

BILL ANALYSIS

Senate Research Center

C.S.S.B. 121
By: Ellis et al.
Criminal Justice
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Committee Report (Substituted)

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.

C.S.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.

C.S.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, at a minimum, conforms to the requirements of Subsection (c).

(b) Requires the institute, in consultation with large, medium, and small law enforcement agencies and with law enforcement associations, scientific experts in eyewitness memory research, and appropriate organizations engaged in the development of law enforcement policy, to develop, adopt, and disseminate to all law enforcement agencies in this state a model policy and associated training materials regarding the administration of photograph and live lineup identification procedures. Requires the institute to provide for a period of public comment before adopting the policy and materials.

(c) Requires that the model policy or any other policy adopted by a law enforcement agency under Subsection (a):

(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;

(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.

Sec. 4. (a) Requires the institute, not later than December 31 of each odd-numbered year, to review the model policy and training materials adopted under this article and to modify the policy and materials as appropriate.

(b) Requires each law enforcement agency, not later than September 1 of each even-numbered year, to review its policy adopted under this article and to modify that policy as appropriate.

Sec. 5. (a) Provides that 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. Provides that 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) Provides that, notwithstanding Article 38.23 (Evidence Not To Be Used) as that article relates to a violation of a state statute, 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.

SECTION 2. (a) Requires the institute, not later than December 31, 2011, 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.