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## HOUSE CONCURRENT RESOLUTION

REQUESTING A TASK FORCE TO REVIEW AND REPORT ON IMPROVING  
EYEWITNESS IDENTIFICATION AND BIOLOGICAL EVIDENCE  
PROCEDURES.

1           WHEREAS, the goal of a police investigation is to apprehend  
2 the person or persons responsible for the commission of a crime;  
3 and  
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5           WHEREAS, mistaken eyewitness identification has been shown  
6 to have contributed to a significant number of convictions that  
7 were eventually exonerated; and  
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9           WHEREAS, over the past 30 years, a large body of peer-  
10 reviewed, scientific research and practice has emerged showing  
11 that simple systematic changes in administering eyewitness  
12 investigation procedures can greatly improve the accuracy of  
13 those investigations; and  
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15           WHEREAS, more accurate eyewitness identifications increase  
16 the ability of police and prosecutors to convict the guilty and  
17 protect the innocent; and  
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19           WHEREAS, the value of properly preserved biological  
20 evidence has been enhanced by the discovery of modern  
21 deoxyribonucleic acid (DNA) testing methods which, coupled with  
22 a comprehensive system of DNA databases that store crime scene  
23 and offender profiles, allow law enforcement to improve its  
24 crime-solving potential; and  
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26           WHEREAS, tapping the potential of preserved biological  
27 evidence requires the proper identification, collection,  
28 preservation, storage, cataloguing, and organization of such  
29 evidence; and



1 WHEREAS, according to law enforcement agencies, "cold" case  
2 investigations are hindered by an inability to access biological  
3 evidence that was collected in connection with criminal  
4 investigations; and

5  
6 WHEREAS, failure to update preservation policies squanders  
7 valuable law enforcement resources, manpower hours, and storage  
8 space; and

9  
10 WHEREAS, simple but crucial enhancements to protocols for  
11 properly preserving biological evidence can solve old crimes,  
12 enhance public safety, and settle claims of innocence; and

13  
14 WHEREAS, to make improvements in administering eyewitness  
15 investigation procedures and update biological evidence  
16 preservation policies, a study on the measures to be implemented  
17 is necessary; now, therefore,

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19 BE IT RESOLVED by the House of Representatives of the  
20 Twenty-fourth Legislature of the State of Hawaii, Regular  
21 Session of 2008, the Senate concurring, that a task force be  
22 established by the Attorney General to study and develop  
23 recommended guidelines for policies, procedures, and training  
24 protocol to improve the accuracy of eyewitness identifications  
25 and make better use of biological evidence in criminal  
26 investigations by law enforcement agencies, including procedures  
27 for the administration of live and photo lineups and showups,  
28 demonstrated to increase the accuracy of eyewitnesses  
29 identifications; and

30  
31 BE IT FURTHER RESOLVED that the task force consist of nine  
32 members designated as follows:

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34 (1) Two members selected by the Attorney General:  
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36 (A) One of whom shall be a prosecutor; and  
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38 (B) One of whom shall be a criminal defense attorney;  
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40 (2) Three members selected by the governor:  
41  
42 (A) One of whom shall have experience in evidence  
43 handling, collection, and retention;



- 1 (B) One of whom shall be a representative from a
- 2 victims' rights organization; and
- 3
- 4 (C) One of whom shall be a law enforcement officer;
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- 6 (3) Two members appointed by the Speaker of the House of
- 7 Representatives; and
- 8
- 9 (4) Two members appointed by the President of the Senate;

10  
11 and

12  
13 BE IT FURTHER RESOLVED that the task force is requested to  
14 recommend whether the following action should be taken:

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- 16 (1) Employing a blind administrator in the administration
- 17 of live and photo lineups;
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- 19 (2) Issuing specific instructions to the eyewitness before
- 20 and during the live or photo lineup or showup, which
- 21 may include:
  - 22
  - 23 (A) That the perpetrator may or may not be among the
  - 24 persons in the identification procedure or, in
  - 25 the case of a showup, may or may not be the
  - 26 person that is presented to the eyewitness;
  - 27
  - 28 (B) That the administrator does not know who the
  - 29 perpetrator is;
  - 30
  - 31 (C) That the eyewitness should not feel compelled to
  - 32 make an identification;
  - 33
  - 34 (D) That the investigation will continue whether or
  - 35 not an identification is made;
  - 36
  - 37 (E) That the procedure requires the administrator to
  - 38 ask the eyewitness to state, in the eyewitness's
  - 39 own words, how certain the eyewitness is of any
  - 40 identification; and



