

## **BILL ANALYSIS**

C.S.H.B. 34  
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Criminal Jurisprudence  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

A recent study reviewed and examined certain criminal cases in Texas in which an innocent defendant was convicted and subsequently exonerated. C.S.H.B. 34 seeks to prevent wrongful convictions by implementing recommendations from the study.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 34 amends the Code of Criminal Procedure to require the state, if the state intends to use at a defendant's trial testimony of a person to whom the defendant made a statement against the defendant's interest while the person was imprisoned or confined in the same correctional facility as the defendant, to disclose to the defendant certain information regarding such a testifying person. The bill requires an attorney representing the state to track the use of proffered testimony of such a testifying person, regardless of whether the testimony is presented at trial and any benefits offered or provided to the person in exchange for such testimony. The bill authorizes evidence of a prior offense committed by such a testifying person to be admitted in a criminal case for the purpose of impeachment if the person received a benefit given by the state in exchange for the person's testimony with respect to the offense, regardless of whether the person was convicted of the offense. The bill requires a law enforcement agency to make an electronic recording of any custodial interrogation that is of a person suspected of committing or charged with the commission of a felony offense and that the agency conducts in a place of detention and exempts the recording from public disclosure as provided under state public information law.

C.S.H.B. 34 revises the information required to be included in the model policy developed by the Bill Blackwood Law Enforcement Management Institute of Texas, or a law enforcement agency's own policy, regarding the administration of photograph or live lineup identification procedures, specifically requiring that the information included in the policy addresses certain evidence-based practices. The bill requires a witness who makes an identification based on a photograph or live lineup identification procedure to be asked immediately after the procedure to state, in the witness's own words, the witness's level of confidence in making the identification and requires a law enforcement agency to document any such statement in accordance with the applicable policy.

C.S.H.B. 34 makes the in-court eyewitness identification of an accused admissible into evidence against the accused only if the evidence is accompanied by the details of any prior identification made of the accused by the witness, including the manner in which that identification procedure was conducted, and by evidence showing the witness's confidence level as described by the witness at the time of the prior identification.

C.S.H.B. 34 clarifies the circumstances under which an oral, sign language, or written statement made as a result of a custodial interrogation of a person accused of an offense is admissible against the accused in a criminal proceeding, without the required electronic recording, if the attorney introducing the statement shows good cause, as defined by the bill, as to the lack of the recording.

C.S.H.B. 34 amends the Occupations Code to require the Texas Commission on Law Enforcement to establish not later than January 1, 2018, as part of the minimum curriculum requirements for law enforcement officers, a statewide comprehensive education and training program on eyewitness identification, including the variables that affect a witness's vision and memory, practices for minimizing contamination, and effective eyewitness identification protocols.

C.S.H.B. 34 requires the Texas Forensic Science Commission to conduct a study regarding the use of drug field test kits by law enforcement agencies in the state and to conduct a separate study regarding the manner in which crime scene investigations are conducted in Texas. The bill sets out requirements of the commission in conducting each study and requires the commission, not later than December 1, 2018, to submit to the governor, the lieutenant governor, and each member of the legislature a written report for each study that summarizes the results of the applicable study and includes any legislative recommendations.

#### **EFFECTIVE DATE**

September 1, 2017.

#### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 34 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

##### INTRODUCED

SECTION 1. Chapter 2, Code of Criminal Procedure, is amended by adding Article 2.023 to read as follows:

Art. 2.023. POLICY REGARDING USE OF CERTAIN TESTIMONY. (a) In this article:

(1) "Attorney representing the state" means a district attorney, criminal district attorney, or county attorney performing the duties of a district attorney.

(2) "Correctional facility" has the meaning assigned by Section 1.07, Penal Code.

(b) An attorney representing the state shall adopt a written policy regarding the testimony of a person to whom a defendant made a statement against the defendant's

##### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Chapter 2, Code of Criminal Procedure, is amended by adding Articles 2.023 and 2.32 to read as follows:

Art. 2.023. TRACKING USE OF CERTAIN TESTIMONY. (a) In this article:

(1) "Attorney representing the state" means a district attorney, a criminal district attorney, or a county attorney with criminal jurisdiction.

