

Honolulu, Hawaii

MAR 01 2019

RE: S.B. No. 414  
S.D. 1

Honorable Ronald D. Kouchi  
President of the Senate  
Thirtieth State Legislature  
Regular Session of 2019  
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred S.B. No. 414 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) Create procedural and administrative requirements for law enforcement agencies for eyewitness identifications of suspects in criminal investigations; and
- (2) Grant defendants the right to challenge any eyewitness identification to be used at trial in a pretrial evidentiary hearing.

Your Committee received testimony in support of this measure from the Office of the Public Defender. Your Committee received testimony in opposition to this measure from the Department of the Prosecuting Attorney of the City and County of Honolulu, Office of the Prosecuting Attorney of the County of Kaua'i, Honolulu Police Department, Maui Police Department, and Hawai'i Police Department. Your Committee received comments on this measure from the Judiciary and Department of the Attorney General.

Your Committee finds that mistaken eyewitness identification contributes to a significant majority of wrongful convictions that



are later overturned by DNA evidence. Your Committee further finds that during the last thirty years, a large body of peer-reviewed, scientific research and practice has emerged showing that simple systemic changes in administering eyewitness identification procedures can greatly improve the accuracy of eyewitness identifications. Your Committee additionally finds that more accurate eyewitness identifications increase the ability of police and prosecutors to solve crimes, convict the guilty, and protect the innocent.

Your Committee has amended this measure by:

- (1) Removing the requirement that eyewitnesses make a statement of how certain the eyewitness is in the event of an identification;
- (2) Clarifying that eyewitnesses are to be instructed that speaking with other witnesses or the media may hinder prosecution;
- (3) Removing the requirement that fillers in a lineup must share any unique or unusual feature with the eyewitness' description of the possible perpetrator;
- (4) Requiring the suspect to be randomly positioned in the live lineup or photo lineup for each eyewitness;
- (5) Requiring all showups to be conducted blind unless to do so would place an undue burden on law enforcement or the investigation;
- (6) Clarifying that either the prosecution or the defendant may request, upon motion, a pretrial evidentiary hearing as to the reliability of the eyewitness identification evidence offered;
- (7) Simplifying the procedural requirements for pretrial evidentiary hearings;
- (8) Changing the effective date to February 1, 2021; and
- (9) 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 that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 414, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 414, S.D. 1, and be placed on the calendar for Third Reading.

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



---

KARL RHOADS, Chair



