

By: Ellis

S.B. No. 799

A BILL TO BE ENTITLED

AN ACT

relating to the creation of the Texas Eyewitness Identification Working Group.

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. TEXAS EYEWITNESS IDENTIFICATION WORKING GROUP

Sec. 1. CREATION. The Texas Eyewitness Identification Working Group is created.

Sec. 2. COMPOSITION. (a) The working group is composed of four members:

(1) the executive director of the Commission on Law Enforcement Officer Standards and Education or the director's designee, who must be employed by the commission;

(2) the executive director of the Bill Blackwood Law Enforcement Management Institute of Texas at Sam Houston State University or the director's designee, who must be a faculty member at the institute;

(3) the executive director of the Eyewitness Identification Research Laboratory of The University of Texas at El Paso or the director's designee, who must be a faculty member at the laboratory; and

(4) the president of the Texas Police Chiefs Association or the president's designee.

1 (b) The working group shall elect a presiding officer from
2 among its members.

3 (c) Chapter 2110, Government Code, does not apply to the
4 size, composition, or duration of the working group.

5 Sec. 3. MODEL COMPREHENSIVE POLICIES AND PROCEDURES;
6 TRAINING MATERIALS. (a) The working group shall develop, adopt,
7 and disseminate to all state and local law enforcement agencies in
8 this state model comprehensive policies and procedures and
9 associated training materials regarding the administration of
10 photograph and live lineup identification procedures.

11 (b) The model policies and procedures must be designed to
12 reduce the potential for erroneous identifications and articulate
13 best practices to enhance the objectivity and reliability of
14 eyewitness identifications. The model policies and procedures must
15 be informed by scientific research on eyewitness memory and
16 address:

17 (1) selecting photograph and live lineup fillers;

18 (2) instructing witnesses before conducting
19 photograph and live lineup identification procedures;

20 (3) documenting photograph and live lineup
21 identification procedures and witness confidence in
22 identifications; and

23 (4) other procedures that will best ensure objective
24 assessments of the memory of witnesses and the ability of witnesses
25 to identify a perpetrator.

26 (c) The model policies and procedures are advisory only.

27 Sec. 4. ADVISORY PANEL. (a) The working group shall

1 consult with an advisory panel to assist in the development of the
2 model policies and procedures and the associated training
3 materials. The advisory panel shall provide guidance and
4 recommendations to the working group, including feedback on draft
5 policies, procedures, and training materials.

6 (b) The advisory panel must include:

7 (1) three police officers with experience in
8 conducting eyewitness identification procedures, nominated by any
9 member of the working group and selected by majority of the working
10 group;

11 (2) three sheriff's deputies with experience in
12 conducting eyewitness identification procedures, nominated by any
13 member of the working group and selected by majority of the working
14 group;

15 (3) a prosecutor designated by the Texas District and
16 County Attorneys Association;

17 (4) an attorney with experience in the practice of
18 criminal law designated by the Texas Criminal Defense Lawyers
19 Association;

20 (5) the chief counsel of the West Texas Innocence
21 Project at the Texas Tech University School of Law or the counsel's
22 designee; and

23 (6) the president of the Texas Center for Actual
24 Innocence at The University of Texas School of Law or the
25 president's designee.

26 (c) For purposes of Subsection (b)(1), the police officers
27 must represent departments of different sizes as follows:

1 (1) one representative of a police department of a
2 municipality with a population of 500,000 or more;

3 (2) one representative of a police department of a
4 municipality with a population of 100,000 or more and less than
5 500,000; and

6 (3) one representative of a police department of a
7 municipality with a population of less than 100,000.

8 (d) For purposes of Subsection (b)(2), the sheriff's
9 deputies must represent departments of different sizes as follows:

10 (1) one representative of a sheriff's department of a
11 county with a population of 500,000 or more;

12 (2) one representative of a sheriff's department of a
13 county with a population of 100,000 or more and less than 500,000;
14 and

15 (3) one representative of a sheriff's department of a
16 county with a population of less than 100,000.

17 Sec. 5. CONSTRUCTION OF LAW. This section and the model
18 policies and procedures and the training materials developed and
19 adopted under this article may not be construed as affecting the
20 admissibility of eyewitness identification testimony in the courts
21 of this state or be held to constitute a best practice in civil or
22 criminal litigation.

23 Sec. 6. BIENNIAL REVIEW. The working group shall complete a
24 biennial review of the policies, procedures, and training materials
25 developed and adopted under this article and shall modify the
26 policies, procedures, and materials as necessary.

27 SECTION 2. Not later than July 1, 2008, the Texas Eyewitness

1 Identification Working Group shall adopt and distribute to local
2 law enforcement agencies in this state the model comprehensive
3 policies and procedures and the associated training materials
4 required by Article 38.20, Code of Criminal Procedure, as added by
5 this Act.

6 SECTION 3. This Act takes effect immediately if it receives
7 a vote of two-thirds of all the members elected to each house, as
8 provided by Section 39, Article III, Texas Constitution. If this
9 Act does not receive the vote necessary for immediate effect, this
10 Act takes effect September 1, 2007.