(2) "Correctional facility" has the meaning assigned by Section 1.07, Penal Code.

(b) An attorney representing the state shall track:

(1) the use of proffered testimony of a person to whom a defendant made a

interest while the person was imprisoned or confined in the same correctional facility as the defendant and regarding how that testimony may be used at the defendant's trial. The policy must require the attorney representing the state to:

(1) implement a system to track the use of, and benefits offered or provided in exchange for, testimony described by this article; and

(2) promptly disclose information regarding the testifying person as required by Article 39.14(h-1).

SECTION 2. Chapter 2, Code of Criminal Procedure, is amended by adding Article 2.32 to read as follows:

Art. 2.32. ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS.

(a) In this article:

(1) "Custodial interrogation" means any investigative questioning, other than routine questions associated with booking, by a peace officer during which:

(A) a reasonable person in the position of the person being interrogated would consider himself or herself to be in custody; and

(B) a question is asked that is reasonably likely to elicit an incriminating response.

(2) "Electronic recording" means an audio or audiovisual electronic recording that begins at the time the person being interrogated enters the area of the place of detention in which the custodial interrogation will take place and that continues until the time the interrogation ceases.

(3) "Place of detention" means a police station or other building that is a place of operation for a law enforcement agency, including a municipal police department or county sheriff's department, and is owned or operated by the law enforcement agency for the purpose of detaining individuals in connection with the suspected violation of a penal law. The term does not include a courthouse.

(b) A law enforcement agency shall make an electronic recording of any custodial interrogation that is of a person suspected of committing or charged with the commission of a felony offense and that the law enforcement agency conducts in a place of detention.

statement against the defendant's interest while the person was imprisoned or confined in the same correctional facility as the defendant, regardless of whether the testimony is presented at trial; and

(2) any benefits offered or provided to a person in exchange for testimony described by Subdivision (1).

Art. 2.32. ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS.

(a) In this article:

(1) "Electronic recording" means an audio or audiovisual electronic recording that begins at the time the person being interrogated enters the area of the place of detention in which the interrogation will take place and that continues until the time the interrogation ceases.

(2) "Place of detention" means a police station or other building that is a place of operation for a law enforcement agency, including a municipal police department or county sheriff's department, and is owned or operated by the law enforcement agency for the purpose of detaining individuals in connection with the suspected violation of a penal law. The term does not include a courthouse.

(b) A law enforcement agency shall make an electronic recording of any custodial interrogation that is of a person suspected of committing or charged with the commission of a felony offense and that the law enforcement agency conducts in a place of detention.

(c) An electronic recording of a custodial interrogation that complies with this article is exempt from public disclosure except as provided by Section 552.108, Government Code.

SECTION 3. Article 38.075, Code of Criminal Procedure, is amended by adding Subsection (c) to read as follows:

(c) Notwithstanding Rules 404 and 405, Texas Rules of Evidence, evidence of other crimes, wrongs, or acts committed by, and information described by Article 39.14(h-1) regarding, a person who gives testimony described by Subsection (a) shall be admitted for its bearing on relevant matters, including the character of the person.

SECTION 4. Sections 3(a) and (c), Article 38.20, Code of Criminal Procedure, are amended to read as follows:

~~(a) Each law enforcement agency shall adopt and [;] 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, at a minimum, conforms to the requirements of Subsection (c)].~~

~~(c) The model policy [or any other policy adopted by a law enforcement agency] under Subsection (b) [(a)] must:~~

~~(1) be based on:~~

~~(A) credible field, academic, or laboratory research on eyewitness memory;~~

~~(B) relevant policies, guidelines, and best practices designed to reduce erroneous eyewitness identifications and to enhance the reliability and objectivity of eyewitness identifications; and~~

~~(C) other relevant information as appropriate; and~~

~~(2) address the following topics:~~

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

(c) An electronic recording of a custodial interrogation that complies with this article is exempt from public disclosure as provided by Section 552.108, Government Code.

