

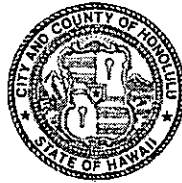
# **SB 67**

## RELATING TO CRIMINAL PROCEDURE.

Creates procedural and administrative requirements for law enforcement agencies for eyewitness identifications of suspects in criminal investigations. Grants a defendant the right to challenge any eyewitness identification to be used at trial in a pretrial evidentiary hearing. Takes effect 1/1/2014.

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813  
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulupd.org



KIRK W. CALDWELL  
MAYOR

LOUIS M. KEALOHA  
CHIEF

DAVE M. KAJIHIRO  
MARIE A. MCCAULEY  
DEPUTY CHIEFS

OUR REFERENCE RR-NTK

January 31, 2013

The Honorable Will Espero, Chair  
and Members  
Committee on Public Safety, Intergovernmental  
and Military Affairs  
The Honorable Glenn Wakai, Chair  
and Members  
Committee on Technology and the Arts  
State Senate  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chairs Espero and Wakai and Members:

Subject: Senate Bill No. 67, Relating to Criminal Procedure

I am Richard Robinson, Major of the Criminal Investigation Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department opposes Senate Bill No. 67, Relating to Criminal Procedure.

The Honolulu Police Department currently adheres to nearly all of the recommendations of the National Institute of Justice for eyewitness evidence. We believe that the determination of the validity of any evidence is best handled by the Judiciary. Further, the Judiciary is able to more quickly adapt to changes in court procedures and/or rules of evidence that may result from judicial findings of higher courts.

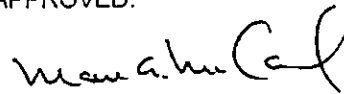
The Honolulu Police Department urges you to oppose Senate Bill No. 67, Relating to Criminal Procedure.

Thank you for the opportunity to testify.

Sincerely,

  
RICHARD C. ROBINSON, Major  
Criminal Investigation Division

APPROVED:

  
LOUIS M. KEALOHA  
Chief of Police

**SB67**

Submitted on: 1/30/2013

Testimony for PSM/TEC on Jan 31, 2013 14:50PM in Conference Room 224

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Tricia Nakamatsu	Dept of the Prosecuting Attorney, C&C of Honolulu	Oppose	Yes

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

ALII PLACE  
1060 RICHARDS STREET • HONOLULU, HAWAII 96813  
PHONE: (808) 547-7400 • FAX: (808) 547-7515

KEITH M. KANESHIRO  
PROSECUTING ATTORNEY

ARMINA A. CHING  
FIRST DEPUTY PROSECUTING ATTORNEY



**THE HONORABLE WILL ESPERO, CHAIR  
SENATE COMMITTEE ON PUBLIC SAFETY,  
INTERGOVERNMENTAL AND MILITARY AFFAIRS**

**THE HONORABLE GLENN WAKAI, CHAIR  
SENATE COMMITTEE ON TECHNOLOGY AND THE ARTS**

**Twenty-Seventh State Legislature  
Regular Session of 2013  
State of Hawai'i**

January 31, 2013

**RE: S.B. 67; RELATING TO CRIMINAL PROCEDURE.**

Chair Espero, Chair Wakai, Vice-Chair Baker, Vice-Chair Nishihara, members of the Senate Committee on Public Safety, Intergovernmental and Military Affairs, and members of the Senate Committee on Technology and the Arts, the Department of the Prosecuting Attorney, City and County of Honolulu, submits the following testimony in opposition to Senate Bill 67.

While the Department agrees that Hawai'i's law enforcement agencies must maintain high standards and protocol for eyewitness identifications, it is also our understanding that they already do so. Moreover, it is our understanding that their protocol is based on local caselaw and evidentiary requirements, as well as on national law enforcement developments and discourse; thus, this protocol is constantly evolving. To codify a specific list of procedures would be overly restrictive, discount the value of assessing a "totality of circumstances," and detract from the flexibility needed for law enforcement to adjust to unique circumstances in each case.

