

MAR 16 2011

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# SENATE CONCURRENT RESOLUTION

ENCOURAGING THE STATE ATTORNEY GENERAL AND STATE AND COUNTY LAW  
ENFORCEMENT AGENCIES TO CONSIDER BETTER EYEWITNESS  
IDENTIFICATION PROCEDURES.

1           WHEREAS, the goal of police investigation in Hawaii is to  
2 apprehend the person or persons responsible for committing a  
3 crime; and  
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5           WHEREAS, recent studies have shown, however, that  
6 traditional eyewitness identification procedures may lead to  
7 faulty eyewitness identifications; and  
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9           WHEREAS, studies have also shown that the criminal justice  
10 system can significantly decrease the rate of erroneous  
11 eyewitness identifications by implementing modern identification  
12 procedures that would also increase the ability of police and  
13 prosecutors to convict the guilty and protect our communities;  
14 and  
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16           WHEREAS, the National Institute of Justice recommends the  
17 adoption of new policies and procedures that are readily  
18 available and have been proven effective in other jurisdictions;  
19 and  
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21           WHEREAS, a number of new eyewitness identification  
22 procedures may better reduce the rate of erroneous eyewitness  
23 identification such as:  
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- 25           (1) Ensuring, when practicable, that the investigator  
26 administering a lineup procedure is a person who is  
27 not aware which person in the lineup is suspected as  
28 the perpetrator of the offense, and, when it is not  
29 practicable for the investigator to be a person who is  
30 unaware which person in the lineup is suspected as the  
31 perpetrator of the offense:  
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- 1 (A) The lineup is presented simultaneously, not
- 2 sequentially; and
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- 4 (B) The investigator states in writing the reason why
- 5 the presentation of the lineup was not made by a
- 6 person who was not aware which person in the
- 7 photo lineup or live lineup was suspected as the
- 8 perpetrator of the offense;
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- 10 (2) The eyewitness is instructed prior to the
- 11 identification procedure that the perpetrator may not
- 12 be among the persons in the photo lineup or the live
- 13 lineup and that the eyewitness should not feel
- 14 compelled to make an identification;
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- 16 (3) If a live lineup or photo lineup is conducted in
- 17 sequence rather than simultaneously:
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- 19 (A) Each photograph or person is viewed one at a
- 20 time;
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- 22 (B) The photographs or persons are displayed in
- 23 random order;
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- 25 (C) The eyewitness is given as much time as needed to
- 26 make a decision about each photograph or person
- 27 before moving to the next one; and
- 28
- 29 (D) All photographs or persons are shown to the
- 30 eyewitness, even if an identification is made
- 31 before all have been viewed;
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- 33 (4) The photo lineup or live lineup is composed so that
- 34 the fillers generally fit the description of the
- 35 person suspected as the perpetrator and, in the case
- 36 of a photo lineup, so that the photograph of the
- 37 person suspected as the perpetrator resembles the
- 38 perpetrator's appearance at the time of the offense
- 39 and does not unduly stand out;
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- 41 (5) If the eyewitness has previously viewed a photo lineup
- 42 or live lineup in connection with the identification
- 43 of another person suspected of involvement in the
- 44 offense, the fillers in the lineup in which the person



- 1           suspected as the perpetrator participates are  
2           different from the fillers used in any prior lineups;  
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4           (6) At least five fillers are included in the photo lineup  
5           and at least four fillers are included in the live  
6           lineup, in addition to the person suspected as the  
7           perpetrator;  
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9           (7) In a photo lineup, no writing or information  
10          concerning any previous arrest of the person suspected  
11          as the perpetrator is visible to the eyewitness;  
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13          (8) In a live lineup, any identification actions, such as  
14          speaking or making gestures or other movements, are  
15          performed by all lineup participants;  
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17          (9) In a live lineup, all lineup participants are out of  
18          the view of the eyewitness at the beginning of the  
19          identification procedure;  
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21          (10) The person suspected as the perpetrator is the only  
22          suspected perpetrator included in the identification  
23          procedure;  
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25          (11) Nothing is said to the eyewitness regarding the  
26          position in the photo lineup or the live lineup of the  
27          person suspected as the perpetrator, except as  
28          otherwise provided in paragraph (2);  
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30          (12) Nothing is said to the eyewitness that might influence  
31          the eyewitness's selection of the person suspected as  
32          the perpetrator;  
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34          (13) If the eyewitness identifies a person as the  
35          perpetrator, the investigator seeks, in the  
36          eyewitness's own words, the eyewitness's confidence  
37          level that any person identified in the lineup is the  
38          suspect;  
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40          (14) If the eyewitness identifies a person as the  
41          perpetrator, the eyewitness is not provided any  
42          information concerning the person prior to obtaining  
43          the eyewitness's statement that the eyewitness is  
44          certain of the selection; and



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(15) A written record of the identification procedure is made that includes the following information:

- (A) All results indicating identification or the inability to identify a person as the perpetrator obtained during the identification procedure, signed by the eyewitness, and including the eyewitness's own words regarding how certain the eyewitness is of the selection;
- (B) The names of all persons present at the identification procedure;
- (C) The date and time of the identification procedure;
- (D) In a live or photo lineup where the subjects were presented sequentially as opposed to simultaneously, the order in which the photographs or persons were displayed to the eyewitness;
- (E) In a photo lineup, the photographs themselves, and identification information and the sources of all photographs used; and
- (F) In a live lineup, a photo or other visual recording of the lineup that includes all persons who participated in the lineup; and

WHEREAS, these new identification procedures could help maximize fairness and justice, provide Hawaii's citizens with greater protections against faulty identifications, and assist police agencies with the capture of the perpetrators of crime in our community; now, therefore,

BE IT RESOLVED by the Senate of the Twenty-sixth Legislature of the State of Hawaii, Regular Session of 2011, the House of Representatives concurring, that the State Attorney General and various state and county law enforcement agencies are encouraged to adopt new eyewitness identification procedures as outlined above to decrease the rate of erroneous eyewitness identifications; and



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BE IT FURTHER RESOLVED that the criminal investigations conducted by state law enforcement agencies shall be in accordance with the newest and best practices available for eyewitness identification; and

BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the Governor; Attorney General; and the Mayor and Police Chief from the City and County of Honolulu, County of Kauai, County of Maui, and County of Hawaii.

OFFERED BY:

*Mike Gabbard*  
*[Signature]*  
*[Signature]*  
*[Signature]*

