

JAN 21 2011

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# A BILL FOR AN ACT

RELATING TO RIGHTS OF THE ACCUSED.

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

1           SECTION 1. The goal of a police investigation is to  
2 apprehend the person or persons responsible for committing a  
3 crime. Recent studies have confirmed, however, that traditional  
4 eyewitness identification procedures may lead to faulty  
5 eyewitness identifications. By contrast, studies also indicate  
6 that the criminal justice system can significantly decrease the  
7 rate of erroneous eyewitness identifications by implementing  
8 modern identification procedures that would also increase the  
9 ability of police and prosecutors to convict the guilty and  
10 protect our communities. The National Institute of Justice  
11 recommends the adoption of new policies and procedures that are  
12 readily available and have proven effective in other  
13 jurisdictions.

14           The purpose of this Act is to prescribe new identification  
15 procedures that will help maximize fairness and justice, provide  
16 Hawaii's citizens with greater protections against faulty  
17 identifications, and assist police agencies with the capture of  
18 the perpetrators of crimes in our community.



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

4 "CHAPTER

5 EYEWITNESS IDENTIFICATION

6 § -1 **Definitions.** For the purposes of this chapter:

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

9 "Filler" means either a person or a photograph of a person  
10 who is not suspected of an offense and is included in an  
11 identification procedure.

12 "Identification procedure" means either a photo lineup or a  
13 live lineup.

14 "Investigator" means the person conducting the live or  
15 photo lineup.

16 "Live lineup" means a procedure in which a group of  
17 persons, including the person suspected as the perpetrator of an  
18 offense and other persons not suspected of the offense, is  
19 displayed to an eyewitness for the purpose of determining  
20 whether the eyewitness is able to identify the suspect as the  
21 perpetrator.



1 "Photo lineup" means a procedure in which an array of  
2 photographs, including a photograph of the person suspected as  
3 the perpetrator of an offense and additional photographs of  
4 other persons not suspected of the offense, is displayed to an  
5 eyewitness for the purpose of determining whether the eyewitness  
6 is able to identify the suspect as the perpetrator.

7 § -2 **Eyewitness identification procedures.** (a) The  
8 conducting of photo lineups and live lineups shall comply with  
9 the following requirements:

10 (1) When practicable, the investigator shall be a person  
11 who is not aware of which person in the lineup is  
12 suspected as the perpetrator of the offense. When it  
13 is not practicable for the investigator to be a person  
14 who is unaware of which person in the lineup is  
15 suspected as the perpetrator of the offense:

16 (A) The lineup shall be presented simultaneously, not  
17 sequentially; and

18 (B) The investigator shall state in writing the  
19 reason that presentation of the lineup was not  
20 made by a person who was not aware of which  
21 person in the photo lineup or live lineup was  
22 suspected as the perpetrator of the offense;



- 1           (2) The eyewitness shall be instructed prior to the  
2           identification procedure that the perpetrator may not  
3           be among the persons in the photo lineup or the live  
4           lineup and that the eyewitness should not feel  
5           compelled to make an identification;
- 6           (3) If a live lineup or photo lineup is conducted in  
7           sequence rather than simultaneously:
- 8           (A) Each photograph or person shall be viewed one at  
9           a time;
- 10          (B) The photographs or persons shall be displayed in  
11          random order;
- 12          (C) The eyewitness shall be given as much time as  
13          needed to make a decision about each photograph  
14          or person before moving to the next one; and
- 15          (D) All photographs or persons shall be shown to the  
16          eyewitness, even if an identification is made  
17          before all have been viewed;
- 18          (4) The photo lineup or live lineup shall be composed so  
19          that the fillers generally fit the description of the  
20          person suspected as the perpetrator and, in the case  
21          of a photo lineup, so that the photograph of the  
22          person suspected as the perpetrator resembles the