SECTION 2. Article 38.075, Code of Criminal Procedure, is amended by adding Subsection (c) to read as follows:

(c) Evidence of a prior offense committed by

a person who gives testimony described by Subsection (a) may be admitted for the purpose of impeachment if the person received a benefit described by Article 39.14(h-1)(2) with respect to the offense, regardless of whether the person was convicted of the offense.

SECTION 3. Section 3, Article 38.20, Code of Criminal Procedure, is amended by amending Subsection (c) and adding Subsection (d) to read as follows:

~~(c) The model policy or any other policy adopted by a law enforcement agency under Subsection (a) must:~~

~~(1) be based on:~~

~~(A) credible field, academic, or laboratory research on eyewitness memory;~~

~~(B) relevant policies, guidelines, and best practices designed to reduce erroneous eyewitness identifications and to enhance the reliability and objectivity of eyewitness identifications; and~~

~~(C) other relevant information as appropriate; and~~

~~(2) include [address] the following information regarding evidence-based practices [topics]:~~

~~(A) procedures for selecting [the selection of] photograph and live lineup filler~~

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

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

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

(E) for a live lineup identification procedure, if practicable, procedures for assigning an administrator who is unaware of which member of the live lineup is the suspect in the case or alternative procedures designed to prevent opportunities to influence the witness;

(F) for a photograph identification procedure, procedures for assigning an administrator who is capable of administering a photograph array in a blind manner or in a manner consistent with other proven or supported best practices designed to prevent opportunities to influence the witness; and

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

photographs or participants to ensure that the photographs or participants:

(i) are consistent in appearance with the description of the alleged perpetrator that was provided by a witness; and

(ii) do not make the suspect noticeably stand out;

(B) instructions given to a witness before conducting a photograph or live lineup identification procedure that must include a statement that the person who committed the offense may or may not be present in the procedure and that the investigation will continue regardless of whether the witness identifies a person in the procedure;

(C) procedures for documenting and preserving the [documentation—and preservation of] results of a photograph or live lineup identification procedure, including the documentation of witness statements, regardless of the outcome of the procedure;

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

(E) for a live lineup identification procedure, [if practicable,] procedures for assigning an administrator who is unaware of which member of the live lineup is the suspect in the case [or alternative procedures—designed—to prevent opportunities to influence the witness];

(F) for a photograph identification procedure, procedures for assigning an administrator who is capable of administering a photograph array in a blind manner or in a manner consistent with other proven or supported best practices designed to prevent opportunities to influence the witness; and

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

(d) A witness who makes an identification based on a photograph or live lineup identification procedure shall be asked immediately after the procedure to state, in the witness's own words, the witness's level of confidence in making the identification. A law enforcement agency shall document in accordance with Subsection (c)(2)(C) any

statement made under this subsection.

No equivalent provision.

SECTION 5. Section 4(b), Article 38.20, Code of Criminal Procedure, is amended to read as follows:

(b) Not later than September 1 of each even-numbered year, each law enforcement agency shall adopt the updated model policy as modified by the institute under Subsection (a) in the preceding year ~~review its policy adopted under this article and shall modify that policy as appropriate~~.

SECTION 6. Section 5, Article 38.20, Code of Criminal Procedure, is amended to read as follows:

Sec. 5. (a) Any evidence or expert testimony presented by the state or the defendant on the subject of eyewitness identification is admissible only subject to compliance with the Texas Rules of Evidence. Except as provided by Subsection (c), evidence ~~[Evidence]~~ of compliance with the model policy ~~[or any other policy]~~ adopted under this article ~~[or with the minimum requirements of this article]~~ is not a condition precedent to the admissibility of an out-of-court eyewitness identification.

(b) Notwithstanding Article 38.23 as that article relates to a violation of a state statute and except as provided by Subsection (c), a failure to conduct a photograph or live lineup identification procedure in substantial compliance with the model policy ~~[or any other policy]~~ adopted under this article ~~[or with the minimum requirements of this article]~~ does not bar the admission of eyewitness identification testimony in the courts of this state.