- 1 (F) That the eyewitness not to discuss the  
2 identification procedure or its results with  
3 other eyewitnesses involved in the case and  
4 discouraging contact with the media;  
5
- 6 (3) In a photo lineup, ensuring that the photograph of the  
7 suspect is contemporary and resembles the suspect's  
8 appearance at the time of the offense;  
9
- 10 (4) Using four or more fillers in live lineups and five or  
11 more fillers in photo lineups and ensuring that those  
12 fillers generally resemble the eyewitness's  
13 description of the perpetrator;  
14
- 15 (5) Using only one suspect in any live or photo lineup and  
16 ensuring that the suspect does not unduly stand out  
17 from the fillers;  
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- 19 (6) Using different fillers in successive lineups  
20 administered for the same eyewitness when new suspects  
21 are introduced;  
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- 23 (7) Presenting separate photo and live lineups when there  
24 are multiple eyewitnesses, while ensuring the same  
25 suspect is placed in a different position for each  
26 identification procedure;  
27
- 28 (8) Taking measures to avoid communication about the  
29 identity of the suspect to the eyewitness and ensuring  
30 communication among multiple eyewitnesses is  
31 prevented;  
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- 33 (9) Presenting photo and live lineup members one at a  
34 time;  
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- 36 (10) Assessing the circumstances under which a showup is  
37 warranted;  
38
- 39 (11) Ensuring that, if there are multiple eyewitnesses,  
40 only one eyewitness at a time participates in the  
41 showup procedure and that:  
42
- 43 (A) Only one of the eyewitnesses be present at the  
44 location of the showup procedure; and



- 1 (B) If a positive identification is made, and an
- 2 arrest is justified, additional eyewitnesses be
- 3 shown live or photo lineups;
- 4
- 5 (12) If there are multiple suspects and a showup procedure
- 6 is warranted, separating these suspects and subjecting
- 7 them to separate showup procedures;
- 8
- 9 (13) Bringing the eyewitness to a neutral, non-law
- 10 enforcement location where the suspect is being
- 11 detained for a showup procedure;
- 12
- 13 (14) Avoiding the restraint of the suspect during the
- 14 course of a showup procedure;
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- 16 (15) Avoiding removing the suspect from a law enforcement
- 17 squad vehicle during the course of a showup procedure;
- 18
- 19 (16) Determining the amount of time that should be allowed
- 20 to elapse between the commission of a crime and the
- 21 administration of a showup procedure;
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- 23 (17) Determining when the administrator should record the
- 24 eyewitness's statement of confidence in the
- 25 eyewitness's selection in the live or photo lineup or
- 26 showup procedure;
- 27
- 28 (18) Refraining from providing any confirmatory information
- 29 to the eyewitness;
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- 31 (19) Making a video or audio recording of the live or photo
- 32 lineup, or showup procedure; and
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- 34 (20) Determining what training, if any, should be made
- 35 available to law enforcement personnel in the use of
- 36 the live or photo lineup, and showup procedure;
- 37

38 and

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40 BE IT FURTHER RESOLVED that the task force is requested to  
41 recommend:



- 1           (1) Statewide standards regarding proper identification,  
2           collection, preservation, storage, cataloguing, and  
3           organization of biological evidence;  
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- 5           (2) Essential components of training programs for law  
6           enforcement officers and other relevant employees who  
7           are charged with preserving and retrieving biological  
8           evidence regarding the methods and procedures  
9           referenced in paragraph (1);  
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- 11          (3) Protocol for the creation of a centralized tracking  
12          system through which laboratories, facilities, and  
13          other related entities may locate biological evidence  
14          connected to felony cases relating to:  
15
  - 16               (A) The retrieval of biological evidence for cases  
17               that have already resulted in felony convictions;  
18               and
  - 19               (B) The retrieval of biological evidence for unsolved  
20               felony cases;  
21
- 22          and  
23
- 24          (4) Practices, protocols, models, and resources for the  
25          cataloguing and accessibility of preserved biological  
26          evidence already in the possession of local, county,  
27          and state entities that preserve such evidence;  
28

29  
30 and

31  
32           BE IT FURTHER RESOLVED that the task force is requested to  
33 submit a report of its findings and recommendations, including  
34 proposed legislation, if any, to the Legislature no later than  
35 20 days prior to the convening of the Regular Session of 2010;  
36 and



# H.C.R. NO. 133

1 BE IT FURTHER RESOLVED that certified copies of this  
2 Concurrent Resolution be transmitted to the Police Chief of the  
3 Police Department of each County, the Governor, and the Attorney  
4 General of the State of Hawaii.

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OFFERED BY: \_\_\_\_\_

*JE*  
*Ms. Sub.*  
*Cindy Evans*  
MAR 04 2008

