

JAN 23 2009

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# 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. Such 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 and provide Hawaii's citizens with greater protections



1 against faulty identifications with the corollary benefit of  
2 assisting the police agencies with the capture of the  
3 perpetrators of crimes in our community.

4 The purpose of this Act is to enact a law relating to  
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) The  
12 conducting of photo lineups and live lineups shall comply with  
13 the following requirements:

14 (1) When practicable, the investigator shall be a person  
15 who is not aware of 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 of which person in the lineup is  
19 suspected 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 of which
- 4 person in the photo lineup or live lineup was
- 5 suspected 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 should take as much time as needed
- 18 in making a decision about each photograph or
- 19 person before moving to the next one; and
- 20 (D) All photographs or persons shall be shown to the
- 21 eyewitness, even if an identification is made
- 22 before all have been viewed;



- 1           (4) The photo lineup or live lineup shall be composed so  
2           that the fillers generally fit the description of the  
3           person suspected as the perpetrator and, in the case  
4           of a photo lineup, so that the photograph of the  
5           person suspected as the perpetrator resembles the  
6           perpetrator's appearance at the time of the offense  
7           and does not unduly stand out;
- 8           (5) If the eyewitness has previously viewed a photo lineup  
9           or live lineup in connection with the identification  
10          of another person suspected of involvement in the  
11          offense, the fillers in the lineup in which the person  
12          suspected as the perpetrator participates shall be  
13          different from the fillers used in any prior lineups;
- 14          (6) At least five fillers shall be included in the photo  
15          lineup and at least four fillers shall be included in  
16          the live lineup, in addition to the person suspected  
17          as the perpetrator;
- 18          (7) In a photo lineup, no writings or information  
19          concerning any previous arrest of the person suspected  
20          as the perpetrator shall be visible to the eyewitness;



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



1 information concerning the person prior to obtaining  
2 the eyewitness's statement that the eyewitness is  
3 certain of the selection; and

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

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

12 (B) The names of all persons present at the  
13 identification procedure;

14 (C) The date and time of the identification  
15 procedure;

16 (D) In a live or photo lineup where the subjects were  
17 presented sequentially as opposed to  
18 simultaneously, the order in which the  
19 photographs or persons were displayed to the  
20 eyewitness;



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

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

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

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

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

19 (c) If evidence of a failure to comply with any of the  
20 provisions of this chapter has been presented at trial, the jury  
21 shall be instructed that it may consider credible evidence of





1 noncompliance in determining the reliability of eyewitness  
2 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."

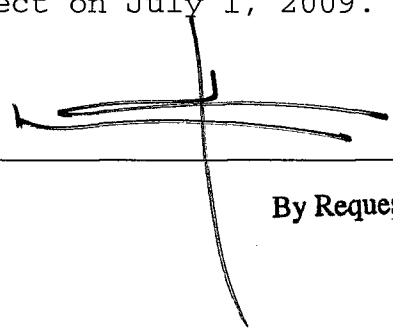
8       SECTION 3. There is appropriated out of the general  
9 revenues of the State of Hawaii the sum of \$                    or so  
10 much thereof as may be necessary for fiscal year 2009-2010 to  
11 establish and operate a training program as provided in  
12 section -4 of chapter       , Hawaii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

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INTRODUCED BY: \_\_\_\_\_



By Request

**Report Title:**

Eyewitness Identification; Procedures

**Description:**

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

