

BILL ANALYSIS

Senate Research Center
82R469 SJM-D

S.B. 121
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Criminal Justice
2/24/2011
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Mistaken eyewitness identification is the leading cause of wrongful convictions in Texas and the United States (U.S.).

Texas has had more DNA exonerations than any other state. According to the national Innocence Project, approximately 75 percent of the 266 DNA exonerations in the U.S. have been due to eyewitness misidentification. In Texas, 85 percent of the 44 DNA wrongful convictions have been largely or exclusively due to incorrect eyewitness identifications.

Despite the fact that certain "best practices" have been shown to improve the accuracy and reliability of eyewitness evidence, the Justice Project found in November 2008 that only 12 percent of police departments in Texas have written policies or guidelines for conducting lineups. There is no law requiring law enforcement agencies to have a written policy regarding eyewitness identification or that such policies should be based on best practices.

S.B. 121 requires all law enforcement agencies in the state to adopt written eyewitness identification policies based on best practices proven effective by scientific research on eyewitness memory and use in law enforcement agencies in other parts of the country. This bill requires the Bill Blackwood Law Enforcement Management Institute of Texas to develop and disseminate a model policy and associated training materials to local law enforcement agencies regarding eyewitness identification procedures.

Eyewitness identification procedures would have to address the following topics: the selection of photograph and live lineup filler photographs or participants; instructions that will be given to a witness before conducting a photograph or live lineup identification procedure; documentation and preservation of lineup procedures; procedures for administering lineups to illiterate persons or persons with limited English proficiency; procedures for assigning a lineup administrator who is unaware of the suspect in a lineup or photo array; and any other procedures or best practices supported by credible research or commonly accepted as a means to reduce erroneous identifications and enhance the objectivity and reliability of eyewitness identifications.

As proposed, S.B. 121 amends current law relating to photograph and live lineup identification procedures in criminal cases.

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. Defines "institute" in this article to mean the Bill Blackwood Law Enforcement Management Institute of Texas (institute) located at Sam Houston State University.

Sec. 2. Provides that 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) Requires each law enforcement agency to 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. Authorizes a law enforcement agency to 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).

(b) Requires the institute, with the advice and assistance of law enforcement agencies and scientific experts in eyewitness memory research, to develop, adopt, and disseminate to all law enforcement agencies a model policy and associated training materials regarding the administration of photograph and live lineup identification procedures.

(c) Requires that the model policy:

(1) be based on:

(A) scientific research on eyewitness memory;

(B) relevant policies and guidelines developed by the federal government, other states, and other law enforcement organizations; 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;

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

(i) is unaware of which member of the live lineup is the suspect in the case or, if that is not practicable,

alternative procedures designed to prevent opportunities to influence the witness; or

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

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

Sec. 4. Requires the institute to complete an annual review of the model policy and training materials adopted under this article and to modify the policy and materials as necessary.

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

(b) Provides that, notwithstanding Article 38.23 (Evidence Not To Be Used), a failure to conduct a photograph or live lineup identification procedure in substantial compliance with the model policy adopted under this article does not bar the admission of eyewitness identification testimony in the courts of this state.

SECTION 2. (a) Requires the institute, not later than June 1, 2012, to develop, adopt, and disseminate the model policy and associated training materials required under Article 38.20, Code of Criminal Procedure, as added by this Act.

(b) Requires each law enforcement agency to which Article 38.20, Code of Criminal Procedure, as added by this Act, applies to adopt a policy as required by that article not later than September 1, 2012.

(c) Makes the change in law made by Section 5, Article 38.20, Code of Criminal Procedure, as added by this Act, prospective to lineup identification procedures conducted on or after September 1, 2012, regardless of whether the offense to which the procedure is related occurred before, on, or after September 1, 2012.

SECTION 3. Effective date: September 1, 2011.