

BILL ANALYSIS

Senate Research Center
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S.B. 117
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Criminal Justice
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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.

As proposed, S.B. 117 requires the Texas Commission on Law Enforcement Officer Standards and Education 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

Sec. 1. (a) Requires each law enforcement agency in this state to adopt and, as necessary, amend a detailed written policy regarding the administration of photograph and live lineup identification procedures that conforms to the requirements in Section 2. Requires the policy to 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) Requires the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE), in consultation with state and local law enforcement agencies and scientific experts, to develop, adopt, and disseminate a model policy and associated training materials regarding photograph and live lineup identification procedures that conforms to the requirements of Section 2.

Sec. 2. (a) Requires the person administering a photograph or live lineup identification procedure to fulfill certain requirements prior to administering the procedure.

(b) Requires the person administering the photograph or live lineup procedure to require the witness to characterize, in writing and in the witness's own words, the degree of certainty of the witness that the individual identified is the offender before any information concerning the identified individual can be provided to the witness.

(c) Requires that a photograph or live lineup be videotaped if practicable, or if videotaping is not practicable, audiotaped. Requires the person

administering the procedure to document in writing the reason the procedure was not videotaped or audiotaped if not practicable. Requires, to the extent applicable, a videotaped or audiotaped recording of a photograph or live lineup identification procedure to include a visual or audio representation of the entire procedure. Requires any documentation of a photograph or live lineup identification procedure to be kept in a case file regardless of the outcome of the procedure.

(d) Requires each member of a photograph array or live lineup to resemble the witness's description of certain significant features of the offender. Requires each line up member in a live lineup to perform certain identifying actions specified by the witness in describing the offender. Requires a photograph of the suspect in a photograph array to be recent and, if possible, resemble the suspect at the time the offense was committed. Provides that only one member of a photograph array or live lineup may be a suspect in the case, and requires that the remaining members be individuals who are not suspects but who resemble the witness's description of the suspect required by this subsection. Requires five or more individuals who are not suspects be included in a photograph array, and four or more individuals who are not suspects be included in a live lineup.

(e) Prohibits the person administering the photograph or live lineup identification procedure from being made aware of which member of the lineup is the suspect in the case, if practicable. Requires the person administering the procedure to use an alternative method of blind administration of the lineup that prevents that person from viewing the array or lineup, simultaneously with the witness, or knowing the order of the presentation of the array or lineup to the witness, in the event that the person administering the procedure is aware of the identity of the suspect.

(f) Requires the participants in a live lineup or all photographs in a photograph array to be kept from the view of the witness before the identification procedure begins.

(g) Requires multiple witnesses to be segregated before and during the administration of the identification procedure if they will view the same photograph array or live lineup.

SECTION 2. (a) Requires TCLEOSE to develop, adopt, and disseminate the model identification policy not later than March 1, 2010. Requires each law enforcement agency in this state to adopt the policy not later than September 1, 2010.

(b) Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2009.