

1-1 By: Ellis S.B. No. 117
1-2 (In the Senate - Filed November 10, 2008; February 10, 2009,
1-3 read first time and referred to Committee on Criminal Justice;
1-4 April 6, 2009, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 7, Nays 0; April 6, 2009,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 117 By: Seliger

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to photograph and live lineup identification procedures in
1-11 criminal cases.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Chapter 38, Code of Criminal Procedure, is
1-14 amended by adding Article 38.20 to read as follows:

1-15 Art. 38.20. PHOTOGRAPH AND LIVE LINEUP IDENTIFICATION
1-16 PROCEDURES

1-17 Sec. 1. In this article, "institute" means the Bill
1-18 Blackwood Law Enforcement Management Institute of Texas located at
1-19 Sam Houston State University.

1-20 Sec. 2. This article applies only to a law enforcement
1-21 agency of this state or of a county, municipality, or other
1-22 political subdivision of this state that employs peace officers who
1-23 conduct photograph or live lineup identification procedures in the
1-24 routine performance of the officers' official duties.

1-25 Sec. 3. (a) Each law enforcement agency shall adopt,
1-26 implement, and as necessary amend a detailed written policy
1-27 regarding the administration of photograph and live lineup
1-28 identification procedures in accordance with this article. A law
1-29 enforcement agency may adopt:

1-30 (1) the model policy adopted under Subsection (b); or
1-31 (2) the agency's own policy that conforms to the
1-32 requirements of the model policy adopted under Subsection (b).

1-33 (b) The institute, with the advice and assistance of law
1-34 enforcement agencies and scientific experts in eyewitness memory
1-35 research, shall develop, adopt, and disseminate to all law
1-36 enforcement agencies a model policy and associated training
1-37 materials regarding the administration of photograph and live
1-38 lineup identification procedures.

1-39 (c) The model policy must:

1-40 (1) be based on:

1-41 (A) scientific research on eyewitness memory;

1-42 and

1-43 (B) relevant policies and guidelines developed
1-44 by the federal government, other states, and other law enforcement
1-45 organizations and other relevant information as appropriate; and

1-46 (2) address the following topics:

1-47 (A) the selection of photograph and live lineup
1-48 filler photographs or participants;

1-49 (B) instructions given to a witness before
1-50 conducting a photograph or live lineup identification procedure;

1-51 (C) the documentation and preservation of
1-52 results of a photograph or live lineup identification procedure,
1-53 including the documentation of witness statements, regardless of
1-54 the outcome of the procedure;

1-55 (D) procedures for administering a photograph or
1-56 live lineup identification procedure to an illiterate person or a
1-57 person with limited English language proficiency;

1-58 (E) procedures for assigning an administrator
1-59 who, as applicable:

1-60 (i) is unaware of which member of the live
1-61 lineup is the suspect in the case or, if that is not practicable,
1-62 alternative procedures designed to prevent opportunities to
1-63 influence the witness; and

2-1 (ii) is capable of administering a
2-2 photograph array in a blind manner or, if that is not practicable,
2-3 alternative procedures designed to prevent opportunities to
2-4 influence the witness; and

2-5 (F) any other procedures or best practices
2-6 supported by credible research or commonly accepted as a means to
2-7 reduce erroneous identifications and enhance the objectivity and
2-8 reliability of eyewitness identifications.

2-9 Sec. 4. The institute shall complete an annual review of the
2-10 model policy and training materials adopted under this article and
2-11 shall modify the policy and materials as necessary.

2-12 Sec. 5. (a) Evidence of compliance or noncompliance with
2-13 the model policy adopted under this article is relevant and
2-14 admissible in a criminal case but is not a condition precedent to
2-15 the admissibility of an out-of-court eyewitness identification.

2-16 (b) Notwithstanding Article 38.23, a failure to conduct a
2-17 photograph or live lineup identification procedure in substantial
2-18 compliance with the model policy adopted under this article does
2-19 not bar the admission of eyewitness identification testimony in the
2-20 courts of this state.

2-21 SECTION 2. (a) Not later than June 1, 2010, the Bill
2-22 Blackwood Law Enforcement Management Institute of Texas shall
2-23 develop, adopt, and disseminate the model policy and associated
2-24 training materials required under Article 38.20, Code of Criminal
2-25 Procedure, as added by this Act.

2-26 (b) Not later than September 1, 2010, each law enforcement
2-27 agency to which Article 38.20, Code of Criminal Procedure, as added
2-28 by this Act, applies shall adopt a policy as required by that
2-29 article.

2-30 (c) The change in law made by Section 5, Article 38.20, Code
2-31 of Criminal Procedure, as added by this Act, applies only to a
2-32 photograph or live lineup identification procedure conducted on or
2-33 after September 1, 2010, regardless of whether the offense to which
2-34 the procedure is related occurred before, on, or after September 1,
2-35 2010.

2-36 SECTION 3. This Act takes effect September 1, 2009.

2-37 * * * * *