(c) If a witness makes an in-court identification of the accused, the eyewitness identification is admissible into evidence against the accused only if the evidence is accompanied by:

- (1) the details of any prior identification made of the accused by the witness, including the manner in which that identification procedure was conducted; and
- (2) evidence showing the witness's confidence level as described by the witness at the time of the prior identification.

SECTION 7. Section 1, Article 38.22, Code of Criminal Procedure, is amended.

SECTION 4. Section 5, Article 38.20, Code of Criminal Procedure, is amended to read as follows:

Sec. 5. (a) Any evidence or expert testimony presented by the state or the defendant on the subject of eyewitness identification is admissible only subject to compliance with the Texas Rules of Evidence. Except as provided by Subsection (c), evidence ~~[Evidence]~~ of compliance with the model policy or any other policy adopted under this article ~~[or with the minimum requirements of this article]~~ is not a condition precedent to the admissibility of an out-of-court eyewitness identification.

(b) Notwithstanding Article 38.23 as that article relates to a violation of a state statute and except as provided by Subsection (c), a failure to conduct a photograph or live lineup identification procedure in substantial compliance with the model policy or any other policy adopted under this article ~~[or with the minimum requirements of this article]~~ does not bar the admission of eyewitness identification testimony in the courts of this state.

(c) If a witness makes an in-court identification of the accused, the eyewitness identification is admissible into evidence against the accused only if the evidence is accompanied by:

- (1) the details of any prior identification made of the accused by the witness, including the manner in which that identification procedure was conducted; and
- (2) evidence showing the witness's confidence level as described by the witness at the time of the prior identification.

SECTION 5. Same as introduced version.

SECTION 8. Sections 3(a) and (b), Article 38.22, Code of Criminal Procedure, are amended to read as follows:

(a) Except as provided by Section 9, no oral, sign language, or written statement made as a result of a custodial interrogation of a person accused of a felony offense is admissible against the accused in a criminal proceeding, and no [Nø] oral or sign language statement made as a result of a custodial interrogation of a person [of an] accused of any other offense is [made as a result of custodial interrogation shall be] admissible against the accused in a criminal proceeding, unless:

(1) an electronic recording [~~which may include motion picture, video tape, or other visual recording,~~] is made of the custodial interrogation [statement];

(2) after being [prior to the statement but during the recording the accused is] given the warning described by Section 2(a), [in Subsection (a) of Section 2 above and] the accused knowingly, intelligently, and voluntarily waives any rights set out in the warning;

(3) the recording device was capable of making an accurate recording, the operator was competent, and the recording is accurate and has not been altered;

(4) all voices on the recording are identified; and

(5) not later than the 20th day before the date of the proceeding, the attorney representing the defendant is provided with a true, complete, and accurate copy of all recordings of the defendant made under this article.

(b) Every electronic recording of [~~any statement made by an accused during] a custodial interrogation must be preserved until such time as the defendant's conviction for any offense relating thereto is final, all direct appeals therefrom are exhausted, or the prosecution of such offenses is barred by law.~~

SECTION 9. Article 38.22, Code of Criminal Procedure, is amended by adding Section 9 to read as follows:

Sec. 9. An oral, sign language, or written statement of an accused made as a result of a custodial interrogation is admissible without an electronic recording otherwise required by Section 3(a) if the attorney

SECTION 6. Sections 3(a) and (b), Article 38.22, Code of Criminal Procedure, are amended to read as follows:

(a) Except as provided by Section 9, no oral, sign language, or written statement made as a result of a custodial interrogation of a person accused of a felony offense is admissible against the accused in a criminal proceeding, and no [Nø] oral or sign language statement made as a result of a custodial interrogation of a person [of an] accused of any other offense is [made as a result of custodial interrogation shall be] admissible against the accused in a criminal proceeding, unless:

(1) an electronic recording [~~which may include motion picture, video tape, or other visual recording,~~] is made of the custodial interrogation [statement];

(2) after being [prior to the statement but during the recording the accused is] given the warning described by Section 2(a), [in Subsection (a) of Section 2 above and] the accused knowingly, intelligently, and voluntarily waives any rights set out in the warning;

(3) the recording device was capable of making an accurate recording, the operator was competent, and the recording is accurate and has not been altered;

(4) all voices on the recording are identified; and

(5) not later than the 20th day before the date of the proceeding, the attorney representing the defendant is provided with a true, complete, and accurate copy of all recordings of the defendant made under this article.