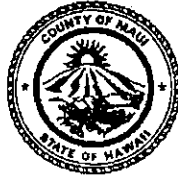
Insofar as S.B. 67, proposes to codify "checklists" of procedures for eyewitness identifications, it also creates an implication that if any of the checklist items are missing, then the eyewitness identification is somehow substandard or unreliable. It is this Department's understanding that Hawai'i's police officers are continuously trained to conduct eyewitness identifications in accordance with the latest developments in local caselaw, and are thus aware of what our courts and juries deem (in)appropriate or (un)reliable evidence. This gives them the

guidance and flexibility to adjust procedures, and act appropriately under the broad spectrum of circumstances that they encounter from day to day.

Once a case proceeds to trial, there are numerous legal safeguards and procedures already built into our trial process, such that juries are made well-aware that eyewitness identifications are not determinative. If the Legislature were to codify and impose a specific list of procedures for conducting eyewitness identifications, the natural tendency for the public--and for juries--would be to consider the "checklist" rather than a true consideration of the totality of circumstances. To keep the focus on a totality of circumstances, eyewitness identification procedures must be allowed to develop administratively, based on well-established and still-evolving caselaw developed by our courts and juries.

In addition to the foregoing, it is our understanding that the Hawaii Pattern Jury Instructions were updated very recently, to address—via jury instructions—the very issues that S.B. 67 are intended to address. For all of these reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes S.B. 67. Thank for you the opportunity to testify on this matter.

ALAN M. ARAKAWA  
Mayor



JOHN D. KIM  
Prosecuting Attorney

ROBERT D. RIVERA  
First Deputy Prosecuting Attorney

DEPARTMENT OF THE PROSECUTING ATTORNEY  
COUNTY OF MAUI  
150 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
PHONE (808) 270-7777 • FAX (808) 270-7625

CONTACT: RICHARD K. MINATOYA  
Deputy Prosecuting Attorney  
Supervisor, Appellate, Asset Forfeiture and Administrative Services Division

TESTIMONY  
ON  
SB 67 - RELATING TO CRIMINAL PROCEDURE

January 31, 2013

The Honorable Will Espero  
Chair  
The Honorable Rosalyn H. Baker  
Vice Chair  
and Members  
Senate Committee on Public Safety, Intergovernmental and Military Affairs

The Honorable Glenn Wakai  
Chair  
The Honorable Clarence K. Nishihara  
Vice Chair  
and Members  
Senate Committee on Technology and the Arts

Chair Espero, Vice Chair Baker and Members of the PSM Committee, and Chair Wakai, Vice Chair Nishihara and Members of the TEC Committee:

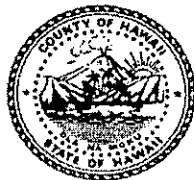
The Department of the Prosecuting Attorney, County of Maui, is in **STRONG OPPOSITION** to SB 67, Relating to Criminal Procedure.

SB 67 creates procedural and administrative requirements for law enforcement agencies for eyewitness identifications of suspects in criminal investigations, and grants a defendant the right to challenge any eyewitness identification to be used at trial in a pretrial evidentiary hearing. We believe that the procedures set forth by SB 67 will be unduly burdensome on law enforcement, and will result in the need for additional personnel and increased expenses. The concerns raised in SB 67 are already addressed by case law and by criminal jury instruction 3.17 of the Hawaii Pattern Jury Instructions - Criminal, which was amended on January 3, 2013.

We ask that SB 67 be HELD IN COMMITTEE.

Thank you very much for the opportunity to provide testimony on this bill.

