

1-1 By: Ellis S.B. No. 799  
1-2 (In the Senate - Filed February 21, 2007; March 6, 2007,  
1-3 read first time and referred to Committee on Criminal Justice;  
1-4 April 16, 2007, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 5, Nays 0; April 16, 2007,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 799 By: Ellis

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the creation of the Texas Eyewitness Identification  
1-11 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  
three 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; and

(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.

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

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

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

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

(1) selecting photograph and live lineup fillers;  
(2) instructing witnesses before conducting  
photograph and live lineup identification procedures;

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

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

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

Sec. 4. ADVISORY PANEL. (a) The working group shall  
consult with an advisory panel to assist in the development of the  
model policies and procedures and the associated training  
materials. The advisory panel shall provide guidance and  
recommendations to the working group, including feedback on draft  
policies, procedures, and training materials.

(b) The advisory panel must include:

2-1 (1) three police officers with experience in  
2-2 conducting eyewitness identification procedures, nominated by any  
2-3 member of the working group and selected by majority of the working  
2-4 group;

2-5 (2) three sheriff's deputies with experience in  
2-6 conducting eyewitness identification procedures, nominated by any  
2-7 member of the working group and selected by majority of the working  
2-8 group;

2-9 (3) a prosecutor designated by the Texas District and  
2-10 County Attorneys Association;

2-11 (4) an attorney with experience in the practice of  
2-12 criminal law designated by the Texas Criminal Defense Lawyers  
2-13 Association;

2-14 (5) the president of the Texas Police Chiefs  
2-15 Association or the president's designee;

2-16 (6) the chief counsel of the West Texas Innocence  
2-17 Project at the Texas Tech University School of Law or the counsel's  
2-18 designee; and

2-19 (7) the president of the Texas Center for Actual  
2-20 Innocence at The University of Texas School of Law or the  
2-21 president's designee.

2-22 (c) For purposes of Subsection (b)(1), the police officers  
2-23 must represent departments of different sizes as follows:

2-24 (1) one representative of a police department of a  
2-25 municipality with a population of 500,000 or more;

2-26 (2) one representative of a police department of a  
2-27 municipality with a population of 100,000 or more and less than  
2-28 500,000; and

2-29 (3) one representative of a police department of a  
2-30 municipality with a population of less than 100,000.

2-31 (d) For purposes of Subsection (b)(2), the sheriff's  
2-32 deputies must represent departments of different sizes as follows:

2-33 (1) one representative of a sheriff's department of a  
2-34 county with a population of 500,000 or more;

2-35 (2) one representative of a sheriff's department of a  
2-36 county with a population of 100,000 or more and less than 500,000;  
2-37 and

2-38 (3) one representative of a sheriff's department of a  
2-39 county with a population of less than 100,000.

2-40 Sec. 5. CONSTRUCTION OF LAW. This section and the model  
2-41 policies and procedures and the training materials developed and  
2-42 adopted under this article may not be construed as affecting the  
2-43 admissibility of eyewitness identification testimony in the courts  
2-44 of this state or be held to constitute a best practice in civil  
2-45 litigation.

2-46 Sec. 6. BIENNIAL REVIEW. The working group shall complete a  
2-47 biennial review of the policies, procedures, and training materials  
2-48 developed and adopted under this article and shall modify the  
2-49 policies, procedures, and materials as necessary.

2-50 SECTION 2. Not later than July 1, 2008, the Texas Eyewitness  
2-51 Identification Working Group shall adopt and distribute to local  
2-52 law enforcement agencies in this state the model comprehensive  
2-53 policies and procedures and the associated training materials  
2-54 required by Article 38.20, Code of Criminal Procedure, as added by  
2-55 this Act.

2-56 SECTION 3. This Act takes effect immediately if it receives  
2-57 a vote of two-thirds of all the members elected to each house, as  
2-58 provided by Section 39, Article III, Texas Constitution. If this  
2-59 Act does not receive the vote necessary for immediate effect, this  
2-60 Act takes effect September 1, 2007.

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