph array, the  
12 photograph of the suspect must be recent and, if possible, resemble  
13 the suspect's appearance at the time the offense was committed.  
14 Only one member of a photograph array or live lineup may be a  
15 suspect in the case. The remaining members must be individuals who  
16 are not suspects but who, without appearing to be significantly  
17 different from the suspect, resemble the witness's description of  
18 the offender as required by this subsection. Five or more  
19 individuals who are not suspects must be included in a photograph  
20 array, and four or more individuals who are not suspects must be  
21 included in a live lineup.

22 (e) If practicable, the person who administers a photograph  
23 or live lineup identification procedure may not be made aware of  
24 which member of the photograph array or live lineup is the suspect  
25 in the case. If the person who administers the procedure is aware  
26 of the identity of the suspect, the person shall use an alternative  
27 method of blind administration of the array or lineup that prevents

1 that person from viewing the members of the array or lineup  
2 simultaneously with the witness or knowing the order of the  
3 presentation of the array or lineup to the witness.

4 (f) All participants in a live lineup or all photographs in  
5 a photograph array must be kept from the view of a witness before  
6 the identification procedure begins.

7 (g) If multiple witnesses will view the same photograph  
8 array or live lineup, the witnesses shall be segregated before and  
9 during the administration of the identification procedure.

10 SECTION 2. (a) The Texas Commission on Law Enforcement  
11 Officer Standards and Education shall develop, adopt, and  
12 disseminate the model policy required by Article 38.20, Code of  
13 Criminal Procedure, as added by this Act, not later than March 1,  
14 2010. Each law enforcement agency in this state shall adopt the  
15 policy required by Article 38.20, Code of Criminal Procedure, as  
16 added by this Act, not later than September 1, 2010.

17 (b) Article 38.20, Code of Criminal Procedure, as added by  
18 this Act, applies to any photograph or live lineup identification  
19 procedure that is conducted on or after the effective date of this  
20 Act.

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