
A BILL FOR AN ACT

RELATING TO 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.

10 The National Institute of Justice recommends the adoption
11 of new policies and procedures that are readily available and
12 have proven effective in other jurisdictions. These changes
13 would decrease erroneous eyewitness identifications and increase
14 the ability of police and prosecutors to convict the guilty and
15 protect our communities. Accordingly, the legislature finds
16 that the adoption of new identification procedures will help
17 maximize fairness and justice, provide Hawaii's citizens with



1 greater protections against faulty identifications, and assist
2 law enforcement agencies in the capture of perpetrators of
3 crimes in our community.

4 The purpose of this Act is to improve the reliability of
5 eyewitness identification.

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

9 "CHAPTER

10 EYEWITNESS IDENTIFICATION

11 § -1 Definitions. For the purpose of this chapter:

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

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

17 "Identification procedure" means either a photo lineup or a
18 live lineup.

19 "Investigator" means the person conducting the live or
20 photo lineup.

21 "Live lineup" means a procedure in which a group of
22 persons, including the person suspected as the perpetrator of an



1 offense and other persons not suspected of the offense, is
2 displayed to an eyewitness for the purpose of determining
3 whether the eyewitness is able to identify the suspect as the
4 perpetrator.

5 "Photo lineup" means a procedure in which an array of
6 photographs, including a photograph of the person suspected as
7 the perpetrator of an offense and additional photographs of
8 other persons not suspected of the offense, is displayed to an
9 eyewitness for the purpose of determining whether the eyewitness
10 is able to identify the suspect as the perpetrator.

11 § -2 **Eyewitness identification procedures.** (a) Photo
12 lineups and live lineups shall be conducted in accordance with
13 the following requirements:

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

20 (A) The lineup shall be presented simultaneously, not
21 sequentially; and



1 (B) The investigator shall state in writing the
2 reason that presentation of the lineup was not
3 made by a person who was not aware which person
4 in the photo lineup or live lineup was suspected
5 as the perpetrator of the offense;

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

11 (3) If a live lineup or photo lineup is conducted in
12 sequence rather than simultaneously:

13 (A) Each photograph or person shall be viewed one at
14 a time;

15 (B) The photographs or persons shall be displayed in
16 random order;

17 (C) The eyewitness shall be permitted to take as much
18 time as needed in making a decision about each
19 photograph or person before moving on to the next
20 one; and



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

4 (4) The photo lineup or live lineup shall be composed so
5 that the fillers generally fit the description of the
6 person suspected as the perpetrator and, in the case
7 of a photo lineup, so that the photograph of the
8 person suspected as the perpetrator resembles the
9 perpetrator's appearance at the time of the offense
10 and does not unduly stand out;

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

17 (6) At least five fillers shall be included in the photo
18 lineup and at least four fillers shall be included in
19 the live lineup, in addition to the person suspected
20 as the perpetrator;



- 1 (7) In a photo lineup, no writings or information
- 2 concerning any previous arrest of the person suspected
- 3 as the perpetrator shall be visible to the eyewitness;
- 4 (8) In a live lineup, any identification actions, such as
- 5 speaking or making gestures or other movements, shall
- 6 be performed by all lineup participants;
- 7 (9) In a live lineup, all lineup participants shall be out
- 8 of the view of the eyewitness at the beginning of the
- 9 identification procedure;
- 10 (10) The person suspected as the perpetrator shall be the
- 11 only suspected perpetrator included in the
- 12 identification procedure;
- 13 (11) Nothing shall be said to the eyewitness regarding the
- 14 position in the photo lineup or the live lineup of the
- 15 person suspected as the perpetrator, except as
- 16 otherwise provided in paragraph (2);
- 17 (12) Nothing shall be said to the eyewitness that might
- 18 influence the eyewitness' selection of the person
- 19 suspected as the perpetrator;
- 20 (13) The investigator shall seek, in the eyewitness' own
- 21 words, the eyewitness' confidence level that the



1 person or persons identified in the lineup is the
2 suspect;

3 (14) If the eyewitness identifies a person as the
4 perpetrator, the eyewitness shall not be provided any
5 information concerning the person prior to obtaining
6 the eyewitness' statement that the eyewitness is
7 certain of the selection; and

8 (15) A written record of the identification procedure shall
9 be made that includes the following information:

10 (A) All results indicating identification obtained or
11 the inability to identify a person as the
12 perpetrator during the identification procedure,
13 signed by the eyewitness, including the
14 eyewitness' own words regarding how certain the
15 eyewitness is of the selection;

16 (B) The names of all persons present at the
17 identification procedure;

18 (C) The date and time of the identification
19 procedure;

20 (D) In a live or photo lineup where the subjects were
21 presented sequentially as opposed to
22 simultaneously, the order in which the



1 photographs or persons were displayed to the
2 eyewitness;

3 (E) In a photo lineup, the photographs themselves,
4 and identification information and the sources of
5 all photographs used; and

6 (F) In a live lineup, a photo or other visual
7 recording of the lineup that includes all persons
8 who participated in the lineup.

9 (b) Not later than January 1, 2010, each county police
10 department and state agency with criminal investigation powers
11 shall adopt procedures for the conducting of photo lineups and
12 live lineups that comply with subsection (a).

13 § -3 Noncompliance. (a) Evidence of a failure to
14 comply with this chapter shall be considered by a court in
15 adjudicating motions to suppress eyewitness identification.

16 (b) Evidence of a failure to comply with this chapter
17 shall be admissible at trial or other hearings in support of
18 claims of eyewitness misidentification as long as the evidence
19 is otherwise admissible.

20 (c) If evidence of a failure to comply with this chapter
21 has been presented at trial, the jury shall be instructed that



1 it may consider credible evidence of noncompliance in
2 determining the reliability of eyewitness identifications.

3 § -4 Training programs. There is established a training
4 program for law enforcement officers and recruits on the methods
5 of proper eyewitness identification practices consistent with
6 this chapter. The department of the attorney general shall
7 administer the program."



8 SECTION 3. There is appropriated out of the general
9 revenues of the State of Hawaii the sum of \$ or so
10 much thereof as may be necessary for fiscal year 2009-2010 to
11 establish and operate a training program as provided in section
12 -4 of chapter , Hawaii Revised Statutes, as enacted in
13 section 2 of this Act.

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

16 SECTION 4. This Act shall take effect on July 1, 2009.

17

INTRODUCED BY:

JAN 26 2009



Report Title:

Eyewitness Identification; Procedures

Description:

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

