

MAR 16 2011

SENATE 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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- 33 (A) The lineup is presented simultaneously, not
34 sequentially; and
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- 1 (B) The investigator states in writing the reason why
2 the presentation of the lineup was not made by a
3 person who was not aware which person in the
4 photo lineup or live lineup was suspected as the
5 perpetrator of the offense;
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- 7 (2) The eyewitness is instructed prior to the
8 identification procedure that the perpetrator may not
9 be among the persons in the photo lineup or the live
10 lineup and that the eyewitness should not feel
11 compelled to make an identification;
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- 13 (3) If a live lineup or photo lineup is conducted in
14 sequence rather than simultaneously:
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- 16 (A) Each photograph or person is viewed one at a
17 time;
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- 19 (B) The photographs or persons are displayed in
20 random order;
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- 22 (C) The eyewitness is given as much time as needed to
23 make a decision about each photograph or person
24 before moving to the next one; and
25
- 26 (D) All photographs or persons are shown to the
27 eyewitness, even if an identification is made
28 before all have been viewed;
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- 30 (4) The photo lineup or live lineup is composed so that
31 the fillers generally fit the description of the
32 person suspected as the perpetrator and, in the case
33 of a photo lineup, so that the photograph of the
34 person suspected as the perpetrator resembles the
35 perpetrator's appearance at the time of the offense
36 and does not unduly stand out;
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- 38 (5) If the eyewitness has previously viewed a photo lineup
39 or live lineup in connection with the identification
40 of another person suspected of involvement in the
41 offense, the fillers in the lineup in which the person
42 suspected as the perpetrator participates are
43 different from the fillers used in any prior lineups;
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- 1 (6) At least five fillers are included in the photo lineup
2 and at least four fillers are included in the live
3 lineup, in addition to the person suspected as the
4 perpetrator;
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- 6 (7) In a photo lineup, no writing or information
7 concerning any previous arrest of the person suspected
8 as the perpetrator is visible to the eyewitness;
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- 10 (8) In a live lineup, any identification actions, such as
11 speaking or making gestures or other movements, are
12 performed by all lineup participants;
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- 14 (9) In a live lineup, all lineup participants are out of
15 the view of the eyewitness at the beginning of the
16 identification procedure;
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- 18 (10) The person suspected as the perpetrator is the only
19 suspected perpetrator included in the identification
20 procedure;
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- 22 (11) Nothing is said to the eyewitness regarding the
23 position in the photo lineup or the live lineup of the
24 person suspected as the perpetrator, except as
25 otherwise provided in paragraph (2);
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- 27 (12) Nothing is said to the eyewitness that might influence
28 the eyewitness's selection of the person suspected as
29 the perpetrator;
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- 31 (13) If the eyewitness identifies a person as the
32 perpetrator, the investigator seeks, in the
33 eyewitness's own words, the eyewitness's confidence
34 level that any person identified in the lineup is the
35 suspect;
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- 37 (14) If the eyewitness identifies a person as the
38 perpetrator, the eyewitness is not provided any
39 information concerning the person prior to obtaining
40 the eyewitness's statement that the eyewitness is
41 certain of the selection; and
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- 43 (15) A written record of the identification procedure is
44 made that includes the following information:



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- (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, 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

BE IT FURTHER RESOLVED that the criminal investigations conducted by state law enforcement agencies shall be in

1 accordance with the newest and best practices available for
2 eyewitness identification; and

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

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OFFERED BY:

Mike Gabbard

Mark

