

JAN 20 2012

S.B. NO. 2304

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 legislature finds that recent studies have
2 shown that eyewitness identification procedures currently used
3 by law enforcement officials may lead to faulty eyewitness
4 identifications in law enforcement investigations. Studies have
5 also shown that erroneous eyewitness identifications may be
6 significantly decreased by implementing certain changes to
7 eyewitness identification procedures. Eyewitness
8 identifications that are more accurate and reliable increase the
9 ability of police and prosecutors to convict the guilty and
10 protect the people of this State.

11 The purpose of this Act is to require new eyewitness
12 identification procedures to improve the accuracy and
13 reliability of eyewitness identifications in law enforcement
14 investigations.

15 SECTION 2. Chapter 801, Hawaii Revised Statutes, is
16 amended by adding a new part to be appropriately designated and
17 to read as follows:

18 **"PART . EYEWITNESS IDENTIFICATION**



1 §801- Definitions. For the purposes of this part:

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

4 "Filler" means a person or a photograph of a person who is
5 not suspected of an offense and is included in an identification
6 procedure.

7 "Identification procedure" means a live lineup or photo
8 lineup.

9 "Investigator" means the person conducting the live lineup
10 or photo lineup.

11 "Live lineup" means a procedure in which a group of
12 persons, including the person suspected of being the perpetrator
13 of an offense and other persons not suspected of the offense, is
14 displayed to an eyewitness for the purpose of determining
15 whether the eyewitness is able to identify the suspect as the
16 perpetrator.

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



1 §801- **Eyewitness identification procedures.** Not later
2 than January 1, 2013, each county police department and all
3 state investigative agencies identified by the attorney general
4 shall adopt procedures for conducting live lineups and photo
5 lineups that comply with the following requirements:

6 (1) When practicable, the investigator shall be a person
7 who is not aware of which person in the lineup is
8 suspected of being the perpetrator of the offense;

9 (2) When it is not practicable for the investigator to be
10 a person who is not aware of which person in the
11 lineup is suspected of being the perpetrator of the
12 offense:

13 (A) The lineup shall be presented simultaneously, not
14 sequentially; and

15 (B) The investigator shall state in writing the
16 reason why the lineup was not conducted by a
17 person who was not aware of which person in the
18 live lineup or photo lineup was suspected of
19 being the perpetrator of the offense;

20 (3) The eyewitness shall be instructed prior to the
21 identification procedure:



1 (A) That the suspected perpetrator may not be among
2 the persons in the live lineup or photo lineup;
3 and

4 (B) That the eyewitness should not feel compelled to
5 make an identification;

6 (4) When a live lineup or photo lineup is conducted in
7 sequence rather than simultaneously:

8 (A) Each person or photograph shall be viewed one at
9 a time;

10 (B) The persons or photographs shall be displayed in
11 random order;

12 (C) The eyewitness shall take as much time as needed
13 to make a decision about each person or
14 photograph before viewing the next person or
15 photograph; and

16 (D) All persons or photographs in the live lineup or
17 photo lineup shall be shown to the eyewitness,
18 even if an identification is made before all
19 persons or photographs have been viewed;

20 (5) The fillers in a live lineup or photo lineup shall
21 generally fit the description of the person suspected
22 of being the perpetrator and, in the case of a photo



1 lineup, the photograph of the person suspected of
2 being the perpetrator shall resemble the suspect's
3 appearance at the time of the offense and shall not
4 unduly stand out;

5 (6) If the eyewitness has previously viewed a live lineup
6 or photo lineup in connection with the identification
7 of another person suspected of being involved in the
8 offense, the fillers in the lineup that includes the
9 person suspected of being the perpetrator shall be
10 different from the fillers used in any prior lineups
11 viewed by the eyewitness;

12 (7) A live lineup shall include at least four fillers and
13 a photo lineup shall include at least five fillers, in
14 addition to the person suspected of being the
15 perpetrator;

16 (8) In a photo lineup, no writings or information
17 concerning any previous arrest of the person suspected
18 of being the perpetrator shall be visible to the
19 eyewitness;

20 (9) In a live lineup, any actions, such as speaking or
21 gesturing or other movements that may identify the



1 person suspected of being the perpetrator, shall be
2 performed by all lineup participants;

3 (10) In a live lineup, all lineup participants shall be out
4 of the view of the eyewitness at the beginning of the
5 identification procedure;

6 (11) The person suspected of being the perpetrator shall be
7 the only suspect included in the identification
8 procedure;

9 (12) Nothing shall be said to the eyewitness regarding the
10 position in the live lineup or photo lineup of the
11 person suspected of being the perpetrator, except as
12 otherwise provided in paragraph (3);

13 (13) Nothing shall be said to the eyewitness that might
14 influence the eyewitness' selection of the person
15 suspected of being the perpetrator;

16 (14) The investigator shall seek to obtain from the
17 eyewitness, in the eyewitness' own words, the
18 eyewitness' level of confidence that the person or
19 persons identified in the live lineup or photo lineup
20 is the suspect;

21 (15) If the eyewitness identifies a person as the
22 perpetrator, the eyewitness shall not be provided any



1 information concerning the person prior to obtaining
2 the eyewitness' statement that the eyewitness is
3 certain of the selection; and

4 (16) A written record of the identification procedure shall
5 be made that includes the following information:

6 (A) All results indicating the eyewitness'
7 identification or inability to identify a person
8 as the perpetrator obtained during the
9 identification procedure, signed by the
10 eyewitness, including the eyewitness' statement
11 regarding how certain the eyewitness is of the
12 selection;

13 (B) The names of all persons present at the
14 identification procedure;

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

17 (D) In a live lineup or photo lineup where the
18 persons or photographs were presented
19 sequentially as opposed to simultaneously, the
20 order in which the persons or photographs were
21 displayed to the eyewitness;



1 (E) In a photo lineup, the photographs themselves,
2 identification information, and the sources of
3 all photographs used; and

4 (F) In a live lineup, a photograph or other visual
5 recording of the lineup that includes all persons
6 who participated in the lineup.

7 §801- Remedies for noncompliance. (a) Any evidence of
8 a failure to comply with this part shall be:

9 (1) Considered by the trial court in adjudicating motions
10 to suppress eyewitness identification; and

11 (2) Admissible at trial or hearings in support of claims
12 of eyewitness misidentification as long as the
13 evidence is otherwise admissible.

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

19 §801- Training of law enforcement officers. The
20 attorney general shall create, administer, and conduct training
21 programs for law enforcement officers and recruits on the
22 methods and technical aspects of the eyewitness identification





1 practices and procedures required in this part. The attorney
2 general shall fund the training programs from appropriations
3 specifically designated for the training programs."

4 SECTION 3. Chapter 801, Hawaii Revised Statutes, is
5 amended by designating sections 801-1 through 801-5 as part I,
6 entitled "General Provisions".

7 SECTION 4. This Act shall take effect upon its approval.
8

INTRODUCED BY:





S.B. NO. 2304

Report Title:

Criminal Procedure; Eyewitness Identification of Suspects; Live Lineups and Photo Lineups

Description:

Establishes procedures for eyewitness identification of persons suspected of perpetrating an offense in live lineups and photo lineups.

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

