
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:

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 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.



Report Title:

Criminal Procedure; Eyewitness Identification

Description:

Creates procedural and administrative requirements for law enforcement agencies for eyewitness identifications of suspects in criminal investigations. Effective 6/1/2020. (CD1)

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