William P. Kenoi  
Mayor



Harry S. Kubojiri  
Police Chief

Paul K. Ferreira  
Deputy Police Chief

## County of Hawai`i

### POLICE DEPARTMENT

349 Kapiolani Street • Hilo, Hawai`i 96720-3998  
(808) 935-3311 • Fax (808) 961-8865

January 29, 2013

Senator Will Espero  
Chairperson and Committee Members  
Committee On Public Safety, Intergovernmental and Military Affairs  
415 South Beretania Street, Room 224  
Honolulu, Hawai`i 96813

**Re: Senate Bill 67 Relating to Criminal Procedure**

Dear Senator Espero:

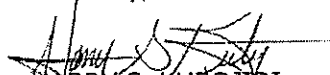
The Hawai`i Police Department opposes passage of Senate Bill 67, relating to the Rights of the Accused. The intent of the appropriation is to require new eyewitness identification procedures.

Our Department is opposed to this measure as it places certain restrictive burdens upon our Department with its limited Human Resources. Although we do comply with most of the Bill's requirements as set, we would be hard pressed to ensure that the officer showing a photo lineup to the witness is unaware as to which person is suspected as being the perpetrator. Our Department's limited size is such that our Detectives have to assist each other in some way in most of our investigations. This assistance includes needing to share information on a consistent basis amongst our limited investigative staff.

Further, the Bill as written seeks to infer that any time one of the procedures is not followed that the identification is immediately flawed to some extent regardless of the individual facts and circumstances connected to each and every particular investigation. Quite frankly, we fully believe that the positive identification process is best left to the "Trier of the Facts" (Judge or Jury) during the judicial adjudication of the case which is also subject to Defense Counsel scrutiny and objection.

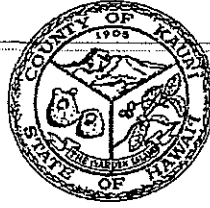
For these reasons, we strongly oppose this legislation. Thank you for allowing the Hawai`i Police Department to provide comments relating to Senate Bill 67.

Sincerely,

  
HARRY S. KUBOJIRI  
POLICE CHIEF



**Justin F. Kollar**  
Prosecuting Attorney



**Kevin K. Takata**  
First Deputy

**Rebecca A. Vogt**  
Second Deputy

**OFFICE OF THE PROSECUTING ATTORNEY**

**County of Kaua'i, State of Hawai'i**

3990 Ka'ana Street, Suite 210, Lihu'e, Hawai'i 96766  
808-241-1888 ~ FAX 808-241-1758  
Victim/Witness Program 808-241-1898 or 800-668-5734

**TESTIMONY IN OPPOSITION TO  
S.B. NO. 67  
A BILL FOR AN ACT RELATING TO CRIMINAL PROCEDURE**

Justin F. Kollar, Prosecuting Attorney  
County of Kaua'i

Senate Committee on Public Safety, Intergovernmental and Military Affairs  
&  
Senate Committee on Technology and the Arts

Thursday, January 31, 2013  
2:50 p.m., Room 224

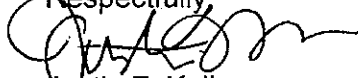
Honorable Chair Espero and Vice-Chair Baker, Honorable Chair Wakai and Vice-Chair Nishihara, and Members of the Senate Committee on Public Safety, Intergovernmental and Military Affairs, and the Senate Committee on Technology and the Arts, the Office of the Prosecuting Attorney, County of Kaua'i submits the following testimony in opposition to Senate Bill No. 67.

The proposed measure in Senate Bill No. 67 is to add a new Chapter in the Hawai'i Revised Statutes that would create "Eyewitness Identification Procedures."

We understand given the National statistics, that mistaken eyewitness identification which contributed to wrongful convictions may appear extreme, however this law would place an untenable burden on law enforcement. Currently in the State of Hawai'i, there are existing safeguards that are adequate enough to protect the interests of the accused.

For these reasons, we oppose Senate Bill No. 67. Thank you for the opportunity to testify on this matter.

Respectfully

  
Justin F. Kollar  
Prosecuting Attorney  
County of Kaua'i

# COMMUNITY ALLIANCE ON PRISONS

76 North King Street, Honolulu, HI 96817

Phones/E-Mail: (808) 533-3454, (808) 927-1214 / [kat.caphi@gmail.com](mailto:kat.caphi@gmail.com)



## COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS

Sen. Will Espero, Chair

Sen. Rosalyn Baker, Vice Chair

## COMMITTEE ON TECHNOLOGY AND THE ARTS

Sen. Glenn Wakai, Chair

Sen. Clarence Nishihara, Vice Chair

Thursday, January 31, 2013

2:50 p.m.