(b) Every electronic recording of [~~any statement made by an accused during] a custodial interrogation of an accused must be preserved until such time as the defendant's conviction for any offense relating thereto is final, all direct appeals therefrom are exhausted, or the prosecution of such offenses is barred by law.~~

SECTION 7. Article 38.22, Code of Criminal Procedure, is amended by adding Section 9 to read as follows:

Sec. 9. An oral, sign language, or written statement of an accused made as a result of a custodial interrogation is admissible without an electronic recording otherwise required by Section 3(a) if the attorney

introducing the statement shows good cause for the lack of the recording. For purposes of this section, "good cause" includes:

(1) the accused refused to respond to questioning or cooperate in a custodial interrogation of which an electronic recording was made, provided that:

(A) a contemporaneous recording of the refusal was made; or

(B) the peace officer or agent of the law enforcement agency conducting the interrogation attempted, in good faith, to record the accused's refusal but the accused was unwilling to have the refusal recorded, and the peace officer or agent contemporaneously, in writing, documented the refusal;

(2) the statement was not made exclusively as the result of a custodial interrogation, including a statement that was made spontaneously by the accused and not in response to a question by a peace officer;

(3) the peace officer or agent of the law enforcement agency conducting the interrogation attempted, in good faith, to record the interrogation but the recording equipment did not function, the officer or agent inadvertently operated the equipment incorrectly, or the equipment malfunctioned or stopped operating without the knowledge of the officer or agent;

(4) exigent public safety concerns prevented or rendered infeasible the making of an electronic recording of the custodial interrogation; or

(5) the peace officer or agent of the law enforcement agency conducting the interrogation reasonably believed at the time the interrogation began that the accused interrogated was not taken into custody for or being interrogated concerning the commission of a felony offense.

SECTION 10. Article 39.14, Code of Criminal Procedure, is amended.

SECTION 11. Section 1701.253, Occupations Code, is amended.

SECTION 12. STUDY REGARDING USE OF DRUG FIELD TEST KITS. (a) The Texas Forensic Science Commission shall conduct a study regarding the use of drug field test kits by law enforcement agencies in this state. The commission shall:

introducing the statement shows good cause for the lack of the recording. For purposes of this section, "good cause" includes:

(1) the accused refused to respond to questioning or cooperate in a custodial interrogation of which an electronic recording was made, provided that:

(A) a contemporaneous recording of the refusal was made; or

(B) the peace officer or agent of the law enforcement agency conducting the interrogation attempted, in good faith, to record the accused's refusal but the accused was unwilling to have the refusal recorded, and the peace officer or agent contemporaneously, in writing, documented the refusal;

(2) the statement was not made exclusively as the result of a custodial interrogation, including a statement that was made spontaneously by the accused and not in response to a question by a peace officer;

(3) the peace officer or agent of the law enforcement agency conducting the interrogation attempted, in good faith, to record the interrogation but the recording equipment did not function, the officer or agent inadvertently operated the equipment incorrectly, or the equipment malfunctioned or stopped operating without the knowledge of the officer or agent;

(4) exigent public safety concerns prevented or rendered infeasible the making of an electronic recording of the custodial interrogation; or

(5) the peace officer or agent of the law enforcement agency conducting the interrogation reasonably believed at the time the interrogation began that the accused was not taken into custody for or being interrogated concerning the commission of a felony offense.

SECTION 8. Same as introduced version.

SECTION 9. Same as introduced version.

SECTION 10. Same as introduced version.

