
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 in the
6 United States overturned by DNA evidence. Over the past thirty
7 years, a large body of peer-reviewed, scientific research and
8 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:

15 "CHAPTER

16 EYEWITNESS 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 not
3 suspected of the offense, is displayed to an eyewitness for the
4 purpose of determining whether the eyewitness identifies the
5 suspect as the 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 possible perpetrator may or may not be among
8 the persons in the identification procedure;

9 (B) The administrator does not know the identity of
10 the possible perpetrator, 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 state, in the eyewitness' own
17 words, how certain the eyewitness is of any
18 identification; and

19 (F) The eyewitness is not to discuss the
20 identification procedure or its results with



1 other eyewitnesses involved in the case and
2 should not speak with the media.

3 (b) The administrator shall comply with the following:

4 (1) In a photo lineup, any photograph of the suspect shall
5 be contemporary and shall resemble the suspect's
6 appearance at the time of the offense;

7 (2) In a photo lineup, there shall be no characteristics
8 of the photographs themselves or the background
9 context in which they are placed that makes any of the
10 photographs unduly stand out;

11 (3) A photo lineup or live lineup shall be composed so
12 that the fillers generally resemble the eyewitness'
13 description of the possible perpetrator, while
14 ensuring that the suspect does not unduly stand out
15 from the fillers;

16 (4) In a photo lineup or live lineup, the administrator
17 shall comply with the following:

18 (A) All fillers selected shall resemble the
19 eyewitness' description of the possible
20 perpetrator in significant features including but
21 not limited to face, weight, build, and skin



1 tone, including any unique or unusual feature
2 such as a scar, tattoo, or other unique
3 identifying mark;

4 (B) At least five fillers shall be included in a
5 photo lineup in addition to the suspect;

6 (C) At least four fillers shall be included in a live
7 lineup in addition to the suspect; and

8 (D) If the eyewitness has previously viewed a photo
9 lineup or live lineup in connection with the
10 identification of another person suspected of
11 involvement in the offense, the fillers in the
12 lineup in which the instant suspect participates
13 shall be different from the fillers used in any
14 prior lineups;

15 (5) In a live lineup, no identifying actions, such as
16 speech, gestures, or other movements, shall be
17 performed by lineup participants;

18 (6) In a live lineup, all lineup participants shall be out
19 of view of the eyewitness prior to the identification
20 procedure;



1 (7) In a photo lineup or live lineup, nothing shall be
2 said to the eyewitness regarding the suspect's
3 position in the lineup; and

4 (8) In a photo lineup or live lineup, nothing shall be
5 said to the eyewitness that might influence the
6 eyewitness' identification of any particular lineup
7 member.

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

10 (1) Each eyewitness shall view photo lineups or live
11 lineups separately;

12 (2) The suspect shall be placed in a different position in
13 the live lineup or photo lineup for each eyewitness;
14 and

15 (3) The eyewitnesses shall not be permitted to communicate
16 with each other until all identification procedures
17 have been completed.

18 (d) In any identification procedure, no writings or
19 information concerning the current investigation or any previous
20 arrest, indictment, or conviction of the suspect shall be
21 visible or made known to an eyewitness.



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

3 (f) In any identification procedure where an eyewitness
4 makes an identification, the administrator shall seek and
5 document a clear statement from the eyewitness at the time of
6 the identification in the eyewitness' own words, including a
7 statement describing the eyewitness' confidence level that the
8 person identified is the possible perpetrator.

9 (g) In any identification procedure where an eyewitness
10 makes an identification, the eyewitness shall not be provided
11 with any information concerning the person identified before the
12 administrator obtains the eyewitness' statement about the
13 identification.

14 (h) Law enforcement shall make a record of each
15 identification procedure, including all identification and non-
16 identification results obtained, undertaken during all
17 investigations. Each identification procedure record shall be
18 signed by the relevant eyewitness.