Room 224

## SUPPORT FOR SB 67 - EYEWITNESS ID

Aloha Chairs Espero & Wakai, Vice Chairs Baker & Nishihara and Members of the Committees!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies for more than a decade. This testimony is respectfully offered on behalf of the 5,800 Hawai'i individuals living behind bars, always mindful that approximately 1,500 Hawai'i individuals are serving their sentences abroad, thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, far from their ancestral lands.

SB 67 creates procedural and administrative requirements for law enforcement agencies for eyewitness identifications of suspects in criminal investigations. Grants a defendant the right to challenge any eyewitness identification to be used at trial in a pretrial evidentiary hearing. Takes effect 1/1/2014.

Community Alliance on Prisons is in strong support of this measure that would greatly improve the quality of justice in Hawai'i.

Community Alliance is pursuing this justice issue because of the fact that 75% of exonerations involved false eyewitness identification and we are researching ways to improve the system. The wrongful conviction and imprisonment of a man on Maui who spent more than 20 years in prison for a crime he did not commit involved false eyewitness identification.

## NY Times Editorial<sup>1</sup>

The Oregon Supreme Court in a unanimous decision last week upended how eyewitness identification is to be used in criminal trials. The landmark ruling shifts the burden of proof to

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<sup>1</sup> A Check on Bad Eyewitness Identifications, December 5, 2012.

<http://www.nytimes.com/2012/12/06/opinion/a-check-on-bad-eyewitness-identifications.html?ref=opinion>

prosecutors to show that such identification is sufficiently reliable to be admissible as evidence at trial. Misidentification is the country's leading cause of wrongful convictions. By altering the legal standard, Oregon has set an example that other states and the federal courts would be wise to follow.

Under the previous approach, trial courts had to assume eyewitness identifications were admissible unless defendants could show that they were unreliable; trial courts also relied heavily on the eyewitnesses' reports of their own reliability even though that was at issue.

In ruling that such evidence should be subject to stricter standards, the court took into account three decades of scientific research showing that memory and perception can be highly unreliable. "Because of the alterations to memory that suggestiveness can cause," the court said, "it is incumbent on courts and law enforcement personnel to treat eyewitness memory just as carefully as they would other forms of trace evidence, like DNA, bloodstains, or fingerprints, the evidentiary value of which can be impaired or destroyed by contamination."

### **Oregon's Eyewitness Decision: Back to Basics<sup>2</sup>**

Dean John Henry Wigmore, the most renowned of American evidence scholars, issued a prediction in 1937 about the relationship between the criminal justice system and modern psychology's investigations into the unreliability of eyewitness evidence.

"When the psychologists are ready for the courts," declared Wigmore, "the courts will be ready for the psychologists."

On November 30, the Oregon Supreme Court demonstrated that Wigmore was actually right. Courts are—or at least one court is—ready for the psychology of eyewitness identification.

### **Professional Prosecutors<sup>3</sup>**

... Jeff Rosen, district attorney of Santa Clara County, where the exoneration groups<sup>1</sup> best practices for eyewitness identifications have been employed for more than a decade, said, "I think that district attorneys should play a role in encouraging police departments to adopt best practices. District attorneys should educate law enforcement about best practices and encourage best practices.

(...)

Gil Garcetti, former Los Angeles County district attorney, agrees. "It is the responsibility of district attorneys to ensure that the practices being employed by law enforcement are the fairest practices. District attorneys should be working with each law enforcement agency to ensure that they are employing the most professional practices." ...

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<sup>2</sup> Oregon's Eyewitness Decision: Back to Basics, By James M. Doyle, December 13, 2012.

