
SENATE CONCURRENT RESOLUTION

ENCOURAGING THE STATE ATTORNEY GENERAL AND STATE AND COUNTY LAW ENFORCEMENT AGENCIES TO ADOPT NEW EYEWITNESS IDENTIFICATION PROCEDURES TO DECREASE THE RATE OF ERRONEOUS EYEWITNESS IDENTIFICATIONS AND TO CONDUCT CRIMINAL INVESTIGATIONS IN ACCORDANCE WITH THE NEWEST AND BEST PRACTICES AVAILABLE FOR EYEWITNESS IDENTIFICATIONS.

1 WHEREAS, the goal of police investigation in Hawaii is to
2 apprehend the person or persons responsible for committing a
3 crime; and
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5 WHEREAS, recent studies have shown, however, that
6 traditional eyewitness identification procedures may lead to
7 faulty eyewitness identifications; and
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9 WHEREAS, studies have also shown that the criminal justice
10 system can significantly decrease the rate of erroneous
11 eyewitness identifications by implementing modern identification
12 procedures that would also increase the ability of police and
13 prosecutors to convict the guilty and protect our communities;
14 and
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16 WHEREAS, the National Institute of Justice recommends the
17 adoption of new policies and procedures that are readily
18 available and have been proven effective in other jurisdictions;
19 and
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21 WHEREAS, the rate of erroneous eyewitness identification
22 procedures may be reduced by a number of new eyewitness
23 identification procedures such as:
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- 25 (1) Ensuring, when practicable, that the investigator
26 administering a lineup procedure is a person who is
27 not aware which person in the lineup is suspected as
28 the perpetrator of the offense, and, when it is not
29 practicable for the investigator to be a person who is



1 unaware which person in the lineup is suspected as the
2 perpetrator of the offense, that:

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4 (A) The lineup is presented simultaneously, not
5 sequentially; and
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7 (B) The investigator states in writing the reason why
8 the presentation of the lineup was not made by a
9 person who was not aware which person in the
10 photo lineup or live lineup was suspected as the
11 perpetrator of the offense;
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13 (2) The eyewitness is instructed prior to the
14 identification procedure that the perpetrator may not
15 be among the persons in the photo lineup or the live
16 lineup and that the eyewitness should not feel
17 compelled to make an identification;
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19 (3) If a live lineup or photo lineup is conducted in
20 sequence rather than simultaneously:
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22 (A) Each photograph or person is viewed one at a
23 time;
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25 (B) The photographs or persons are displayed in
26 random order;
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28 (C) The eyewitness is given as much time as needed to
29 make a decision about each photograph or person
30 before moving to the next one; and
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32 (D) All photographs or persons are shown to the
33 eyewitness, even if an identification is made
34 before all have been viewed;
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36 (4) The photo lineup or live lineup is composed so that
37 the fillers generally fit the description of the
38 person suspected as the perpetrator and, in the case
39 of a photo lineup, so that the photograph of the
40 person suspected as the perpetrator resembles the
41 perpetrator's appearance at the time of the offense
42 and does not unduly stand out;
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- 1 (5) If the eyewitness has previously viewed a photo lineup
2 or live lineup in connection with the identification
3 of another person suspected of involvement in the
4 offense, the fillers in the lineup in which the person
5 suspected as the perpetrator participates are
6 different from the fillers used in any prior lineups;
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- 8 (6) At least five fillers are included in the photo lineup
9 and at least four fillers are included in the live
10 lineup, in addition to the person suspected as the
11 perpetrator;
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- 13 (7) In a photo lineup, no writing or information
14 concerning any previous arrest of the person suspected
15 as the perpetrator is visible to the eyewitness;
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- 17 (8) In a live lineup, any identification actions, such as
18 speaking or making gestures or other movements, are
19 performed by all lineup participants;
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- 21 (9) In a live lineup, all lineup participants are out of
22 the view of the eyewitness at the beginning of the
23 identification procedure;
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- 25 (10) The person suspected as the perpetrator is the only
26 suspected perpetrator included in the identification
27 procedure;
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- 29 (11) Nothing is said to the eyewitness regarding the
30 position in the photo lineup or the live lineup of the
31 person suspected as the perpetrator, except as
32 otherwise provided in paragraph (2);
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- 34 (12) Nothing is said to the eyewitness that might influence
35 the eyewitness's selection of the person suspected as
36 the perpetrator;
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- 38 (13) If the eyewitness identifies a person as the
39 perpetrator, the investigator seeks, in the
40 eyewitness's own words, the eyewitness's confidence
41 level that any person identified in the lineup is the
42 suspect;
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- 1 (14) If the eyewitness identifies a person as the
2 perpetrator, the eyewitness is not provided any
3 information concerning the person prior to obtaining
4 the eyewitness's statement that the eyewitness is
5 certain of the selection; and
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- 7 (15) A written record of the identification procedure is
8 made that includes the following information:
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- 10 (A) All results indicating identification or the
11 inability to identify a person as the perpetrator
12 obtained during the identification procedure,
13 signed by the eyewitness, and including the
14 eyewitness's own words regarding how certain the
15 eyewitness is of the selection;
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- 17 (B) The names of all persons present at the
18 identification procedure;
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- 20 (C) The date and time of the identification
21 procedure;
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- 23 (D) In a live or photo lineup where the subjects were
24 presented sequentially as opposed to
25 simultaneously, the order in which the
26 photographs or persons were displayed to the
27 eyewitness;
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- 29 (E) In a photo lineup, the photographs themselves,
30 and identification information and the sources of
31 all photographs used; and
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- 33 (F) In a live lineup, a photo or other visual
34 recording of the lineup that includes all persons
35 who participated in the lineup; and
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37 WHEREAS, these new identification procedures could help
38 maximize fairness and justice, provide Hawaii's citizens with
39 greater protections against faulty identifications, and assist
40 police agencies with the capture of the perpetrators of crime in
41 our community; now, therefore,
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43 BE IT RESOLVED by the Senate of the Twenty-sixth
44 Legislature of the State of Hawaii, Regular Session of 2011, the



1 House of Representatives concurring, that the Attorney General
2 and various state and county law enforcement agencies are
3 encouraged to adopt new eyewitness identification procedures as
4 outlined above to decrease the rate of erroneous eyewitness
5 identifications; and

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7 BE IT FURTHER RESOLVED that the criminal investigations
8 conducted by state and county law enforcement agencies be in
9 accordance with the newest and best practices available for
10 eyewitness identification; and

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12 BE IT FURTHER RESOLVED that certified copies of this
13 Concurrent Resolution be transmitted to the Governor; Attorney
14 General; and the Mayors, Police Chiefs, and Prosecuting
15 Attorneys of the City and County of Honolulu, County of Kauai,
16 County of Maui, and County of Hawaii.