- (1) evaluate the quality, accuracy, and reliability of drug field test kits;
  - (2) identify any common problems with drug field test kits;
  - (3) evaluate the availability and adequacy of training for law enforcement officers regarding the use of drug field test kits and the interpretation of the test results; and
  - (4) develop legislative recommendations regarding the use of drug field test kits by law enforcement agencies and regarding related training for law enforcement officers.
- (b) Not later than December 1, 2018, the Texas Forensic Science Commission shall submit to the governor, the lieutenant governor, and each member of the legislature a written report that summarizes the results of the study conducted under this section and includes any legislative recommendations.

SECTION 13. CRIME SCENE INVESTIGATION STUDY. (a) The Texas Forensic Science Commission shall conduct a study regarding the manner in which crime scene investigations are conducted in this state. The commission shall:

- (1) evaluate the standard procedures used in processing a crime scene and evaluate the quality of crime scene investigations;
- (2) evaluate the availability and adequacy of the training or continuing education provided to crime scene investigators; and
- (3) develop legislative recommendations regarding improvements to crime scene investigation procedures and training.

(b) Not later than December 1, 2018, the Texas Forensic Science Commission shall submit to the governor, the lieutenant governor, and each member of the legislature a written report that summarizes the results of the study conducted under this section and includes any legislative recommendations.

SECTION 14. Not later than December 1, 2017, each attorney representing the state, as defined by Article 2.023, Code of Criminal Procedure, as added by this Act, shall adopt the written policy required by that article.

SECTION 15. Article 2.32 and Section 9, Article 38.22, Code of Criminal Procedure,

SECTION 11. Same as introduced version.

No equivalent provision.

SECTION 12. Substantially the same as introduced version.

as added by this Act, and Sections 1 and 3, Article 38.22, Code of Criminal Procedure, as amended by this Act, apply to the use of a statement made as a result of a custodial interrogation that occurs on or after the effective date of this Act, regardless of whether the criminal offense giving rise to that interrogation is committed before, on, or after that date.

SECTION 16. Article 38.075(c), Code of Criminal Procedure, as added by this Act, applies to the admissibility of evidence in a criminal proceeding that commences on or after the effective date of this Act. The admissibility of evidence in a criminal proceeding that commences before the effective date of this Act is governed by the law in effect on the date the proceeding commenced, and the former law is continued in effect for that purpose.

SECTION 17. (a) Not later than October 1, 2017, each law enforcement agency to which Article 38.20, Code of Criminal Procedure, as amended by this Act, applies shall adopt the model policy as required by that article.

(b) Sections 5(a) and (b), Article 38.20, Code of Criminal Procedure, as amended by this Act, apply only to a photograph or live lineup identification procedure conducted on or after January 1, 2018, regardless of whether the offense to which the procedure is related was committed before, on, or after January 1, 2018.

(c) Section 5(c), Article 38.20, Code of Criminal Procedure, as added by this Act, applies only to the trial of an offense with respect to which a prior identification of the accused occurred on or after January 1, 2018, regardless of whether the offense that is the subject of the trial was committed before, on, or after January 1, 2018.

SECTION 18. Article 39.14(h-1), Code of Criminal Procedure, as added by this Act, applies to the prosecution of an offense committed on or after the effective date of this Act. The prosecution of an offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the

SECTION 13. Same as introduced version.

SECTION 14.

(a) Section 3(d), Article 38.20, Code of Criminal Procedure, as added by this Act, applies only to a photograph or live lineup identification procedure conducted on or after the effective date of this Act, regardless of whether the offense to which the procedure is related was committed before, on, or after the effective date of this Act.

(b) Section 5, Article 38.20, Code of Criminal Procedure, as amended by this Act, applies only to the trial of an offense with respect to which a prior identification of the accused occurred on or after the effective date of this Act, regardless of whether the offense that is the subject of the trial was committed before, on, or after the effective date of this Act.

SECTION 15. Same as introduced version.

former law is continued in effect for that purpose. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

SECTION 19. Not later than January 1, 2018, the Texas Commission on Law Enforcement shall establish the eyewitness identification education and training program as required by Section 1701.253(n), Occupations Code, as added by this Act.

SECTION 20. This Act takes effect September 1, 2017.

SECTION 16. Same as introduced version.

SECTION 17. Same as introduced version.