

1-1 By: Gallego, et al. (Senate Sponsor - Ellis) H.B. No. 215  
1-2 (In the Senate - Received from the House April 4, 2011;  
1-3 May 3, 2011, read first time and referred to Committee on Criminal  
1-4 Justice; May 12, 2011, reported favorably by the following vote:  
1-5 Yeas 7, Nays 0; May 12, 2011, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to photograph and live lineup identification procedures in  
1-9 criminal cases.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Chapter 38, Code of Criminal Procedure, is  
1-12 amended by adding Article 38.20 to read as follows:

1-13 Art. 38.20. PHOTOGRAPH AND LIVE LINEUP IDENTIFICATION  
1-14 PROCEDURES

1-15 Sec. 1. In this article, "institute" means the Bill  
1-16 Blackwood Law Enforcement Management Institute of Texas located at  
1-17 Sam Houston State University.

1-18 Sec. 2. This article applies only to a law enforcement  
1-19 agency of this state or of a county, municipality, or other  
1-20 political subdivision of this state that employs peace officers who  
1-21 conduct photograph or live lineup identification procedures in the  
1-22 routine performance of the officers' official duties.

1-23 Sec. 3. (a) Each law enforcement agency shall adopt,  
1-24 implement, and as necessary amend a detailed written policy  
1-25 regarding the administration of photograph and live lineup  
1-26 identification procedures in accordance with this article. A law  
1-27 enforcement agency may adopt:

1-28 (1) the model policy adopted under Subsection (b); or  
1-29 (2) the agency's own policy that, at a minimum,  
1-30 conforms to the requirements of Subsection (c).

1-31 (b) The institute, in consultation with large, medium, and  
1-32 small law enforcement agencies and with law enforcement  
1-33 associations, scientific experts in eyewitness memory research,  
1-34 and appropriate organizations engaged in the development of law  
1-35 enforcement policy, shall develop, adopt, and disseminate to all  
1-36 law enforcement agencies in this state a model policy and  
1-37 associated training materials regarding the administration of  
1-38 photograph and live lineup identification procedures. The  
1-39 institute shall provide for a period of public comment before  
1-40 adopting the policy and materials.

1-41 (c) The model policy or any other policy adopted by a law  
1-42 enforcement agency under Subsection (a) must:

1-43 (1) be based on:

1-44 (A) credible field, academic, or laboratory  
1-45 research on eyewitness memory;

1-46 (B) relevant policies, guidelines, and best  
1-47 practices designed to reduce erroneous eyewitness identifications  
1-48 and to enhance the reliability and objectivity of eyewitness  
1-49 identifications; and

1-50 (C) other relevant information as appropriate;  
1-51 and

1-52 (2) address the following topics:

1-53 (A) the selection of photograph and live lineup  
1-54 filler photographs or participants;

1-55 (B) instructions given to a witness before  
1-56 conducting a photograph or live lineup identification procedure;

1-57 (C) the documentation and preservation of  
1-58 results of a photograph or live lineup identification procedure,  
1-59 including the documentation of witness statements, regardless of  
1-60 the outcome of the procedure;

1-61 (D) procedures for administering a photograph or  
1-62 live lineup identification procedure to an illiterate person or a  
1-63 person with limited English language proficiency;

1-64 (E) for a live lineup identification procedure,

2-1 if practicable, procedures for assigning an administrator who is  
2-2 unaware of which member of the live lineup is the suspect in the  
2-3 case or alternative procedures designed to prevent opportunities to  
2-4 influence the witness;

2-5 (F) for a photograph identification procedure,  
2-6 procedures for assigning an administrator who is capable of  
2-7 administering a photograph array in a blind manner or in a manner  
2-8 consistent with other proven or supported best practices designed  
2-9 to prevent opportunities to influence the witness; and

2-10 (G) any other procedures or best practices  
2-11 supported by credible research or commonly accepted as a means to  
2-12 reduce erroneous eyewitness identifications and to enhance the  
2-13 objectivity and reliability of eyewitness identifications.

2-14 Sec. 4. (a) Not later than December 31 of each  
2-15 odd-numbered year, the institute shall review the model policy and  
2-16 training materials adopted under this article and shall modify the  
2-17 policy and materials as appropriate.

2-18 (b) Not later than September 1 of each even-numbered year,  
2-19 each law enforcement agency shall review its policy adopted under  
2-20 this article and shall modify that policy as appropriate.

2-21 Sec. 5. (a) Any evidence or expert testimony presented by  
2-22 the state or the defendant on the subject of eyewitness  
2-23 identification is admissible only subject to compliance with the  
2-24 Texas Rules of Evidence. Evidence of compliance with the model  
2-25 policy or any other policy adopted under this article or with the  
2-26 minimum requirements of this article is not a condition precedent  
2-27 to the admissibility of an out-of-court eyewitness identification.

2-28 (b) Notwithstanding Article 38.23 as that article relates  
2-29 to a violation of a state statute, a failure to conduct a photograph  
2-30 or live lineup identification procedure in substantial compliance  
2-31 with the model policy or any other policy adopted under this article  
2-32 or with the minimum requirements of this article does not bar the  
2-33 admission of eyewitness identification testimony in the courts of  
2-34 this state.

2-35 SECTION 2. (a) Not later than December 31, 2011, the Bill  
2-36 Blackwood Law Enforcement Management Institute of Texas shall  
2-37 develop, adopt, and disseminate the model policy and associated  
2-38 training materials required under Article 38.20, Code of Criminal  
2-39 Procedure, as added by this Act.

2-40 (b) Not later than September 1, 2012, each law enforcement  
2-41 agency to which Article 38.20, Code of Criminal Procedure, as added  
2-42 by this Act, applies shall adopt a policy as required by that  
2-43 article.

2-44 (c) The change in law made by Section 5, Article 38.20, Code  
2-45 of Criminal Procedure, as added by this Act, applies only to a  
2-46 photograph or live lineup identification procedure conducted on or  
2-47 after September 1, 2012, regardless of whether the offense to which  
2-48 the procedure is related occurred before, on, or after September 1,  
2-49 2012.

2-50 SECTION 3. This Act takes effect September 1, 2011.

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