



EXECUTIVE CHAMBERS  
HONOLULU

DAVID Y. IGE  
GOVERNOR

**GOV. MSG. NO. 1401**

July 10, 2019

The Honorable Ronald D. Kouchi,  
President  
and Members of the Senate  
Thirtieth State Legislature  
State Capitol, Room 409  
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,  
Speaker and Members of the  
House of Representatives  
Thirtieth State Legislature  
State Capitol, Room 431  
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

Re: SB414 SD1 HD1 CD1

Pursuant to Section 16 of Article III of the State Constitution, SB414 SD1 HD1 CD1, entitled "A BILL FOR AN ACT RELATING TO CRIMINAL PROCEDURE" became law as ACT 281 on July 10, 2019.

This bill will require law enforcement agencies to adopt specified procedures when conducting live lineups, photo lineups, and showups for the eyewitness identification of those suspected of committing offenses. It also requires the agencies to include these procedures in their training programs.

We understand that these procedures are intended to result in more accurate eyewitness identifications, and thereby increase the ability of law enforcement agencies to solve crimes and protect the innocent.

In fact, law enforcement agencies already have adopted many of these procedures. However, some of the other procedures have not been adopted because they are unduly burdensome. Some agencies are also concerned that this bill legislates what should be internal policies and procedures regarding the investigation of crimes. Such legislation could eliminate the flexibility and control agencies need to conduct their investigations.

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The bill provides for an effective date of June 1, 2020. This delay will give law enforcement agencies time to adopt and implement eyewitness identification procedures. It will also allow them to raise any concerns that arise during the implementation process with the Legislature during the next session.

For the foregoing reasons, I allowed SB414 SD1 HD1 CD1 to become law without my signature.

Sincerely,

A handwritten signature in black ink that reads "David Y. Ige". The signature is fluid and cursive, with a large, sweeping flourish under the "Ige" part.

DAVID Y. IGE  
Governor, State of Hawaii

# A BILL FOR AN ACT

RELATING TO CRIMINAL PROCEDURE.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that the goal of a police  
2 investigation is to apprehend the person or persons responsible  
3 for the commission of a crime. Mistaken eyewitness  
4 identification contributed to approximately seventy per cent of  
5 the more than three hundred fifty wrongful convictions  
6 overturned by DNA evidence in the United States. Over the past  
7 thirty years, a large body of peer-reviewed, scientific research  
8 and practice has emerged showing that simple systemic changes in  
9 administering eyewitness identification procedures can greatly  
10 improve the accuracy of eyewitness identifications. Policies  
11 and procedures to improve the accuracy of eyewitness  
12 identifications, such as those recommended by the National  
13 Institute of Justice, the American Bar Association, the New  
14 Jersey Office of the Attorney General, the Wisconsin Office of  
15 the Attorney General, the California Commission on the Fair  
16 Administration of Justice, and the North Carolina Center on  
17 Actual Innocence, are readily available for review.



1           The legislature further finds that more accurate eyewitness  
2 identifications increase the ability of police and prosecutors  
3 to solve crime, convict the guilty, and protect the innocent.  
4 The integrity of the State's criminal justice process is  
5 enhanced by adherence to best practices in evidence gathering.  
6 The people of the State of Hawai'i will benefit from the  
7 improvement of the accuracy of eyewitness identifications.

8           The purpose of this Act is to create procedural and  
9 administrative requirements for law enforcement agencies for  
10 eyewitness identifications of suspects in criminal  
11 investigations.

12           SECTION 2. The Hawaii Revised Statutes is amended by  
13 adding a new chapter to be appropriately designated and to read  
14 as follows:

"CHAPTER

EWITNESS IDENTIFICATION PROCEDURES

17           § -1 Definitions. As used in this chapter, unless the  
18 context clearly requires otherwise:

19           "Administrator" means the person conducting the photo  
20 lineup, live lineup, or showup for law enforcement.



1 "Blind" means the administrator does not know the identity  
2 of the suspect in the identification procedure.

3 "Blinded" means the administrator may know who the suspect  
4 is, but by virtue of the use of procedures or technology, does  
5 not know which lineup member is being viewed by the eyewitness.

6 "Contamination" means the alteration, replacement, or  
7 impairment of an eyewitness' memory of a person or event as a  
8 result of exposure to extrinsic information related to that  
9 person or event.

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

12 "Filler" means either a person or a photograph of a person  
13 who is not suspected of an offense and is included in an  
14 identification procedure.

