

JAN 23 2006

S.B. NO. 2144

A BILL FOR AN ACT

RELATING TO THE RIGHTS OF THE ACCUSED.

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

1 SECTION 1. The goal of a police investigation is to
2 apprehend the person or persons responsible for committing a
3 crime. Recent studies have confirmed, however, that present
4 eyewitness identification procedures may lead to faulty
5 eyewitness identifications. Studies of modern eyewitness
6 identification procedures indicate that the criminal justice
7 system can significantly decrease the rate of erroneous
8 eyewitness identifications by implementing changes to
9 identification procedures. These changes would decrease
10 erroneous eyewitness identifications and increase the ability of
11 police and prosecutors to convict the guilty and protect our
12 communities. The National Institute of Justice recommends the
13 adoption of new policies and procedures which are readily
14 available and have proven effective in other jurisdictions.
15 Accordingly, the legislature finds that the adoption of new
16 identification procedures will help maximize fairness and
17 justice to Hawaii's citizens.



1 The purpose of this Act is to change police investigative
2 procedures in order to minimize faulty eyewitness
3 identifications.

4 SECTION 2. The Hawaii Revised Statutes is amended by
5 adding a new chapter to be appropriately designated and to read
6 as follows:

7 "CHAPTER

8 EYEWITNESS IDENTIFICATION

9 § -1 Definitions. For the purpose of this chapter:

10 "Eyewitness" means a person who observes another person at
11 or near the scene of an offense.

12 "Filler" means either a person or a photograph of a person
13 who is not suspected of an offense and who is included in an
14 identification procedure.

15 "Identification procedure" means either a photo lineup or a
16 live lineup.

17 "Investigator" means the person conducting the live or
18 photo lineup.

19 "Live lineup" means a procedure in which a group of
20 persons, including the person suspected as the perpetrator of an
21 offense and fillers, is displayed to an eyewitness for the

1 purpose of determining whether the eyewitness is able to
2 identify the suspect as the perpetrator.

3 "Photo lineup" means a procedure in which an array of
4 photographs, including a photograph of the person suspected as
5 the perpetrator of an offense and additional photographs of
6 fillers, is displayed to an eyewitness for the purpose of
7 determining whether the eyewitness is able to identify the
8 suspect as the perpetrator.

9 **§ -2 Eyewitness identification procedures.** (a) The
10 conducting of photo lineups and live lineups shall comply with
11 the following requirements:

12 (1) When practicable, the investigator shall be a person
13 who is not aware of which person in the lineup is
14 suspected as the perpetrator of the offense. When it
15 is not practicable for the investigator to be a person
16 who is unaware of which person in the lineup is
17 suspected as the perpetrator of the offense:

18 (A) The lineup shall be presented simultaneously, not
19 sequentially; and

20 (B) The written record required under paragraph (15)
21 shall include a statement by the investigator of
22 the reason that presentation of the lineup was



1 not made by a person who was not aware of which
2 person in the photo lineup or live lineup was
3 suspected as the perpetrator of the offense;

4 (2) The eyewitness shall be instructed prior to the
5 identification procedure that the perpetrator may not
6 be among the persons in the photo lineup or the live
7 lineup, and that the eyewitness should not feel
8 compelled to make an identification;

9 (3) When administering a live lineup or photo lineup in
10 sequence rather than simultaneously:

11 (A) Each photograph or person shall be viewed one at
12 a time;

13 (B) The photographs or persons shall be displayed in
14 random order;

15 (C) The eyewitness should take as much time as needed
16 in making a decision about each photograph or
17 person before moving to the next one; and

18 (D) All photographs or persons shall be shown to the
19 eyewitness, even if an identification is made
20 before all have been viewed;

21 (4) The photo lineup or live lineup shall be composed so
22 that the fillers generally fit the description of the



1 person suspected as the perpetrator and, in the case
2 of a photo lineup, so that the photograph of the
3 person suspected as the perpetrator resembles the
4 perpetrator's appearance at the time of the offense
5 and does not unduly stand out;

6 (5) If the eyewitness has previously viewed a photo lineup
7 or live lineup in connection with the identification
8 of another person suspected of involvement in the
9 offense, the fillers in the lineup in which the person
10 suspected as the perpetrator participates shall be
11 different from the fillers used in any prior lineups;

