



## *The Judiciary, State of Hawai‘i*

**Testimony to the House Committee on Judiciary**  
The Honorable Karl Rhoads, Chair  
The Honorable Sharon E. Har, Vice Chair

Tuesday, March 18, 2014, 2:00 p.m.  
State Capitol, Conference Room 325

By

### **WRITTEN TESTIMONY ONLY**

Elizabeth Zack  
Supreme Court Staff Attorney

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**Resolution No. and Title:** House Concurrent Resolution No. 192, Requesting the convening of a task force to establish statewide procedural and administrative requirements for eyewitness identification and interrogation of suspects in criminal investigations.

### **Judiciary's Position:**

The Judiciary respectfully offers the following comments on House Concurrent Resolution No. 192 for the Committee's consideration.

The Judiciary believes that it should not be a part of the task force at all, other than as a non-voting member to serve as a resource for information. If the Chief Justice convenes, or the Judiciary participates in the task force, there may be potential conflict since the task force will be making recommendations that are likely to serve as the framework for legislation or proposed administrative rules which the courts may be called upon to review. The Judiciary suggests that the Attorney General would be a more appropriate party to serve as chair, or that the Chair could be determined by the members of the task force.

Thank you for the opportunity to comment on House Concurrent Resolution No. 192.

**Justin F. Kollar**  
Prosecuting Attorney

**Kevin K. Takata**  
First Deputy



**Rebecca A. Vogt**  
Second Deputy

**Diana Gausepohl-White, LCSW**  
Victim/Witness Program Director

**OFFICE OF THE PROSECUTING ATTORNEY**

**County of Kaua'i, State of Hawai'i**

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**TESTIMONY IN OPPOSITION TO  
HCR 192 – REQUESTING THE CONVENING OF A TASK FORCE TO  
ESTABLISH STATEWIDE PROCEDURAL AND ADMINISTRATIVE  
REQUIREMENTS FOR EYEWITNESS IDENTIFICATION AND INTERROGATION  
OF SUSPECTS IN CRIMINAL INVESTIGATIONS.**

Justin F. Kollar, Prosecuting Attorney  
County of Kaua'i

House Committee on Judiciary  
March 18, 2014, 2:00 p.m., Room 308

Chair Rhoads, Vice Chair Har, and Members of the Committee:

The County of Kauai, Office of the Prosecuting Attorney, OPPOSES HCR 192. As grounds therefore, we note that the Hawaii Supreme Court, in the course of fifty years of jurisprudence, in conjunction with guidance from the United States Supreme Court, has established a thorough and comprehensive set of legal guidelines setting forth the procedures to be followed by law enforcement in conducting eyewitness identification. The same courts have also established strict guidelines to be followed by law enforcement in the interrogation of suspects in criminal investigations.

This office submits that the work of any task force could not, legally, have the effect of running counter to or relaxing the requirements imposed by the courts. Moreover, the impacts of new, additional requirements, would be unduly burdensome in that current procedures already comply with the requirements of the Hawaii and United States Supreme Courts. There already exists a remedy in cases where said procedures are violated – the right of appeal, the same remedy that would follow from any violation of new administrative regulations.

In conclusion, any recommendations adopted by the Task Force would duplicate already existing protections and impose new burdens on law enforcement agencies that are already held to very stringent standards in a

State that affords criminal defendants protections that extend beyond those offered by the United States Constitution.

Based on the foregoing, the County of Kauai, Office of the Prosecuting Attorney, OPPOSES the establishment of this Task Force. We ask that the Committee HOLD HCR 192.

Thank you very much for the opportunity to provide testimony on this bill.

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Respectfully,



Justin F. Kollar  
Prosecuting Attorney

# COMMUNITY ALLIANCE ON PRISONS

P.O. Box 37158, Honolulu, HI 96837-0158

Phone/email: (808) 927-1214 / [kat.caphi@gmail.com](mailto:kat.caphi@gmail.com)



## COMMITTEE ON JUDICIARY

Rep. Karl Rhoads, Chair

Rep. Sharon Har, Vice Chair

Tuesday, March 18, 2014

2:00 p.m.

Room 325

## SUPPORT HCR 192 - EYEWITNESS ID & CONVICTION EVIDENCE TASK FORCE

Aloha Chair Rhoads, Vice Chair Har and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies for more than a decade. This testimony is respectfully offered on behalf of the 5,800 Hawai'i individuals living behind bars, always mindful that approximately 1,500 Hawai'i individuals are serving their sentences abroad, thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, far from their ancestral lands.

HCR 192 requests the convening of a task force to establish statewide procedural and administrative requirements for eyewitness identification and interrogation of suspects in criminal investigations.