15 "Identification" means the identification by the eyewitness  
16 of a specific person as the possible perpetrator.

17 "Identification procedure" means a live lineup, a photo  
18 lineup, or a showup.

19 "Law enforcement" means any law enforcement entity  
20 conducting an investigation.



1 "Live lineup" means an identification procedure in which a  
2 group of persons, including the suspect and other persons acting  
3 as fillers, is displayed to an eyewitness for the purpose of  
4 determining whether the eyewitness identifies the suspect as the  
5 possible perpetrator.

6 "Photo lineup" means an identification procedure in which  
7 an array of photographs, including a photograph of the suspect  
8 and additional photographs of other persons not suspected of the  
9 offense, is displayed to an eyewitness either in hard copy form  
10 or via computer or other electronic means for the purpose of  
11 determining whether the eyewitness identifies the suspect as the  
12 possible perpetrator.

13 "Showup" means an identification procedure in which an  
14 eyewitness is presented in-person with a single suspect for the  
15 purpose of determining whether the eyewitness identifies this  
16 individual as the possible perpetrator.

17 "Suspect" means the person believed by law enforcement to  
18 be the possible perpetrator of the crime.

19 § -2 Eyewitness identification procedures for live  
20 lineups and photo lineups. (a) Any law enforcement entity  
21 conducting eyewitness identification procedures shall adopt



1 specific procedures for conducting photo lineups and live  
2 lineups that comply with the following requirements:

3 (1) Prior to a photo lineup or live lineup, law  
4 enforcement shall record in writing as complete a  
5 description as possible of the possible perpetrator  
6 provided by the eyewitness in the eyewitness' own  
7 words. This statement shall also include information  
8 regarding the conditions under which the eyewitness  
9 observed the possible perpetrator including location,  
10 time, distance, obstructions, lighting, weather  
11 conditions, and other impairments, including but not  
12 limited to alcohol, drugs, stress, and visual or  
13 auditory disabilities;

14 (2) The eyewitness shall also be asked if the eyewitness'  
15 vision needs correction by glasses or contact lenses  
16 and whether the eyewitness was wearing them at the  
17 time of the offense. The administrator shall note  
18 whether the eyewitness was wearing glasses or contact  
19 lenses at the time of the identification procedure;



- 1 (3) All live lineups and photo lineups shall be conducted  
2 blind unless to do so would place an undue burden on  
3 law enforcement or the investigation; and
- 4 (4) The eyewitness shall be instructed, without other  
5 eyewitnesses present, prior to any live lineup or  
6 photo lineup, that:
- 7 (A) The suspect may or may not be among the persons  
8 in the identification procedure;
- 9 (B) The administrator does not know the identity of  
10 the suspect, if applicable;
- 11 (C) The eyewitness should not feel compelled to make  
12 an identification;
- 13 (D) The investigation will continue whether or not an  
14 identification is made;
- 15 (E) The procedure requires the administrator to ask  
16 the eyewitness to make a statement, in the  
17 eyewitness' own words, if the eyewitness makes an  
18 identification; and
- 19 (F) Speaking with other witnesses or the media may  
20 hinder prosecution.
- 21 (b) The administrator shall comply with the following:





- 1           (1) In a photo lineup, any photograph of the suspect shall
- 2                   be contemporary and shall resemble the suspect's
- 3                   appearance at the time of the offense;
- 4           (2) In a photo lineup, there shall be no characteristics
- 5                   of the photographs themselves or the background
- 6                   context in which they are placed that makes any of the
- 7                   photographs unduly stand out;
- 8           (3) A photo lineup or live lineup shall be composed so
- 9                   that the fillers generally resemble the eyewitness'
- 10                  description of the possible perpetrator, while
- 11                  ensuring that the suspect does not unduly stand out
- 12                  from the fillers;
- 13           (4) In a photo lineup or live lineup, the administrator
- 14                  shall comply with the following:
- 15                   (A) All fillers selected shall resemble the
- 16                           eyewitness' description of the possible
- 17                           perpetrator in significant features including but
- 18                           not limited to face, weight, build, and skin
- 19                           tone;
- 20                   (B) At least five fillers shall be included in a
- 21                           photo lineup in addition to the suspect;