<http://www.thecrimereport.org/viewpoints/2012-12-oregons-eyewitness-decision-back-to-basics>

<sup>3</sup> Despite exonerations, eyewitness ID process virtually unchanged

County has seen nine convictions based on such evidence overturned since 1995, Jan. 4, 2013 Updated: Jan. 6, 2013

<http://www.oregister.com/articles/police-382513-practices-departments.html>

There has been a plethora of stories and cases concerning eyewitness identification that have all shown that the mind is not a video camera. Here is a small sampling that you can check out.

#### **How Accurate Is Visual Memory?**

[http://www.youtube.com/watch?v=xtDt-THaH\\_o](http://www.youtube.com/watch?v=xtDt-THaH_o)

#### **False Memories: The Perils of Eyewitness IDs**

By Jordan Smith

<http://www.thecrimereport.org/news/inside-criminal-justice/2011-06-false-memories-the-perils-of-eyewitness-ids>

Monday, June 13, 2011 01:28

#### **How Can Courts Trust Eyewitnesses?**

*How can courts use eyewitness testimony and lineup IDs without overemphasizing their reliability?*

<http://www.nytimes.com/roomfordebate/2011/08/31/can-we-trust-eyewitnessidentifications/in-eyewitness-testimony-memory-fails-us>

August 31, 2011

#### **What Did They Really See?**

[http://www.nytimes.com/2011/08/27/opinion/what-did-eyewitnesses-really-see.html?\\_r=1](http://www.nytimes.com/2011/08/27/opinion/what-did-eyewitnesses-really-see.html?_r=1)

Published: August 26, 2011

Community Alliance on Prisons speaks in many college and university classes around Hawai'i nei. During a recent class at Hawai'i Pacific University, the professor and I arranged for a student from another class to enter the room while I was speaking and take a red bag that I had entered with. The room was rectangular with the door at the shorter side of the rectangle. As I was speaking, I reached down to get some material I had brought in my red bag. The bag was missing. I asked, "Did anyone see me walk in with a red bag?" Some students said that they had seen me enter with the bag. I proceeded to look around for it. Someone then said that they saw a woman enter the room, take the bag, and leave. I asked the class if others had witnessed this as well.

Our discussion about what the person looked like was very revealing. The one thing everyone got right was that it was a woman. After that, the descriptions of hair, height, ethnicity, and clothing ranged widely.

Here I must mention that the student who took the bag was not a very good actor because as she was leaving the room, she looked at the professor as if to verify that she grabbed the correct item!

This was just a short example of how wrong people can be when witnessing an event. When one adds the trauma of witnessing or being involved in a criminal event, it is easy to see how wrong we can be in 'remembering' the details.

On a personal note, I was once mugged at gunpoint. When the police asked me what the perpetrator looked like, I realized that he looked like lots of people - brown hair, brown eyes, about 5'7" and I could only really remember that a gun was pointing at me. The officer then asked me what type of gun it was. I told him that we really hadn't discussed the make and model of the gun, I could only remember that it was black, had a round barrel that was pointing at me. I was no help in solving that crime!

"At its most basic level, a police lineup involves placing a suspect among people not suspected of committing the crime (fillers) and asking the eyewitness if he or she can identify the perpetrator. This can be done using a live lineup of people or, as more commonly done in U.S. police departments, a lineup of photographs. Live lineups typically use five or six people (a suspect plus four or five fillers) and photo lineups six or more photographs.<sup>5</sup>

There are two common types of lineups: simultaneous and sequential. In a simultaneous lineup (used most often in police departments around the country)<sup>6</sup>, the eyewitness views all the people or photos at the same time. In a sequential lineup, people or photographs are presented to the witness one at a time.