Community Alliance on Prisons is in strong support of this resolution.

It is important that uniform investigative procedures and protocols are adopted statewide by all county law enforcement to ensure that the guilty are convicted and the innocent are freed. Since 1989, 312 individuals have been exonerated. The suffering these individuals had to and are currently enduring could have been avoided with some simple changes in investigative procedures.

Upon the release of the report from the Police Executive Research Forum entitled, *A National Survey of Eyewitness Identification Procedures in Law Enforcement Agencies*<sup>1</sup>, the June 13<sup>th</sup> edition of The Crime Report stated: "Eighty-four percent of U.S. police agencies have no written policies for handling eyewitness identifications despite long-standing federal guidelines, says USA Today<sup>2</sup>, citing a report by the Police Executive Research Forum for the National Institute of Justice. Sixty-four percent of agencies had no formal standard for photo displays of potential suspects. Flaws in eyewitness ID contribute to 75 percent of convictions overturned through DNA testing, says the Innocence Project, which uses DNA testing to challenge criminal convictions.

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<sup>1</sup> *A National Survey of Eyewitness Identification Procedures in Law Enforcement Agencies*, Police Executive Research Forum, March 8, 2013.

[http://www.policeforum.org/assets/docs/Free\\_Online\\_Documents/Eyewitness\\_Identification/a%20national%20survey%20of%20eyewitness%20identification%20procedures%20in%20law%20enforcement%20agencies%202013.pdf](http://www.policeforum.org/assets/docs/Free_Online_Documents/Eyewitness_Identification/a%20national%20survey%20of%20eyewitness%20identification%20procedures%20in%20law%20enforcement%20agencies%202013.pdf)

<sup>2</sup> *Eyewitness rules ignored, wrongful convictions result*, Kevin Johnson, USA TODAY, June 11, 2013

<http://www.usatoday.com/story/news/nation/2013/06/11/eyewitness-wrongful-convictions-exonerate-dna/2411717/>

*More than 300 people have been exonerated since 1989 through post-conviction DNA testing. Though witnesses always have been an integral part of criminal investigations, there has been "growing recognition" that eyewitness identifications are often unreliable, says the report. Some problems have been associated with faulty memories of specific incidents and unwitting or undue influence exerted by investigators."*

The Honolulu Police Department has been working on improving their investigative procedures and protocols and we congratulate them on this forward step to improve the quality of justice in Hawai'i. HCR 192 would create a task force convened by the Chief Justice to ensure uniform investigative policies and procedures across Hawai'i nei...

A December 3, 2013 article<sup>3</sup> in The Crime Report said:

*"A "culture of openness to new information from reliable sources" is a key to reducing the problem of wrongful convictions in American criminal justice, the International Association of Chiefs of Police said today.*

*The IACP issued a federally-funded report, announced in conjunction with The Innocence Project, concluding that "law enforcement can take a lead role in preventing and reducing wrongful convictions by eliminating the arrest of the wrong person." The report includes 30 recommendations for dealing with the problem.*

*The new report was based on a Wrongful Conviction Summit<sup>4</sup> held last year in which the IACP assembled 75 experts to dissect the wrongful conviction problem. The project was supported by the U.S. Justice Department's Office of Justice Programs. Its release had been planned for October's annual IACP convention but was delayed because of the federal government shutdown."*

The report's recommendations are divided into eight categories:

1. Eyewitness identifications, including better lineup procedures, more research, and better officer training.
2. False confessions, testimony and informants, including a call to record all law enforcement interviews.
3. Preventing investigative bias.
4. Improving DNA testing procedures.
5. Expanding access to the CODIS DNA database and providing more resources to small law enforcement agencies.
6. Creating a "culture of critical thinking" in law enforcement to help prevent wrongful arrests.
7. Leveraging technology and forensic science, including the evaluation of current protocols and investing in emerging technology.
8. Openness to new information in re-examining closed cases.

Community Alliance on Prisons thanks the committee for hearing this important measure and urges the committee to pass HCR 192 to improve the quality of justice in Hawai'i nei.

Mahalo for this opportunity to testify.