- 1 (C) At least four fillers shall be included in a live  
2 lineup in addition to the suspect; and
- 3 (D) If the eyewitness has previously viewed a photo  
4 lineup or live lineup in connection with the  
5 identification of another person suspected of  
6 involvement in the offense, the fillers in the  
7 lineup in which the instant suspect participates  
8 shall be different from the fillers used in any  
9 prior lineups;
- 10 (5) In a live lineup, no identifying actions, such as  
11 speech, gestures, or other movements, shall be  
12 performed by lineup participants;
- 13 (6) In a live lineup, all lineup participants shall be out  
14 of view of the eyewitness prior to the identification  
15 procedure;
- 16 (7) In a photo lineup or live lineup, nothing shall be  
17 said to the eyewitness regarding the suspect's  
18 position in the lineup; and
- 19 (8) In a photo lineup or live lineup, nothing shall be  
20 said to the eyewitness that might influence the



1           eyewitness' identification of any particular lineup  
2           member.

3           (c) If there are multiple eyewitnesses, the administrator  
4 shall comply with the following:

5           (1) Each eyewitness shall view photo lineups or live  
6           lineups separately;

7           (2) The suspect shall be randomly positioned in the live  
8           lineup or photo lineup for each eyewitness; and

9           (3) The eyewitnesses shall not be permitted to communicate  
10           with each other until all identification procedures  
11           have been completed.

12           (d) In any identification procedure, no writings or  
13 information concerning the current investigation or any previous  
14 arrest, indictment, or conviction of the suspect shall be  
15 visible or made known to an eyewitness.

16           (e) When there are multiple suspects, each identification  
17 procedure shall include only one suspect.

18           (f) In any identification procedure where an eyewitness  
19 makes an identification, the administrator shall seek and  
20 document a clear statement from the eyewitness at the time of  
21 the identification in the eyewitness' own words.



1 (g) In any identification procedure where an eyewitness  
2 makes an identification, the eyewitness shall not be provided  
3 with any information concerning the person identified before the  
4 administrator obtains the eyewitness' statement about the  
5 identification.

6 (h) Law enforcement shall make a record of each  
7 identification procedure, including all identification and non-  
8 identification results obtained, undertaken during all  
9 investigations. Each identification procedure record shall be  
10 signed by the relevant eyewitness.

11 (i) When it is impracticable for a blind administrator to  
12 conduct a lineup, the investigator shall state in writing, in  
13 the identification procedure record, the reason therefor.

14 **§ -3 Eyewitness identification procedures for showups.**

15 (a) The administrator shall comply with the following in  
16 conducting a showup:

17 (1) Where possible, the administrator shall perform a live  
18 lineup or photo lineup instead of a showup;

19 (2) A showup shall only be performed using a live suspect  
20 and only in exigent circumstances that require the  
21 immediate display of a suspect to an eyewitness;



- 1           (3) All showups shall be conducted blind unless to do so  
2           would place an undue burden on law enforcement or the  
3           investigation;
- 4           (4) An administrator shall not conduct a showup with a  
5           photograph. If investigators wish to determine if an  
6           eyewitness can make an identification using a  
7           photograph, a photo lineup shall be used;
- 8           (5) Prior to any showup, law enforcement shall record in  
9           writing as complete a description as possible of the  
10          possible perpetrator provided by the eyewitness in the  
11          eyewitness' own words. This record shall also include  
12          information regarding the conditions under which the  
13          eyewitness observed the possible perpetrator including  
14          location, time, distance, obstructions, lighting,  
15          weather conditions, and other impairments including  
16          but not limited to alcohol, drugs, stress, and visual  
17          or auditory disabilities;
- 18          (6) The eyewitness shall also be asked if the eyewitness'  
19          vision needs correction by glasses or contact lenses  
20          and whether the eyewitness was wearing them at the  
21          time of witnessing the offense. The administrator



- 1 shall note whether the eyewitness was wearing glasses  
2 or contact lenses at the time of the identification  
3 procedure;
- 4 (7) The eyewitness shall be transported to a neutral, non-  
5 law enforcement location where the suspect is being  
6 detained for the purposes of a showup;
- 7 (8) The eyewitness shall be instructed, without other  
8 eyewitnesses present, prior to any showup that:
- 9 (A) The suspect may or may not be the person that is  
10 presented to the eyewitness;
- 11 (B) The administrator does not know the identity of  
12 the suspect, if applicable;
- 13 (C) The eyewitness should not feel compelled to make  
14 an identification;
- 15 (D) The investigation will continue whether or not an  
16 identification is made;
- 17 (E) The procedure requires the administrator to ask  
18 the eyewitness to make a statement, in the  
19 eyewitness' own words, if the eyewitness makes an  
20 identification; and



1 (F) Speaking with other witnesses or the media may  
2 hinder prosecution.

