

By: Ellis

S.B. No. 663

A BILL TO BE ENTITLED

AN ACT

relating to photograph and live lineup identification procedures in criminal cases.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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

Art. 38.20. PHOTOGRAPH AND LIVE LINEUP IDENTIFICATION PROCEDURES. (a) A person administering a photograph or live lineup identification procedure to enable a witness to identify an offender for purposes of prosecution in a criminal case shall show the photographs or live lineup participants sequentially to the witness. The person shall require the witness to state whether the individual shown is the offender before the witness views the next photograph or live lineup participant.

(b) Before a photograph or live lineup identification procedure, the person administering the procedure shall inform the witness that:

(1) the offender may not be among those shown, and the witness is not required to make an identification;

(2) the witness will be shown photographs or live lineup participants one at a time and will be required to state whether the individual shown is the offender before the witness views the next photograph or live lineup participant; and

(3) the witness should not assume that the person

1 administering the photograph or live lineup identification
2 procedure knows which individual is the suspect in the case.

3 (c) A witness who views a live lineup or photograph array
4 must sign a form stating that the witness has received the
5 information described by Subsection (b).

6 (d) If the witness identifies an individual as the offender,
7 the person administering the photograph or live lineup
8 identification procedure shall require the witness to characterize
9 the degree of certainty of the witness that the individual
10 identified is the offender.

11 (e) Only one member of a photograph array or live lineup may
12 be a suspect in the case. The remaining members must be individuals
13 who are not suspects but who satisfy the witness's previous
14 description of the offender without appearing to be significantly
15 different from the suspect. Five or more individuals who are not
16 suspects must be included in the photograph array or live lineup.

17 (f) The person who administers a photograph or live lineup
18 identification procedure may not be made aware of which member of
19 the photograph array or live lineup is the suspect in the case.

20 (g) Information related to a photograph or live lineup
21 identification procedure must be documented in writing, including:

22 (1) identification information regarding the
23 photographs or live lineup participants and sources of any
24 photographs used;

25 (2) names of all individuals present when the
26 procedure was conducted; and

27 (3) the date and time the procedure was conducted.

1 (h) A live lineup identification procedure must be
2 photographed or videotaped. The photographs or video from the
3 procedure must be disclosed to the defendant and the attorney
4 representing the defendant during discovery proceedings in the
5 case.

6 SECTION 2. Article 38.20, Code of Criminal Procedure, as
7 added by this Act, applies to any photograph or live lineup
8 identification procedure that is conducted on or after the
9 effective date of this Act.

10 SECTION 3. This Act takes effect September 1, 2005.