Typically, the law enforcement official or lineup administrator knows who the suspect is.<sup>7</sup> Experts suggest that lineup administrators might—whether purposefully or inadvertently—give the witness verbal or nonverbal cues as to the identity of the suspect. For instance, if an eyewitness utters the number of a filler, the lineup administrator may say to the witness, "Take your time . . . . Make sure you look at all the photos." Such a statement may effectively lead the witness away from the filler.<sup>8</sup>

In the recent US Supreme Court decision *Perry v. New Hampshire*, dissenting Associate Justice Sotomayor writes:

"...Our due process concern, however, arises not from the act of suggestion, but rather from the corrosive effects of suggestion on the reliability of the resulting identification. By rendering protection contingent on improper police arrangement of the suggestive circumstances, the Court effectively grafts a *mens rea* inquiry onto our rule. The Court's holding enshrines a murky distinction—between suggestive confrontations intentionally orchestrated by the police and, as here, those inadvertently caused by police actions—that will sow confusion. It ignores our precedents' acute sensitivity to the hazards of intentional and unintentional suggestion alike and unmoors our rule from the very interest it protects, inviting arbitrary results. And it recasts the driving force of our decisions as an interest in police deterrence, rather than reliability. ...

...The "driving force" behind *United States v. Wade*, 388 U. S. 218 (1967), *Gilbert v. California*, 388 U. S. 263 (1967), and *Stovall v. Denno*, 388 U. S. 293 (1967), was "the Court's concern with the problems of eyewitness identification"—specifically, "the concern that the jury not hear eyewitness testimony unless that evidence has aspects of reliability." *Manson v. Brathwaite*, 432 U. S. 98, 111-112 (1977). ..."

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<sup>4</sup> *Police Lineups: Making Eyewitness Identification More Reliable*, NIJ Journal No. 258 • October 2007, by Beth Schuster, Managing editor of the *NIJ Journal*.

<http://www.ojp.usdoj.gov/nij/journals/258/police-lineups.htm>

<sup>5</sup> Wells, G.L., A. Memon, and S.D. Penrod, "Eyewitness Evidence: Improving Its Probative Value," *Psychological Science in the Public Interest* 7 (2) (November 2006): 45-75.

<sup>6</sup> Wells, G.L., and E. Olson, "Eyewitness Testimony," *Annual Review of Psychology* 54 (2003): 277-295.

<sup>7</sup> Wells, Memon, and Penrod, "Eyewitness Evidence: Improving Its Probative Value," 63.

<sup>8</sup> Gary L. Wells' comments on the Mecklenburg Report (see note 8), available at [www.psychology.iastate.edu/faculty/gwells/Illinois Project Wells comments.pdf](http://www.psychology.iastate.edu/faculty/gwells/Illinois%20Project%20Wells%20comments.pdf) (accessed June 19, 2007).

A New York Times story published on August 24, 2011 entitled *In New Jersey, Rules Are Changed on Witness IDs* - [http://www.nytimes.com/2011/08/25/nyregion/in-new-jersey-rules-changed-on-witness-ids.html?\\_r=2&hp](http://www.nytimes.com/2011/08/25/nyregion/in-new-jersey-rules-changed-on-witness-ids.html?_r=2&hp)

“Study after study revealed a troubling lack of reliability in eyewitness identifications,” Chief Justice Rabner wrote. “From social science research to the review of actual police lineups, from laboratory experiments to DNA exonerations, the record proves that the possibility of mistaken identification is real. “Indeed, it is now widely known that eyewitness misidentification is the leading cause of wrongful convictions across the country.”