12 (6) At least five fillers shall be included in the photo
13 lineup and at least four fillers shall be included in
14 the live lineup, in addition to the person suspected
15 as the perpetrator;

16 (7) In a photo lineup, no writings or information
17 concerning any previous arrest of the person suspected
18 as the perpetrator shall be visible to the eyewitness;

19 (8) In a live lineup, any identification actions, such as
20 speaking or making gestures or other movements, shall
21 be performed by all lineup participants;



- 1 (9) In a live lineup, all lineup participants shall be out
2 of the view of the eyewitness at the beginning of the
3 identification procedure;
- 4 (10) The person suspected as the perpetrator shall be the
5 only suspected perpetrator included in the
6 identification procedure;
- 7 (11) Nothing shall be said to the eyewitness regarding the
8 position in the photo lineup or the live lineup of the
9 person suspected as the perpetrator, except as
10 otherwise provided in paragraph (2);
- 11 (12) Nothing shall be said to the eyewitness that might
12 influence the eyewitness's selection of the person
13 suspected as the perpetrator;
- 14 (13) The investigator shall record, in the eyewitness's own
15 words, the eyewitness's confidence level that the
16 person or persons identified in the lineup is the
17 suspect;
- 18 (14) If the eyewitness identifies a person as the
19 perpetrator, the eyewitness shall not be provided any
20 information concerning the person prior to obtaining
21 the eyewitness's statement that the eyewitness is
22 certain of the selection; and



- 1 (15) A written record of the identification procedure shall
2 be made that includes the following information:
- 3 (A) All results indicating identification or the
4 inability to identify a person as the perpetrator
5 obtained during the identification procedure,
6 signed by the eyewitness, including the
7 eyewitness's own words regarding how certain the
8 eyewitness is of the selection;
- 9 (B) The names of all persons present at the
10 identification procedure;
- 11 (C) The date and time of the identification
12 procedure;
- 13 (D) In a live or photo lineup where the subjects were
14 presented sequentially as opposed to
15 simultaneously, the order in which the
16 photographs or persons were displayed to the
17 eyewitness;
- 18 (E) In a photo lineup, the photographs themselves,
19 and identification information and the sources of
20 all photographs used; and



1 (F) In a live lineup, a photo or other visual
2 recording of the lineup that includes all persons
3 who participated in the lineup.

4 (b) Not later than January 1, 2007, each county police
5 department and state agency with criminal investigatory powers
6 shall adopt procedures for the conducting of photo lineups and
7 live lineups that comply with subsection (a).

8 **§ -3 Noncompliance.** (a) Evidence of a failure to
9 comply with any of the provisions of this chapter shall be
10 considered by a court in adjudicating motions to suppress
11 eyewitness identification.

12 (b) Evidence of a failure to comply with any of the
13 provisions of this chapter may be admissible at trial or other
14 hearings in support of claims of eyewitness misidentification as
15 long as such evidence is otherwise admissible.

16 (c) When evidence of a failure to comply with any of the
17 provisions of this chapter has been presented at trial, the jury
18 shall be instructed that it may consider credible evidence of
19 noncompliance in determining the reliability of eyewitness
20 identifications.

21 **§ -4 Training programs.** There is established a training
22 program for law enforcement officers and recruits on the methods

1 of proper eyewitness identification practices consistent with
2 this chapter. The department of the attorney general shall
3 administer the program."

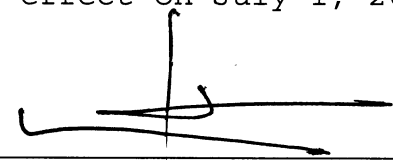
4 SECTION 3. There is appropriated out of the general
5 revenues of the State of Hawaii the sum of \$, or so
6 much thereof as may be necessary for fiscal year 2006-2007, for
7 the creation and administration of a training program for law
8 enforcement for eyewitness identification procedures.




9 The sum appropriated shall be expended by the department of
10 the attorney general for the purposes of this Act.

11 SECTION 4. This Act shall take effect on July 1, 2006.

12

INTRODUCED BY:



a.s.t.

A. Kala'ele

Russell - Kohl


SB 2144

Report Title:

Eyewitness Identification; Procedures

Description:

Specifies procedures for eyewitness identification at photographic and live lineups. Mandates that state and county law enforcement adopt these procedures. Makes appropriation.

