

Honolulu, Hawaii

FEB 13 2015

RE: S.B. No. 147
S.D. 1

Honorable Donna Mercado Kim
President of the Senate
Twenty-Eighth State Legislature
Regular Session of 2015
State of Hawaii

Madam:

Your Committee on Judiciary and Labor, to which was referred
S.B. No. 147 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) Establish procedural and administrative requirements for law enforcement to conduct eyewitness identifications, including photo and live lineups and showups, of suspects in criminal investigations;
- (2) Grant a defendant the right to challenge an eyewitness identification to be used at trial in a pretrial evidentiary hearing;
- (3) Establish factors for the court to consider when determining eyewitness identification contamination and the admissibility of such evidence;
- (4) Establish jury instructions when the court determines that the eyewitness identification is admissible; and
- (5) Require county police departments to develop and administer and require law enforcement officers and recruits to attend training programs regarding eyewitness identification practices and procedures.



Your Committee received testimony in support of this measure from the Office of the Public Defender, Community Alliance on Prisons, American Civil Liberties Union of Hawaii, and two individuals. Your Committee received testimony in opposition to this measure from the Department of the Prosecuting Attorney, City and County of Honolulu; Department of the Prosecuting Attorney, County of Maui; Office of the Prosecuting Attorney, County of Kauai; and Office of the Prosecuting Attorney, County of Hawaii. Your Committee received comments on this measure from the Judiciary.

Your Committee finds that this measure establishes uniform procedures under which eyewitnesses to crimes are asked to identify suspects. The Office of the Public Defender testified that the current procedures used by law enforcement agencies, including those used by the Honolulu Police Department, are in need of reform to reduce the chances of erroneous eyewitness identifications.

Your Committee notes the concerns raised by the Department of the Prosecuting Attorney of the City and County of Honolulu that codifying eyewitness identification standards may prevent eyewitness identifications from being reviewed under a totality of the circumstances. Furthermore, the Department indicated that Hawaii case law addresses when specific jury instructions pertaining to eyewitness identification are necessary.

Accordingly, your Committee has amended this measure by:

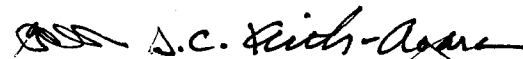
- (1) Adopting minimum procedural and administrative requirements for law enforcement to conduct eyewitness identifications, including:
 - (A) Information that law enforcement is required to provide to an eyewitness;
 - (B) Requirements to prevent law enforcement from contaminating eyewitness identifications;
 - (C) Requirements for law enforcement to use fillers for any photo or live lineup; and
 - (D) Requirements for law enforcement to conduct showups;



- (2) Deleting language that grants a defendant the right to challenge an eyewitness identification to be used at trial, and factors for the court to consider when determining eyewitness identification contamination and the admissibility of such evidence;
- (3) Deleting language that requires county police departments to develop and administer training programs regarding eyewitness identification procedures and inserting language that requires the Attorney General to establish uniform statewide witness identification procedures;
- (4) Inserting an effective date of January 7, 2059, to encourage further discussion; and
- (5) 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 and Labor that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 147, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 147, S.D. 1, and be referred to the Committee on Ways and Means.

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

 S.C. Keith-Agaran

GILBERT S.C. KEITH-AGARAN, Chair



The Senate
Twenty-Eighth Legislature
State of Hawai'i

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:* <div style="text-align: center; font-size: 1.2em;">SB 147</div>	Committee Referral: <div style="text-align: center; font-size: 1.2em;">JDL, WAM</div>	Date: <div style="text-align: center; font-size: 1.2em;">2/3/15</div>		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <div style="display: flex; justify-content: space-around; align-items: flex-start;"> <div style="text-align: center;"> <input type="checkbox"/> Pass, unamended 2312 </div> <div style="text-align: center;"> <input checked="" type="checkbox"/> Pass, with amendments 2311 </div> <div style="text-align: center;"> <input type="checkbox"/> Hold 2310 </div> <div style="text-align: center;"> <input type="checkbox"/> Recommit 2313 </div> </div>				
Members	Aye	Aye (WR)	Nay	Excused
KEITH-AGARAN, Gilbert S.C. (C)	✓			
SHIMABUKURO, Maile S.L. (VC)	✓			
ESPERO, Will	✓			
GABBARD, Mike				✓
IHARA, Jr., Les	✓			
THIELEN, Laura H.	✓			
SLOM, Sam	✓			
TOTAL	6			1
Recommendation: <div style="display: flex; justify-content: space-around; margin-top: 10px;"> <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted </div>				
Chair's or Designee's Signature:				
Distribution: <div style="display: flex; justify-content: space-between; font-size: 0.8em; margin-top: 5px;"> <div>Original File with Committee Report</div> <div>Yellow Clerk's Office</div> <div>Pink Drafting Agency</div> <div>Goldenrod Committee File Copy</div> </div>				

*Only one measure per Record of Votes