

Honolulu, Hawaii

MAR 27 2015

RE: H.B. No. 147
H.D. 1
S.D. 1

Honorable Donna Mercado Kim
President of the Senate
Twenty-Eighth State Legislature
Regular Session of 2015
State of Hawaii

Madam:

Your Committee on Judiciary and Labor, to which was referred
H.B. No. 147, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO CRIMINAL PROCEDURE,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Establish procedural and administrative requirements for law enforcement to conduct eyewitness identifications, including photo and live lineups and showups, of suspects in criminal investigations;
- (2) Grant a defendant the right to a pretrial evidentiary hearing as to the reliability of the evidence offered by the prosecution when the prosecution intends to offer eyewitness identification evidence at trial;
- (3) Require the court at the pretrial evidentiary hearing to examine whether law enforcement or any administrator failed to substantially comply with any requirements that may have resulted in contamination of the eyewitness identification evidence and, as a result of its examination, require the court to consider the admissibility of the eyewitness identification evidence; and



- (4) Require the county police departments to develop and administer to law enforcement officers and recruits training programs regarding the eyewitness identifications practices and procedures.

Your Committee received testimony in support of this measure from the Office of the Public Defender, American Civil Liberties Union of Hawaii, Community Alliance on Prisons, Hawaii Innocence Project, Hawaii Women's Coalition, and four individuals. Your Committee received testimony in opposition to this measure from the Department of the Prosecuting Attorney, City and County of Honolulu and Office of the Prosecuting Attorney, County of Kauai. Your Committee received comments on this measure from the Judiciary.

Your Committee finds that this measure establishes uniform procedures under which eyewitnesses to crimes are asked to identify suspects. The Office of the Public Defender testified that the current procedures used by law enforcement agencies, including those used by the Honolulu Police Department, are in need of reform to reduce the chances of erroneous eyewitness identifications.

Your Committee notes the concerns raised by the Department of the Prosecuting Attorney of the City and County of Honolulu that codifying eyewitness identification standards may prevent eyewitness identifications from being reviewed under a totality of the circumstances. Furthermore, the Department indicated that Hawaii case law addresses when specific jury instructions pertaining to eyewitness identification are necessary.

Accordingly, your Committee has amended this measure by:

- (1) Deleting its contents and inserting language from S.B. No. 147, S.D. 1 (Regular Session of 2015), the companion to this measure, that:
 - (A) Creates procedural and administrative requirements for law enforcement agencies for eyewitness identifications of suspects in criminal investigations;
 - (B) Establishes jury instructions when the court determines that the eyewitness identification evidence is admissible; and



- (C) Requires the Attorney General to establish procedures for the implementation of uniform statewide eyewitness identification procedures;
- (2) Retaining language from this measure that:
 - (A) Establishes procedures for the video recording or other alternative recording methods when video recording is not practicable of the eyewitness identification procedure; and
 - (B) Requires county police departments to develop and administer to law enforcement officers and recruits training programs regarding the eyewitness identification practices and procedures;
- (3) Inserting an effective date of July 1, 2015; and
- (4) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 147, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 147, H.D. 1, S.D. 1, and be referred to the Committee on Ways and Means.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,


GILBERT S.C. KEITH-AGARAN, Chair



