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Vernon's Texas Statutes and Codes Annotated
 Code of Criminal **Procedure**(Refs & Annos)
 Title 1. Code of Criminal **Procedure** of 1965

Art. 38.20. Photograph and Live Lineup Identification Procedures

Vernon's Texas Statutes and Codes Annotated Code of Criminal Procedure Effective: September 1, 2011 (Approx. 3 pages)
 CHAPTER TWENTY-EIGHT. EVIDENCE IN CRIMINAL ACTIONS (REFS & ANNOS)

Effective: September 1, 2011

Vernon's Ann.Texas C.C.P. Art. 38.20

Art. 38.20. Photograph and Live Lineup Identification Procedures

Currentness

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).

(b) The institute, 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, shall develop, adopt, and disseminate to all law enforcement agencies in this state a model policy and associated training materials regarding the administration of **photograph** and **live lineup** identification **procedures**. The institute shall provide for a period of public comment before adopting the policy and materials.

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

- (1) be based on:
 - (A) credible field, academic, or laboratory research on eyewitness memory;
 - (B) relevant policies, guidelines, and best practices designed to reduce erroneous eyewitness identifications and to enhance the reliability and objectivity of eyewitness identifications; and
 - (C) other relevant information as appropriate; and

(2) address the following topics:

- (A) the selection of **photograph** and **live lineup** filler **photographs** or participants;
- (B) instructions given to a witness before conducting a **photograph** or **live lineup** identification **procedure**;
- (C) 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**;
- (D) **procedures** for administering a **photograph** or **live lineup** identification **procedure** to an illiterate person or a person with limited English language proficiency;
- (E) for a **live lineup** identification **procedure**, if practicable, **procedures** for assigning an administrator who is unaware of which member of the **live lineup** is the suspect in the case or alternative **procedures** designed to prevent opportunities to influence the witness;
- (F) for a **photograph** identification **procedure**, **procedures** for assigning 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
- (G) any other **procedures** or best practices supported by credible research or commonly accepted as a means to reduce erroneous eyewitness identifications and to enhance the objectivity and reliability of eyewitness identifications.

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

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

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

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

Credits

Added by Acts 2011, 82nd Leg., ch. 219 (H.B. 215), § 1, eff. Sept. 1, 2011.

Vernon's Ann. Texas C. C. P. Art. 38.20, TX CRIM PRO Art. 38.20
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