

BILL ANALYSIS

Senate Research Center
80R6298 SLO-F

S.B. 799
By: Ellis
Criminal Justice
4/5/2007
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Mistaken eyewitness identification of an innocent person is the leading documented factor in causing mistaken convictions that have been overturned in this country. To date, of the 28 DNA exonerations in Texas, 22 were wrongfully convicted based on incorrect eyewitness identifications. This legislation is designed to reduce the incidence of wrongful convictions by improving the accuracy and reliability of eyewitness identification procedures used by police departments in Texas. Research and experience show that the reliability of eyewitness identification can be significantly increased through this subtle change in the eyewitness identification process. The reforms in this bill are endorsed and recommended by the United States Department of Justice.

As proposed, S.B. 799 improves eyewitness lineup procedures by enhancing objectivity and reliability of eyewitness identifications to reduce the potential for mistaken identifications and wrongful convictions.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 38, Code of Criminal Procedure, by adding Article 38.20, as follows:

Art. 38.20. PHOTOGRAPH AND LIVE LINEUP IDENTIFICATION PROCEDURES

Sec. 1. (a) Requires the office of the attorney general in consultation with certain law enforcement agencies and scientific experts in witness memory to develop, adopt, and disseminate to all state and local law enforcement agencies in Texas comprehensive written policies and procedures and associated training materials regarding the administration of photograph and live lineup identification procedures in accordance with Section 2.

(b) Requires the policies and procedures adopted under Subsection (a) to address the manner in which a photograph or live lineup identification procedure (procedure) should be administered to an illiterate person or a person of limited English proficiency.

(c) Requires a law enforcement agency conducting a procedure to comply with the policies and procedures adopted by the office of the attorney general under Subsection (a).

Sec. 2. (a) Requires the person administering the procedure to provide the witness with certain instructions, a written summary of the instructions, and to obtain the witness's signature on the form before a procedure.

(b) Prohibits the person administering a procedure, if practicable, from being aware of which member of the photograph array or live lineup is the suspect in the case.

(c) Requires the person investigating the case to document in writing the reason the photograph array or live lineup was conducted by a person aware of the suspect's identity. Requires the procedure to be administered in a certain way if the person administering the procedure is aware of the identity of the suspect.

(d) Authorizes an alternative method adopted by the office of the attorney general under Subsection (c) to include a computer program that automatically administers the program, a procedure under which photographs are randomly placed in folders and shuffled, or another method designed to achieve a neutral administration of the procedure.

(e) Prohibits the person administering the procedure and any other person present during the procedure from offering commentary or feedback to the witness regarding any member of the photograph array or live lineup. Prohibits writings or other information concerning a previous arrest, indictment, or conviction of a suspect from being made visible or known to a witness.

(f) Prohibits a person familiar with the identity of the suspect from being present at the procedure.

(g) Requires the person administering the procedure to immediately require the witness, if a witness identifies an individual as the offender, to characterize in writing in the witness's own words the degree of certainty that the individual identified is the offender. Requires the person administering the procedure to include the witness's statement as a part of the record certified under Subsection (o).

(h) Authorizes only one member of a photograph array or live lineup to be a suspect in the case. Requires the remaining members of the array or lineup to be individuals who are not suspect or otherwise of interest in the investigation but who resemble the witness's previous description of the offender. Prohibits the suspect from differing significantly in appearance from the remaining members of the array or lineup. Requires the remaining members of the array or lineup to share with the suspect the same significant features if the witness has provided a limited or inadequate description of the offender or a description of the offender that differs significantly from the appearance of the suspect. Requires five or more individuals who are not suspects to be included in a photograph array, and requires four or more individuals who are not suspects to be included in a live lineup.

(i) Requires the person administering a photograph identification procedure, to the extent practicable, to create, by artificially adding or concealing the unusual features in the photographs, a consistent appearance between the members of the photograph array with respect to any unusual features specified by the witness in describing the offender. Requires the photograph of the suspect in the array to resemble the suspect's appearance at the time the offense was committed and prohibits the depiction of the suspect in a manner that differs significantly from the photographs of other members of the array.

(j) Requires each lineup member to perform identifying actions specified by the witness in describing the offender.

(k) Requires the members of subsequent arrays or live lineups for the offense to be different from the members used in any previous arrays or lineups if a witness previously viewed a procedure to identify another suspect for the offense.

(l) Requires the suspect to be placed in a different position in the array or lineup for each witness if multiple witnesses view a photograph array or live lineup.

(m) Requires all participants in a live lineup to be kept from the view of a witness before the lineup begins.

(n) Authorizes a law enforcement agency to seek the identification of a particular suspect through a photograph or live lineup procedure only once from any particular witness.

(o) Requires information related to a procedure to be documented in a record certified with the witness's signature regardless of whether an identification is made. Requires the record of the procedure to be made part of the case record and, if applicable, provided to the attorney representing the state. Sets forth the information required to be included in the record.

(p) Requires a procedure to be videotaped or audiotaped if practicable. Requires comments and exchanges among persons present at the procedure to be documented in writing if the procedure is not videotaped or audiotaped. Requires an explanation of why the procedure was not videotaped or audiotaped to be included in the record certified under Subsection (o). Sets forth the information required to be included in the videotaped, audiotaped, or written documentation under this subsection without reference to the perceived importance of the information.

SECTION 2. Makes application of Article 38.20, Code of Criminal Procedure, as added by this Act, prospective.

SECTION 3. Effective date: September 1, 2007.