

BILL ANALYSIS

C.S.H.B. 215
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Procedures for eyewitness lineup identification are inconsistent across the state and can lead to a wrongful conviction. Many of the procedures currently followed may leave too much room for individual discretion even after the practices have been determined to be flawed. It has been reported that a high percentage of convictions in Texas based on eyewitness lineups have been overturned by DNA evidence.

C.S.H.B. 215 requires each law enforcement agency to create a written policy on handling the agency's lineup identification procedures. The policy for both live and photograph lineups would be informed by credible field, academic, or laboratory research and incorporate best practices for reducing the risk of misidentification. The bill also provides for a model policy to be developed by the Bill Blackwood Law Enforcement Management Institute of Texas at Sam Houston State University as a resource to local law enforcement jurisdictions.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 215 amends the Code of Criminal Procedure to require each 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 officer's official duties to adopt, implement, and as necessary amend a detailed written policy regarding the administration of photograph and live lineup identification procedures in accordance with the bill's provisions. The bill authorizes a law enforcement agency to adopt a model policy developed by the Bill Blackwood Law Enforcement Management Institute of Texas at Sam Houston State University or the agency's own policy that conforms, at a minimum, to the requirements prescribed by the bill's provisions. The bill requires the institute, not later than December 31, 2011, and 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 Texas a model policy and associated training materials regarding the administration of photograph and live lineup identification procedures. The bill requires the institute to provide for a period of public comment before adopting the policy and materials.

C.S.H.B. 215 requires the model policy or any other policy adopted by a law enforcement agency in place of the model policy to be based on credible field, academic, or laboratory research on eyewitness memory; relevant policies, guidelines, and best practices designed to reduce erroneous eyewitness identifications and enhance the reliability and objectivity of eyewitness identifications; and other relevant information as appropriate. The bill requires the model policy to address the following topics: the selection of photograph and live lineup filler photographs or participants; instructions given to a witness before conducting a photograph or

live lineup identification procedure; 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; procedures for administering a photograph or live lineup identification procedure to an illiterate person or a person with limited English language proficiency; procedures for assigning an administrator who, as applicable, 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 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 any other procedures or best practices supported by credible research or commonly accepted as a means to reduce erroneous eyewitness identifications and enhance the objectivity and reliability of eyewitness identifications. The bill requires the institute, not later than December 31 of each odd-numbered year, to review the adopted model policy and training materials and to modify the policy and materials as necessary. The bill requires each law enforcement agency, not later than September 1 of each even-numbered year, to review its adopted policy and to modify that policy as appropriate.

C.S.H.B. 215 makes evidence of compliance or noncompliance with the model policy or any other policy adopted in place of the model policy under the bill's provisions or with the minimum requirements as prescribed by the bill relevant and admissible in a criminal case but not a condition precedent to the admissibility of an out-of-court eyewitness identification. The bill specifies that a failure to conduct a photograph or live lineup identification procedure in substantial compliance with the model policy or any other policy adopted in place of the model policy under the bill's provisions or with the minimum requirements as prescribed by the bill does not bar the admission of eyewitness identification testimony in courts of this state. The bill makes these provisions regarding compliance or noncompliance applicable only to a photograph or live lineup identification procedure conducted on or after September 1, 2012, regardless of the date the related offense occurred. The bill requires each law enforcement agency to which the bill's provisions apply to adopt the policy as required by the bill not later than September 1, 2012.

C.S.H.B. 215 defines "institute."

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 215 differs from the original by making a technical correction to cross-referenced requirements outlined in the bill's provisions to which a lineup identification policy adopted by a law enforcement agency in place of the model policy must conform and by specifying that the agency's policy must conform to those requirements at a minimum. The substitute differs from the original by specifying that the law enforcement agencies with which the institute is required to consult in the development of its model policy are to be large, medium, and small law enforcement agencies and by adding to the entities with which the institute is required to consult appropriate organizations engaged in the development of law enforcement policy. The substitute differs from the original by requiring the development of the institute's policy in consultation with, rather than with the advice and assistance of, specified entities and experts. The substitute differs from the original by clarifying that the model policy is to be disseminated to all law enforcement agencies in Texas. The substitute differs from the original by adding a requirement for the institute to provide for a period of public comment before adopting the policy and materials. The substitute requires the model policy, in addition to the other elements, to be based on credible field, academic, or laboratory research on eyewitness memory, whereas the original requires the policy to be based on scientific research on eyewitness memory. The substitute requires the model policy to be based on relevant policies, guidelines, and best practices

designed to reduce erroneous eyewitness identifications and to enhance the reliability and objectivity of eyewitness identifications, whereas the original requires the model policy to be based on relevant policies and guidelines developed by the federal government, other states, and other law enforcement organizations and does not specify the purpose of the policies and guidelines. The substitute requires the model policy to address procedures for assigning an administrator 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, whereas the original requires the policy to address procedures for assigning an administrator capable of administering the array in a blind manner or, if such administration is not practicable, using unspecified alternative procedures. The substitute requires the institute to complete a review of the model policy and training materials not later than December 31 of each odd-numbered year, whereas the original requires an annual review. The substitute adds a provision not in the original requiring each law enforcement agency to review the policy it has adopted under the bill not later than September 1 of each even-numbered year. The substitute differs from the original by specifying that provisions in the bill regarding the relevance and admissibility in criminal cases of evidence of compliance or noncompliance with an adopted model policy, and provisions in the bill regarding a failure to conduct photograph or live lineup identification procedures in substantial compliance with the model policy, also apply to a policy adopted by a law enforcement agency in place of the model policy and to the minimum requirements prescribed by the bill. The substitute differs from the original by changing the date by which the institute is required to develop, adopt, and disseminate the model policy and materials from not later than June 1, 2012, to not later than December 31, 2011.