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## HOUSE 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  
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31           WHEREAS, according to law enforcement agencies, "cold" case  
32 investigations are hindered by an inability to access biological  
33 evidence that was collected in connection with criminal  
34 investigations; and



1           WHEREAS, failure to update preservation policies squanders  
2 valuable law enforcement resources, manpower hours, and storage  
3 space; and  
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5           WHEREAS, simple but crucial enhancements to protocols for  
6 properly preserving biological evidence can solve old crimes,  
7 enhance public safety, and settle claims of innocence; and  
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9           WHEREAS, to make improvements in administering eyewitness  
10 investigation procedures and update biological evidence  
11 preservation policies, a study on the measures to be implemented  
12 is necessary; now, therefore,  
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14           BE IT RESOLVED by the House of Representatives of the  
15 Twenty-fourth Legislature of the State of Hawaii, Regular  
16 Session of 2008, that a task force be established by the  
17 Attorney General to study and develop recommended guidelines for  
18 policies, procedures, and training protocol to improve the  
19 accuracy of eyewitness identifications and make better use of  
20 biological evidence in criminal investigations by law  
21 enforcement agencies, including procedures for the  
22 administration of live and photo lineups and showups,  
23 demonstrated to increase the accuracy of eyewitnesses  
24 identifications; and  
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26           BE IT FURTHER RESOLVED that the task force consist of nine  
27 members designated as follows:  
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29           (1) Two members selected by the Attorney General:  
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31                   (A) One of whom shall be a prosecutor; and  
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33                   (B) One of whom shall be a criminal defense attorney;  
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35           (2) Three members selected by the governor:  
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37                   (A) One of whom shall have experience in evidence  
38 handling, collection, and retention;  
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40                   (B) One of whom shall be a representative from a  
41 victims' rights organization; and  
42

43                   (C) One of whom shall be a law enforcement officer;



1 (3) Two members appointed by the Speaker of the House of  
2 Representatives; and

3  
4 (4) Two members appointed by the President of the Senate;

5  
6 and

7  
8 BE IT FURTHER RESOLVED that the task force is requested to  
9 recommend whether the following action should be taken:

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11 (1) Employing a blind administrator in the administration  
12 of live and photo lineups;

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14 (2) Issuing specific instructions to the eyewitness before  
15 and during the live or photo lineup or showup, which  
16 may include:

17  
18 (A) That the perpetrator may or may not be among the  
19 persons in the identification procedure or, in  
20 the case of a showup, may or may not be the  
21 person that is presented to the eyewitness;

22  
23 (B) That the administrator does not know who the  
24 perpetrator is;

25  
26 (C) That the eyewitness should not feel compelled to  
27 make an identification;

28  
29 (D) That the investigation will continue whether or  
30 not an identification is made;

31  
32 (E) That the procedure requires the administrator to  
33 ask the eyewitness to state, in the eyewitness's  
34 own words, how certain the eyewitness is of any  
35 identification; and

36  
37 (F) That the eyewitness not to discuss the  
38 identification procedure or its results with  
39 other eyewitnesses involved in the case and  
40 discouraging contact with the media;

41  
42 (3) In a photo lineup, ensuring that the photograph of the  
43 suspect is contemporary and resembles the suspect's  
44 appearance at the time of the offense;



- 1 (4) Using four or more fillers in live lineups and five or  
2 more fillers in photo lineups and ensuring that those  
3 fillers generally resemble the eyewitness's  
4 description of the perpetrator;  
5
- 6 (5) Using only one suspect in any live or photo lineup and  
7 ensuring that the suspect does not unduly stand out  
8 from the fillers;  
9
- 10 (6) Using different fillers in successive lineups  
11 administered for the same eyewitness when new suspects  
12 are introduced;  
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- 14 (7) Presenting separate photo and live lineups when there  
15 are multiple eyewitnesses, while ensuring the same  
16 suspect is placed in a different position for each  
17 identification procedure;  
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- 19 (8) Taking measures to avoid communication about the  
20 identity of the suspect to the eyewitness and ensuring  
21 communication among multiple eyewitnesses is  
22 prevented;  
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- 24 (9) Presenting photo and live lineup members one at a  
25 time;  
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- 27 (10) Assessing the circumstances under which a showup is  
28 warranted;  
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- 30 (11) Ensuring that, if there are multiple eyewitnesses,  
31 only one eyewitness at a time participates in the  
32 showup procedure and that:  
33
  - 34 (A) Only one of the eyewitnesses be present at the  
35 location of the showup procedure; and
  - 36 (B) If a positive identification is made, and an  
37 arrest is justified, additional eyewitnesses be  
38 shown live or photo lineups;  
39
- 40 (12) If there are multiple suspects and a showup procedure  
41 is warranted, separating these suspects and subjecting  
42 them to separate showup procedures;



- 1 (13) Bringing the eyewitness to a neutral, non-law  
2 enforcement location where the suspect is being  
3 detained for a showup procedure;  
4
- 5 (14) Avoiding the restraint of the suspect during the  
6 course of a showup procedure;  
7
- 8 (15) Avoiding removing the suspect from a law enforcement  
9 squad vehicle during the course of a showup procedure;  
10
- 11 (16) Determining the amount of time that should be allowed  
12 to elapse between the commission of a crime and the  
13 administration of a showup procedure;  
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- 15 (17) Determining when the administrator should record the  
16 eyewitness's statement of confidence in the  
17 eyewitness's selection in the live or photo lineup or  
18 showup procedure;  
19
- 20 (18) Refraining from providing any confirmatory information  
21 to the eyewitness;  
22
- 23 (19) Making a video or audio recording of the live or photo  
24 lineup, or showup procedure; and  
25
- 26 (20) Determining what training, if any, should be made  
27 available to law enforcement personnel in the use of  
28 the live or photo lineup, and showup procedure;  
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30 and

31  
32 BE IT FURTHER RESOLVED that the task force is requested to  
33 recommend:

- 34
- 35 (1) Statewide standards regarding proper identification,  
36 collection, preservation, storage, cataloguing, and  
37 organization of biological evidence;  
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- 39 (2) Essential components of training programs for law  
40 enforcement officers and other relevant employees who  
41 are charged with preserving and retrieving biological  
42 evidence regarding the methods and procedures  
43 referenced in paragraph (1);



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(3) Protocol for the creation of a centralized tracking system through which laboratories, facilities, and other related entities may locate biological evidence connected to felony cases relating to:

(A) The retrieval of biological evidence for cases that have already resulted in felony convictions; and

(B) The retrieval of biological evidence for unsolved felony cases;

and

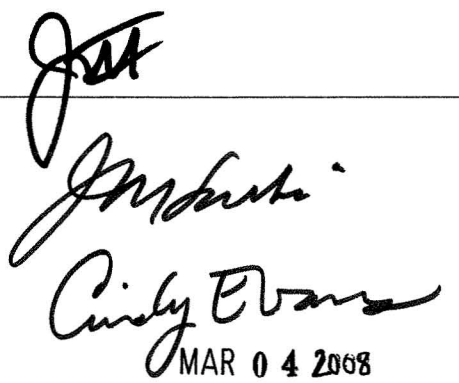
(4) Practices, protocols, models, and resources for the cataloguing and accessibility of preserved biological evidence already in the possession of local, county, and state entities that preserve such evidence;

and

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

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

OFFERED BY:

  
MAR 04 2008