3 (b) At any showup, in order to reduce potentially damaging  
4 or prejudicial inferences that may be drawn by the eyewitness,  
5 the administrator shall:

6 (1) Refrain from suggesting, through statements or  
7 nonverbal conduct, that the suspect is or may be the  
8 perpetrator of the crime;

9 (2) Refrain from removing the suspect from a squad car in  
10 front of the eyewitness; and

11 (3) When practicable, present the suspect to the  
12 eyewitness without handcuffs.

13 (c) When there are multiple eyewitnesses, the following  
14 procedure shall apply:

15 (1) Only one eyewitness at a time shall be present at the  
16 location of the showup to participate in the showup;  
17 and

18 (2) If a positive identification is made and an arrest is  
19 justified, subsequent eyewitnesses shall be shown live  
20 lineups or photo lineups.



1 (d) If there are multiple suspects, the suspects shall be  
2 separated and participate in separate showups.

3 (e) If an eyewitness makes an identification, the  
4 administrator shall seek and document a clear statement from the  
5 eyewitness, at the time of the identification and in the  
6 eyewitness' own words.

7 (f) The administrator shall photograph each suspect or  
8 cause the suspect to be photographed at the time and place of  
9 the showup to preserve a record of the appearance of the suspect  
10 at the time of the showup.

11 (g) When it is impracticable for a blind administrator to  
12 conduct a showup, the investigator shall state in writing the  
13 reason therefor.

14 § -4 Video record of identification procedures;  
15 impracticability; alternative record. (a) Unless  
16 impracticable, a video record of each identification procedure  
17 shall be made that includes the following information:

18 (1) All identification and non-identification results  
19 obtained during the identification procedure, signed  
20 by each eyewitness;





1           (2) The names of all persons present at the identification  
2            procedure, including the name of the administrator and  
3            whether the administrator was blind, blinded, or non-  
4            blind;

5           (3) If an administrator other than a blind administrator  
6            was used, the reason therefor;

7           (4) The date and time of the identification procedure;

8           (5) In a photo lineup or live lineup, any eyewitness  
9            identifications of fillers; and

10          (6) In a photo lineup or live lineup, the names of the  
11          lineup members and other relevant identifying  
12          information, and the sources of all photographs or  
13          persons used in the lineup.

14          (b) If a video record of the identification procedure is  
15          impracticable, the administrator shall document the reason  
16          therefor, and an audio record of the identification procedure  
17          shall be made. The audio record shall be supplemented by the  
18          following:

19           (1) All of the photographs used in a photo lineup; and

20           (2) Photographs of all of the individuals used in a live  
21          lineup or showup.



1 (c) If both a video and audio record of the identification  
2 procedure are impracticable, the administrator shall document in  
3 writing the reason therefor, and a written record of the  
4 identification procedure shall be made. The written record  
5 shall be supplemented by the following:

- 6 (1) All of the photographs used in a photo lineup; and  
7 (2) Photographs of all of the individuals used in a live  
8 lineup or showup.

9 § -5 Training by law enforcement entities. Law  
10 enforcement entities shall include in their training programs  
11 for law enforcement officers and recruits information on the  
12 methods, technical aspects, and scientific findings regarding  
13 the basis of the eyewitness identification practices and  
14 procedures referenced in this chapter."

15 SECTION 3. This Act does not affect rights and duties that  
16 matured, penalties that were incurred, and proceedings that were  
17 begun before its effective date.

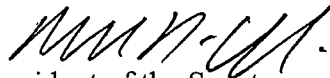
18 SECTION 4. This Act shall take effect on June 1, 2020.

APPROVED this                      day of                      , 2019

**THE SENATE OF THE STATE OF HAWAI'I**

Date: April 30, 2019  
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Thirtieth Legislature of the State of Hawai'i, Regular Session of 2019.



President of the Senate



Clerk of the Senate

SB No. 414, SD 1, HD 1, CD 1

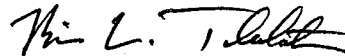
THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: April 30, 2019  
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirtieth Legislature of the State of Hawaii, Regular Session of 2019.



Scott K. Saiki  
Speaker  
House of Representatives



Brian L. Takeshita  
Chief Clerk  
House of Representatives