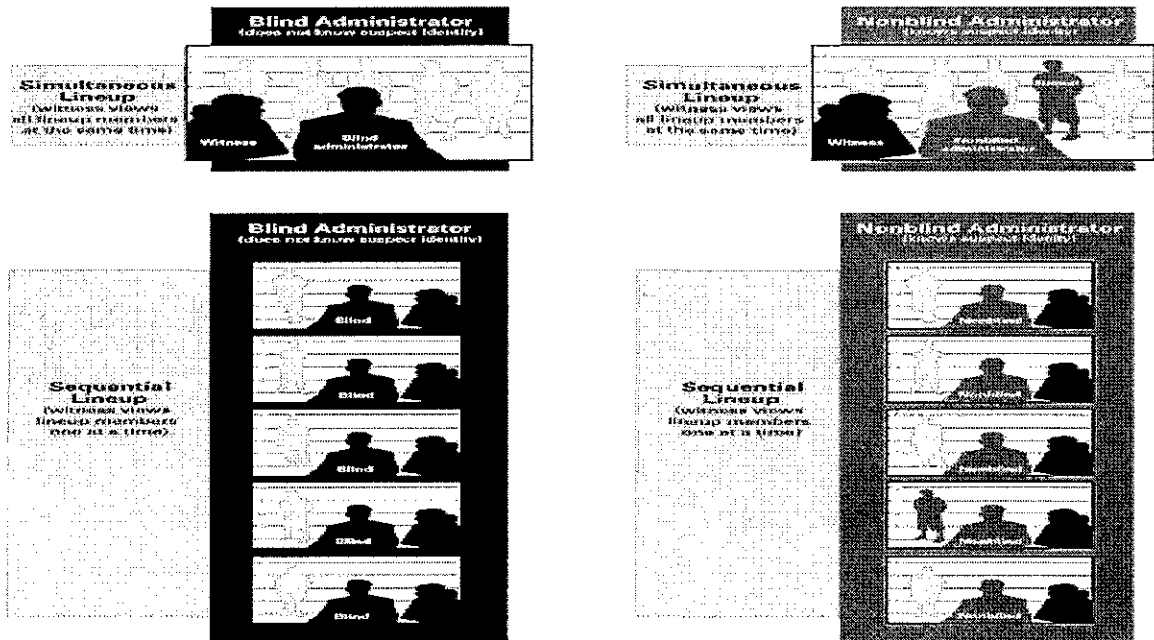
...In its ruling, the court cited findings by Brandon L. Garrett, a law professor at the University of Virginia, who documented in a recent book, “Convicting the Innocent,” **eyewitness misidentifications in 190 of the first 250 cases of DNA exoneration in the country.** Professor Garrett said the decision would provide a model for legislatures and courts around the country that “have been at a loss for what to do” and needed “a structure for how judges should handle identifications in the courtroom.”

After 289 exonerations, 75% were the results of false eyewitness identifications.

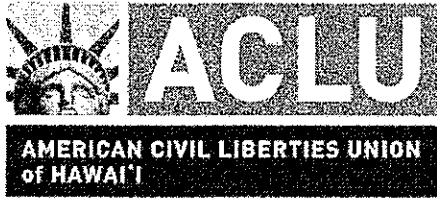
Community Alliance on Prisons respectfully asks the committee to pass this important measure to ensure the quality of justice and that the right person is convicted of the crime.

Mahalo for this opportunity to share our research on this important justice issue.

**Live Police Lineups: How Do They Work?\***



\* Most U.S. police departments use photo lineups. The same concepts depicted in this graphic — simultaneous and sequential, blind and nonblind — apply in photo lineups.



Committee: Committee on Public Safety, Intergovernmental and Military Affairs  
Hearing Date/Time: Thursday, January, 31 2013, 2:50 p.m.  
Place: Conference Room 224  
Re: Testimony of the ACLU of Hawaii in Support of S.B. 67, Relating to Criminal Procedure and Eyewitness Identification

Dear Chair Espero and Members of the Committee on Public Safety, Intergovernmental and Military Affairs:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in support of S. B. 67, relating to Criminal Procedure and Eyewitness Identification.

As the old Latin proverb goes, “to err is human.” Police officers and eyewitnesses in investigations are no exception. Proof of such humanity is evident in the 294 people who were convicted in criminal cases and subsequently exonerated by DNA evidence in the United States. It is also evident in the finding of the Innocence Project, that eyewitness identifications are “the single greatest cause of wrongful convictions nationwide, playing a role in nearly 75% of convictions overturned through DNA testing.”

Hawaii law enforcement agencies must implement policies and procedures that will prevent mistaken eyewitness identifications whenever possible, particularly when something as fundamental as a person’s freedom and liberty are at stake.