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



1 § -3 **Eyewitness identification procedures for showups.**

2 (a) The administrator shall comply with the following in
3 conducting a showup:

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

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

9 (3) An administrator shall not conduct a showup with a
10 photograph. If investigators wish to determine if an
11 eyewitness can make an identification using a
12 photograph, a photo lineup shall be used;

13 (4) Prior to any showup, law enforcement shall record in
14 writing as complete a description as possible of the
15 possible perpetrator provided by the eyewitness in the
16 eyewitness' own words. This record shall also include
17 information regarding the conditions under which the
18 eyewitness observed the possible perpetrator including
19 location, time, distance, obstructions, lighting,
20 weather conditions, and other impairments including



1 but not limited to alcohol, drugs, stress, and visual
2 or auditory disabilities;

3 (5) The eyewitness shall also be asked if the eyewitness'
4 vision needs correction by glasses or contact lenses
5 and whether the eyewitness was wearing them at the
6 time of the offense. The administrator shall note
7 whether the eyewitness was wearing glasses or contact
8 lenses at the time of the identification procedure;

9 (6) The eyewitness shall be transported to a neutral, non-
10 law enforcement location where the suspect is being
11 detained for the purposes of a showup;

12 (7) The eyewitness shall be instructed, without other
13 eyewitnesses present, prior to any showup that:

14 (A) The possible perpetrator may or may not be the
15 person that is presented to the eyewitness;

16 (B) The administrator does not know the identity of
17 the possible perpetrator, if applicable;

18 (C) The eyewitness should not feel compelled to make
19 an identification;

20 (D) The investigation will continue whether or not an
21 identification is made;



1 (E) The procedure requires the administrator to ask
2 the eyewitness to state, in the eyewitness' own
3 words, how certain the eyewitness is of any
4 identification; and

5 (F) The eyewitness is not to discuss the
6 identification procedure or its results with
7 other eyewitnesses involved in the case and
8 should not speak with the media.

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

12 (1) Refrain from suggesting, through statements or
13 nonverbal conduct, that the suspect is or may be the
14 perpetrator of the crime;

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

17 (3) When practicable, present the suspect to the
18 eyewitness without handcuffs.

19 (c) When there are multiple eyewitnesses, the following
20 procedure shall apply:



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

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

7 (d) If there are multiple suspects, the suspects shall be
8 separated and subjected to separate showup procedures.

9 (e) If an eyewitness makes an identification, the
10 administrator shall seek and document a clear statement from the
11 eyewitness, at the time of the identification and in the
12 eyewitness' own words, as to the eyewitness' confidence level
13 that the person identified in the showup is the possible
14 perpetrator.

15 (f) The administrator shall photograph each suspect or
16 cause the suspect to be photographed at the time and place of
17 the showup to preserve a record of the appearance of the suspect
18 at the time of the showup.

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



1 § -4 Video record of identification procedures;

2 impracticability; alternative record. (a) Unless
3 impracticable, a video record of each identification procedure
4 shall be made that includes the following information:

5 (1) All identification and non-identification results
6 obtained during the identification procedure, signed
7 by each eyewitness, including any eyewitness'
8 confidence statements;

9 (2) The names of all persons present at the identification
10 procedure, including the name of the administrator and
11 whether the administrator was blind, blinded, or non-
12 blind;

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

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

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

18 (6) In a photo lineup or live lineup, the names of the
19 lineup members and other relevant identifying
20 information, and the sources of all photographs or
21 persons used in the lineup.



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

- 14 (1) All of the photographs used in a photo lineup; and
15 (2) Photographs of all of the individuals used in a live
16 lineup or showup.

17 **§ -5 Training by law enforcement entities.** Law
18 enforcement entities shall include in their training programs
19 for law enforcement officers and recruits information on the
20 methods, technical aspects, and scientific findings regarding



1 the basis of the eyewitness identification practices and
2 procedures referenced in this chapter."

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

6 SECTION 4. This Act shall take effect on January 28, 2081.



Report Title:

Criminal Procedure; Eyewitness Identification

Description:

Creates procedural and administrative requirements for law enforcement agencies for eyewitness identifications of suspects in criminal investigations. (HB1061 HD1)

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