- 1 perpetrator's appearance at the time of the offense  
2 and does not unduly stand out;
- 3 (5) If the eyewitness has previously viewed a photo lineup  
4 or live lineup in connection with the identification  
5 of another person suspected of involvement in the  
6 offense, the fillers in the lineup in which the person  
7 suspected as the perpetrator participates shall be  
8 different from the fillers used in any prior lineups;
- 9 (6) At least five fillers shall be included in the photo  
10 lineup and at least four fillers shall be included in  
11 the live lineup, in addition to the person suspected  
12 as the perpetrator;
- 13 (7) In a photo lineup, no writings or information  
14 concerning any previous arrest of the person suspected  
15 as the perpetrator shall be visible to the eyewitness;
- 16 (8) In a live lineup, any identification actions, such as  
17 speaking or making gestures or other movements, shall  
18 be performed by all lineup participants;
- 19 (9) In a live lineup, all lineup participants shall be out  
20 of the view of the eyewitness at the beginning of the  
21 identification procedure;



- 1       (10) The person suspected as the perpetrator shall be the  
2           only suspected perpetrator included in the  
3           identification procedure;
- 4       (11) Nothing shall be said to the eyewitness regarding the  
5           position in the photo lineup or the live lineup of the  
6           person suspected as the perpetrator, except as  
7           otherwise provided in paragraph (2);
- 8       (12) Nothing shall be said to the eyewitness that might  
9           influence the eyewitness's selection of the person  
10          suspected as the perpetrator;
- 11       (13) If the eyewitness identifies a person as the  
12          perpetrator, the investigator shall seek, in the  
13          eyewitness's own words, the eyewitness's confidence  
14          level that any person identified in the lineup is the  
15          suspect;
- 16       (14) If the eyewitness identifies a person as the  
17          perpetrator, the eyewitness shall not be provided any  
18          information concerning the person prior to obtaining  
19          the eyewitness's statement that the eyewitness is  
20          certain of the selection; and
- 21       (15) A written record of the identification procedure shall  
22          be made that includes the following information:



- 1 (A) All results indicating identification or the  
2 inability to identify a person as the perpetrator  
3 obtained during the identification procedure,  
4 signed by the eyewitness, including the  
5 eyewitness's own words regarding how certain the  
6 eyewitness is of the selection;
- 7 (B) The names of all persons present at the  
8 identification procedure;
- 9 (C) The date and time of the identification  
10 procedure;
- 11 (D) In a live or photo lineup where the subjects were  
12 presented sequentially as opposed to  
13 simultaneously, the order in which the  
14 photographs or persons were displayed to the  
15 eyewitness;
- 16 (E) In a photo lineup, the photographs themselves,  
17 and identification information and the sources of  
18 all photographs used; and
- 19 (F) In a live lineup, a photo or other visual  
20 recording of the lineup that includes all persons  
21 who participated in the lineup.



1 (b) Not later than January 1, 2012, each county police  
2 department and state agency with criminal investigation powers  
3 shall adopt procedures for conducting photo lineups and live  
4 lineups that comply with subsection (a).

5 § -3 **Noncompliance.** (a) Evidence of a failure to  
6 comply with any of the provisions of this chapter shall be  
7 considered by a court in adjudicating motions to suppress  
8 eyewitness identification.

9 (b) Evidence of a failure to comply with any of the  
10 provisions of this chapter shall be admissible at trial or other  
11 hearings in support of claims of eyewitness misidentification;  
12 provided that such evidence is otherwise admissible.

13 (c) If evidence of a failure to comply with any of the  
14 provisions of this chapter has been presented at trial, the jury  
15 shall be instructed that it may consider credible evidence of  
16 noncompliance in determining the reliability of eyewitness  
17 identifications.

18 § -4 **Training program.** There is established a training  
19 program for law enforcement officers and recruits on the methods  
20 of proper eyewitness identification practices consistent with  
21 this chapter. The department of the attorney general shall  
22 administer the program."



1 SECTION 3. There is appropriated out of the general  
2 revenues of the State of Hawaii the sum of \$ or so much  
3 thereof as may be necessary for fiscal year 2011-2012 and the  
4 same sum or so much thereof as may be necessary for fiscal year  
5 2012-2013 to establish and operate a training program as  
6 provided in section -4, Hawaii Revised Statutes, as enacted  
7 in section 2 of this Act.

8 The sums appropriated shall be expended by the department  
9 of the attorney general for the purposes of this Act.

10 SECTION 4. This Act shall take effect on July 1, 2011.

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INTRODUCED BY:

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**Report Title:**

Eyewitness Identification; Procedures; Appropriation

**Description:**

Specifies procedures for eyewitness identification via photographic and live lineups. Mandates that state and county law enforcement adopt these procedures. Establishes training program.

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

