

By: Gallego

H.B. No. 215

Substitute the following for H.B. No. 215:

By: Hartnett

C.S.H.B. No. 215

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

Sec. 1. In this article, "institute" means the Bill Blackwood Law Enforcement Management Institute of Texas located at Sam Houston State University.

Sec. 2. 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) Each law enforcement agency shall 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. A law enforcement agency may 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).

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

11 (c) The model policy or any other policy adopted by a law
12 enforcement agency under Subsection (a) must:

13 (1) be based on:

14 (A) credible field, academic, or laboratory
15 research on eyewitness memory;

16 (B) relevant policies, guidelines, and best
17 practices designed to reduce erroneous eyewitness identifications
18 and to enhance the reliability and objectivity of eyewitness
19 identifications; and

20 (C) other relevant information as appropriate;
21 and

22 (2) address the following topics:

23 (A) the selection of photograph and live lineup
24 filler photographs or participants;

25 (B) instructions given to a witness before
26 conducting a photograph or live lineup identification procedure;

27 (C) the documentation and preservation of

1 results of a photograph or live lineup identification procedure,
2 including the documentation of witness statements, regardless of
3 the outcome of the procedure;

4 (D) procedures for administering a photograph or
5 live lineup identification procedure to an illiterate person or a
6 person with limited English language proficiency;

7 (E) procedures for assigning an administrator
8 who, as applicable:

9 (i) is unaware of which member of the live
10 lineup is the suspect in the case or, if that is not practicable,
11 alternative procedures designed to prevent opportunities to
12 influence the witness; or

13 (ii) is capable of administering a
14 photograph array in a blind manner or in a manner consistent with
15 other proven or supported best practices designed to prevent
16 opportunities to influence the witness; and

17 (F) any other procedures or best practices
18 supported by credible research or commonly accepted as a means to
19 reduce erroneous eyewitness identifications and to enhance the
20 objectivity and reliability of eyewitness identifications.

21 Sec. 4. (a) Not later than December 31 of each odd-numbered
22 year, the institute shall review the model policy and training
23 materials adopted under this article and shall modify the policy
24 and materials as appropriate.

25 (b) Not later than September 1 of each even-numbered year,
26 each law enforcement agency shall review its policy adopted under
27 this article and shall modify that policy as appropriate.

1 Sec. 5. (a) Evidence of compliance or noncompliance with
2 the model policy or any other policy adopted under this article or
3 with the minimum requirements of this article is relevant and
4 admissible in a criminal case but is not a condition precedent to
5 the admissibility of an out-of-court eyewitness identification.

6 (b) Notwithstanding Article 38.23 as that article relates
7 to a violation of a state statute, a failure to conduct a photograph
8 or live lineup identification procedure in substantial compliance
9 with the model policy or any other policy adopted under this article
10 or with the minimum requirements of this article does not bar the
11 admission of eyewitness identification testimony in the courts of
12 this state.

13 SECTION 2. (a) Not later than December 31, 2011, the Bill
14 Blackwood Law Enforcement Management Institute of Texas shall
15 develop, adopt, and disseminate the model policy and associated
16 training materials required under Article 38.20, Code of Criminal
17 Procedure, as added by this Act.

18 (b) Not later than September 1, 2012, each law enforcement
19 agency to which Article 38.20, Code of Criminal Procedure, as added
20 by this Act, applies shall adopt a policy as required by that
21 article.

22 (c) The change in law made by Section 5, Article 38.20, Code
23 of Criminal Procedure, as added by this Act, applies only to a
24 photograph or live lineup identification procedure conducted on or
25 after September 1, 2012, regardless of whether the offense to which
26 the procedure is related occurred before, on, or after September 1,
27 2012.

1 SECTION 3. This Act takes effect September 1, 2011.