S.B 67 seeks to propel Hawaii law enforcement in this direction by reducing any intentional or unintentional influence or suggestion investigators’ might make to eyewitnesses about a suspect.

If law enforcement agencies are truly interested in justice, they should revise their eyewitness identification policies to conform to the best practices established by the state. Compliance will improve eyewitness accuracy, which means fewer innocent people may be convicted.

Human error may be inevitable, but it can – and should— be prevented whenever possible. Improving Hawaii’s best practices are one step in the right direction.

Thank you for this opportunity to testify.

Sincerely,

American Civil Liberties Union of Hawai’i  
P.O. Box 3410  
Honolulu, Hawai’i 96801  
T: 808-522-5900  
F: 808-522-5909  
E: [office@acluhawaii.org](mailto:office@acluhawaii.org)  
[www.acluhawaii.org](http://www.acluhawaii.org)

Chair Espero and PBS Committee Members  
January 31, 2013  
Page 2 of 2  
Laurie A. Temple  
Staff Attorney and Legislative Program Director  
ACLU of Hawaii

*About the American Civil Liberties Union of Hawaii*

*The American Civil Liberties Union of Hawaii ("ACLU") has been the state's guardian of liberty for 47 years, working daily in the courts, legislatures and communities to defend and preserve the individual rights and liberties equally guaranteed to all by the Constitutions and laws of the United States and Hawaii.*

*The ACLU works to ensure that the government does not violate our constitutional rights, including, but not limited to, freedom of speech, association and assembly, freedom of the press, freedom of religion, fair and equal treatment, and privacy.*

*The ACLU network of volunteers and staff works throughout the islands to defend these rights, often advocating on behalf of minority groups that are the target of government discrimination. If the rights of society's most vulnerable members are denied, everyone's rights are imperiled.*

American Civil Liberties Union of Hawai'i  
P.O. Box 3410  
Honolulu, Hawai'i 96801  
T: 808-522-5900  
F: 808-522-5909  
E: [office@acluhawaii.org](mailto:office@acluhawaii.org)  
[www.acluhawaii.org](http://www.acluhawaii.org)





# Hawaii Women's Coalition

## **COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS**

Sen. Will Espero, Chair  
Sen. Rosalyn Baker, Vice Chair

## **COMMITTEE ON TECHNOLOGY AND THE ARTS**

Sen. Glenn Wakai, Chair  
Sen. Clarence Nishihara, Vice Chair

Thursday, January 31, 2013  
2:50 p.m.  
Room 224

## **SUPPORT FOR SB 67 – EYEWITNESS ID**

Aloha Chairs Espero and Wakai, Vice Chairs Baker and Nishihara, Members of the Committees

The Hawai'i Women's Coalition is in strong support of this measure that would go far to rectify inequities in convictions that rely heavily on eyewitness ID. As we have seen in recent investigative reports, eyewitnesses' memories are notoriously unreliable.

This measure would create procedural and administrative requirements for law enforcement agencies for eyewitness identifications of suspects in criminal investigations and would grant a defendant the right to challenge any eyewitness identification to be used at trial in a pretrial evidentiary hearing.

Consider these facts:

- Of the 5,800 people from Hawai'i living behind bars, approximately 1,500 are serving their sentences abroad, thousands of miles away from their loved ones. In addition a disproportionate number of these are Native Hawaiians, far from their ancestral lands.
- Add to this the fact that 75% of exonerations involve false eyewitness identification and we have a system that is meting out injustice to some of Hawaii's most vulnerable citizens on a regular basis.

The Coalition stands with Community Alliance on Prisons in strong support of this measure and respectfully requests that this Committee pass **SB67**. The women of Hawai'i who are affected by the current system need their families restored and justice served.

Mahalo,

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**SB67**

Submitted on: 1/29/2013

Testimony for PSM/TEC on Jan 31, 2013 14:50PM in Conference Room 224

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position Present at Hearing</b>	
Betty Sestak	Individual	Support	No