

By: Hinojosa, Ellis

S.B. No. 889

A BILL TO BE ENTITLED

AN ACT

relating to jury instructions regarding eyewitness identification testimony in certain criminal cases.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 3(a), Article 38.20, Code of Criminal Procedure, is amended to read as follows:

(a) Each law enforcement agency shall adopt, implement, require the agency's peace officers to comply with, 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).

SECTION 2. Chapter 36, Code of Criminal Procedure, is amended by adding Article 36.145 to read as follows:

Art. 36.145. STATEMENT REGARDING EYEWITNESS IDENTIFICATION TESTIMONY. During the trial of a case in which the identity of the perpetrator is a contested issue and an eyewitness identifies the defendant as the perpetrator, the judge shall include in the court's charge under Article 36.14 a statement that, in considering the reliability of the eyewitness's testimony, the jury may consider the facts and circumstances surrounding:

1 (1) the eyewitness's opportunity to observe the
2 perpetrator at the time or times about which the eyewitness
3 testified; and

4 (2) the eyewitness's out-of-court identification of
5 the defendant, including whether the out-of-court identification
6 procedure was conducted for the eyewitness by a law enforcement
7 agency in compliance with the agency's policy adopted as required
8 under Article 38.20.

9 SECTION 3. Article 36.145, Code of Criminal Procedure, as
10 added by this Act, applies only to a criminal case in which the voir
11 dire examination begins on or after the effective date of this Act.
12 A criminal case in which the voir dire examination begins before the
13 effective date of this Act is governed by the law in effect when the
14 examination begins, and the former law is continued in effect for
15 that purpose.

16 SECTION 4. This Act takes effect September 1, 2015.