
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 legislature finds that recent studies have
2 shown that eyewitness identification procedures currently used
3 by law enforcement officials may lead to faulty eyewitness
4 identifications in law enforcement investigations. Studies have
5 also shown that erroneous eyewitness identifications may be
6 significantly decreased by implementing certain changes to
7 eyewitness identification procedures. Eyewitness
8 identifications that are more accurate and reliable increase the
9 ability of police and prosecutors to convict the guilty and
10 protect the people of this State.

11 The purpose of this Act is to require new eyewitness
12 identification procedures to improve the accuracy and
13 reliability of eyewitness identifications in law enforcement
14 investigations.

15 SECTION 2. Chapter 801, Hawaii Revised Statutes, is
16 amended by adding a new part to be appropriately designated and
17 to read as follows:



1 **"PART . EYEWITNESS IDENTIFICATION**

2 **§801- Definitions.** For the purposes of this part:

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

5 "Filler" means a person or a photograph of a person who is
6 not suspected of an offense and is included in an identification
7 procedure.

8 "Identification procedure" means a live lineup or photo
9 lineup.

10 "Investigator" means the person conducting the live lineup
11 or photo lineup.

12 "Live lineup" means a procedure in which a group of
13 persons, including the person suspected of being the perpetrator
14 of an offense and other persons not suspected of the offense, is
15 displayed to an eyewitness for the purpose of determining
16 whether the eyewitness is able to identify the suspect as the
17 perpetrator.

18 "Photo lineup" means a procedure in which an array of
19 photographs, including a photograph of the person suspected of
20 being the perpetrator of an offense and photographs of other
21 persons not suspected of the offense, is displayed to an



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

3 **§801- Eyewitness identification procedures.** Not later
4 than January 1, 2014, each county police department and all
5 state investigative agencies identified by the attorney general
6 shall adopt procedures for conducting live lineups and photo
7 lineups that comply with the following requirements:

8 (1) When practicable, the investigator shall be a person
9 who is not aware of which person in the lineup is
10 suspected of being the perpetrator of the offense;

11 (2) When it is not practicable for the investigator to be
12 a person who is not aware of which person in the
13 lineup is suspected of being the perpetrator of the
14 offense:

15 (A) The lineup shall be presented simultaneously, not
16 sequentially; and

17 (B) The investigator shall state in writing the
18 reason why the lineup was not conducted by a
19 person who was not aware of which person in the
20 live lineup or photo lineup was suspected of
21 being the perpetrator of the offense;



- 1 (3) The eyewitness shall be instructed prior to the
2 identification procedure:
- 3 (A) That the suspected perpetrator may not be among
4 the persons in the live lineup or photo lineup;
5 and
- 6 (B) That the eyewitness should not feel compelled to
7 make an identification;
- 8 (4) When a live lineup or photo lineup is conducted in
9 sequence rather than simultaneously:
- 10 (A) Each person or photograph shall be viewed one at
11 a time;
- 12 (B) The persons or photographs shall be displayed in
13 random order;
- 14 (C) The eyewitness shall take as much time as needed
15 to make a decision about each person or
16 photograph before viewing the next person or
17 photograph; and
- 18 (D) All persons or photographs in the live lineup or
19 photo lineup shall be shown to the eyewitness,
20 even if an identification is made before all
21 persons or photographs have been viewed;



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



- 1 (9) In a live lineup, any actions, such as speaking or
2 gesturing or other movements that may identify the
3 person suspected of being the perpetrator, shall be
4 performed by all lineup participants;
- 5 (10) In a live lineup, all lineup participants shall be out
6 of the view of the eyewitness prior to and at the
7 beginning of the identification procedure;
- 8 (11) The person suspected of being the perpetrator shall be
9 the only suspect included in the identification
10 procedure;
- 11 (12) Nothing shall be said to the eyewitness regarding the
12 position in the live lineup or photo lineup of the
13 person suspected of being the perpetrator, except as
14 otherwise provided in paragraph (3);
- 15 (13) Nothing shall be said to the eyewitness that might
16 influence the eyewitness' selection of the person
17 suspected of being the perpetrator;
- 18 (14) The investigator shall seek to obtain from the
19 eyewitness, in the eyewitness' own words, the
20 eyewitness' level of confidence that the person or
21 persons identified in the live lineup or photo lineup
22 are the suspects;



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

6 (16) A written record of the identification procedure shall
7 be made that includes the following information:

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

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

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

19 (D) In a live lineup or photo lineup where the
20 persons or photographs were presented
21 sequentially as opposed to simultaneously, the



1 order in which the persons or photographs were
2 displayed to the eyewitness;

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

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

9 **§801- Remedies for noncompliance.** (a) Any evidence of
10 a failure to comply with this part shall be:

11 (1) Considered by the trial court in adjudicating motions
12 to suppress eyewitness identification; and

13 (2) Admissible at trial or hearings in support of claims
14 of eyewitness misidentification; provided that the
15 evidence is otherwise admissible.

16 (b) When any evidence of a failure to comply with the
17 provisions of this part 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 **§801- Training of law enforcement officers.** The
22 attorney general shall create, administer, and conduct training



1 programs for law enforcement officers and recruits on the
2 methods and technical aspects of the eyewitness identification
3 practices and procedures required in this part. The attorney
4 general shall fund the training programs with appropriations
5 specifically designated for the training programs."

6 SECTION 3. Chapter 801, Hawaii Revised Statutes, is
7 amended by designating sections 801-1 through 801-5 as part I,
8 entitled "General Provisions".

9 SECTION 4. This Act shall take effect on July 1, 2050.



Report Title:

Criminal Procedure; Eyewitness Identification of Suspects

Description:

Establishes procedures for eyewitness identification in live lineups and photo lineups of persons who are suspected of committing an offense. Effective July 1, 2050. (SB2304 HD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

