

Testimony on behalf of the  
Office of the Public Defender, State of Hawai`i  
to the Senate Committee on Judiciary and Labor

February 7, 2012

RE: S.B. No. 2304: Relating To Rights of the Accused.

Senator Hee and Members of the Committee:

S. B. 2304 seeks to create a statute that would establish eyewitness identification procedures for use by state and county law enforcement. This would be a significant and long overdue improvement to our criminal justice system.

As of yesterday, February 6, 2012, there have been 289 post-conviction DNA exonerations reported by the Innocence Project at Cardozo Law School in New York City. These exonerations have occurred in 35 states. 222 of the exonerations have occurred since 2000. 17 of the persons exonerated served time on Death Row.

Eyewitness **mis-**identificaiton was a factor in nearly 75 per cent of the wrongful convictions. In fact, it was the leading cause of wrongful convictions in these cases. These statistics bear out the significant risk that eyewitness identification evidence may contribute to a wrongful conviction. That is why such evidence must be gathered by methods designed to eliminate the risk of influencing a wrongful identification, consciously or subconsciously.

That is why we support the intent of S.B. 2304. We would suggest some amendments to the bill, however.

Scientific study has shown that showing a line-up, either with photos or live persons, in a sequential presentation, rather than a simultaneous presentation, reduces the risk of making a mistake in identifying someone. Showing all the possible suspects at the same time increases the risk that the witness will identify the person who **most resembles** the suspect out of the six available photos or persons, rather than choosing the person that the witness believes to be the perpetrator. A sequential presentation has been shown to be the most reliable in avoiding mistaken identifications. Therefore, we would suggest the following change at page 3, line 8:

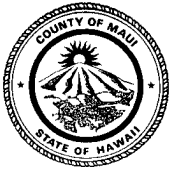
- (1) When practicable, the investigator shall be a person who is not aware of which person in the lineup is suspected of being the perpetrator of the offense and the lineup shall be presented sequentially, not simultaneously.

We note that the bill currently provides that when the line-up is presented by someone who IS aware of who the suspect is, it should be presented simultaneously. We don't oppose that provision but it would also be acceptable to have the line-up presented sequentially in ALL cases, especially as a starting point for the implementation of these procedures.

We are aware that various representatives of law enforcement have previously voiced concerns that they are not able to implement this change. We would note, however, that law enforcement said the same thing about providing constitutional warnings to suspects, prior to the Miranda vs. Arizona decision, yet once that became a required mandate, law enforcement adapted and it is now part of the standard procedure in interviewing suspects.

We believe that the procedure set out in this bill will also become a part of the standard methods used by the police, once they are required to do so, and it will not be any more burdensome than the Miranda procedure has become. Indeed, given the number of wrongful convictions that have resulted from eyewitness mis-identification, this is a change we must adopt.

Thank you for the opportunity to comment on this bill.



**ALAN M. ARAKAWA**  
MAYOR

OUR REFERENCE  
YOUR REFERENCE

# **POLICE DEPARTMENT**

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February 7, 2012



**GARY A. YABUTA**  
CHIEF OF POLICE

**CLAYTON N.Y.W. TOM**  
DEPUTY CHIEF OF POLICE

The Honorable Clayton Hee, Chair  
And Members of the Committee on Judiciary and Labor  
The Senate  
State Capitol  
Honolulu, HI 96813

**RE: SB No. 2304, Relating To The Rights Of The Accused**

Dear Chair Hee and Members of the Committee:

The Maui Police Department is in opposition of SB No. 2304. This bill is attempting to establish additional procedures for eyewitness identification of persons suspected of perpetrating an offense in live lineups and photo lineups which goes beyond the needed procedures to ensure the fairness of this process. Currently the Maui Police Department adheres to all necessary standards regarding lineups and show-ups established by C.A.L.E.A. (The Commission on Accreditation for Law Enforcement Agencies), State and Federal law, and under the Constitution of the United States of America.

Additional procedures outlined in this bill are unnecessary and also will create additional burdens for police manpower and the already limited resources.

On page 3, lines 6 through 12 of the bill, states:

- “(1) When practicable, the investigator shall be a person who is not aware of which person in the lineup is suspected of being the perpetrator of the offense;
- (2) When it is not practicable for the investigator to be a person who is not aware of which person in the lineup is suspected of being the perpetrator of the offense: ...”

This bill will call for an additional investigator to compile a photo lineup before passing it on to another investigator who would then present it to the witness for viewing. Instead of one investigator being subpoenaed to court, there will now be two

The Honorable Clayton Hee, Chair  
Committee on Judiciary and Labor  
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investigators. The Maui Police Department is already in compliance with the applicable laws established for this very situation.

The Maui Police Department asks for your opposition for S.B. No. 2304.

Thank you for the opportunity to testify.

Sincerely,



GARY A. YABUTA  
Chief of Police