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<sup>3</sup> IACP: Police Can Take Lead Role in Preventing Wrongful Convictions, By Ted Gest, December 3, 2013.  
<http://www.thecrimereport.org/news/inside-criminal-justice/2013-11-wrongful-conviction-report>

<sup>4</sup> National Summit On Wrongful Convictions: Building a Systemic Approach to Prevent Wrongful Convictions, Report from the International Association of Chiefs of Police/U.S. Department of Justice, Office of Justice Programs Wrongful Convictions Summit, August 2013.  
[http://www.theiacp.org/portals/0/documents/pdfs/Wrongful\\_Convictions\\_Summit\\_Report\\_WEB.pdf](http://www.theiacp.org/portals/0/documents/pdfs/Wrongful_Convictions_Summit_Report_WEB.pdf)

**HCR192**

Submitted on: 3/17/2014

Testimony for JUD on Mar 18, 2014 14:00PM in Conference Room 325

| <b>Submitted By</b> | <b>Organization</b>           | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|-------------------------------|---------------------------|---------------------------|
| Virginia E. Hench   | The Hawai`i Innocence Project | Support                   | No                        |

Comments: STRONG SUPPORT: HAWAI`I INNOCENCE PROJECT Aloha1 I am unable to attend because of a prior commitment but on behalf of the Hawai`i Innocence Project I strongly support this measure, and urge that this resolution be passed.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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**HCR192**

Submitted on: 3/15/2014

Testimony for JUD on Mar 18, 2014 14:00PM in Conference Room 325

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| james crowe         | Individual          | Comments Only             | No                        |

Comments: Support HCR192. Improving the procedure for eye witness convictions will be good for public safety and more just for all concerned.

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| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Catherine Lampton   | Individual          | Support                   | No                        |

Comments: Aloha! I SUPPORT HCR 192 The single greatest contributing factor to wrongful convictions is eyewitness misidentification, contributing to nearly 75 percent of the 312 wrongful convictions overturned by DNA evidence. Fortunately, there are readily available changes to police identification procedures that can greatly improve the reliability of eyewitness evidence and enhance law enforcement's ability to zero in on true perpetrators early on in the investigative process. Failure to implement scientifically-supported best practices not only leaves innocent people vulnerable, it also puts the public at great risk since any focus on the wrong person allows the real perpetrator to remain undetected. Please pass this bill

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**HCR192**

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| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Teri Heede          | Individual          | Support                   | No                        |

Comments:

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**HCR192**

Submitted on: 3/15/2014

Testimony for JUD on Mar 18, 2014 14:00PM in Conference Room 325

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Peter Gellatly      | Individual          | Support                   | No                        |

Comments: Aloha, This is a common-sense, fact-based measure that will save lives and increase public safety. It is backed by solid scientific data. If we do not support it, we will all be accessories to the inevitable, unconscionable act of imprisoning an innocent man or woman in our community. Don't let this happen anymore, please. mahalo, Peter Gellatly

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**HCR192**

Submitted on: 3/15/2014

Testimony for JUD on Mar 18, 2014 14:00PM in Conference Room 325

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Lillian Wakinekona  | Individual          | Support                   | Yes                       |

Comments: My husband Delbert Wakinekona was accused falsely of rape, by an eye witness, & sentenced to 20 years. He died without being able to remove the stigma of "sexual offender" from his name. The single greatest contributing factor to wrongful convictions is eyewitness mis-identification, contributing to nearly 75 percent of the 312 wrongful convictions overturned by DNA evidence. Fortunately, there are readily available changes to police identification procedures that can greatly improve the reliability of eyewitness evidence and enhance law enforcement's ability to zero in on true perpetrators early on in the investigative process. Failure to implement scientifically-supported best practices not only leaves innocent people vulnerable, it also puts the public at great risk since any focus on the wrong person allows the real perpetrator to remain undetected.

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**HCR192**

Submitted on: 3/15/2014

Testimony for JUD on Mar 18, 2014 14:00PM in Conference Room 325

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| E. Ileina Funakoshi | Individual          | Support                   | No                        |

Comments: JUDICIARY COMMITTEE Dear Chair Rhoads, Vice Chair Har, and Committee Members: I am E. Ileina Funakoshi, writing to support HCR 192. The single greatest contributing factor to wrongful convictions is eyewitness misidentification, contributing to nearly 75 percent of the 312 wrongful convictions overturned by DNA evidence. Fortunately, there are readily available changes to police identification procedures that can greatly improve the reliability of eyewitness evidence and enhance law enforcement's ability to zero in on true perpetrators early on in the investigative process. Failure to implement scientifically-supported best practices not only leaves innocent people vulnerable, it also puts the public at great risk since any focus on the wrong person allows the real perpetrator to remain undetected. Thank you for the opportunity to provide my testimony. Aloha, E. Ileina Funakoshi

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

**HCR192**

Submitted on: 3/17/2014

Testimony for JUD on Mar 18, 2014 14:00PM in Conference Room 325

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Karin Hokoana       | Individual          | Support                   | No                        |

Comments: The single greatest contributing factor to wrongful convictions is eyewitness misidentification, contributing to nearly 75 percent of the 312 wrongful convictions overturned by DNA evidence. Fortunately, there are readily available changes to police identification procedures that can greatly improve the reliability of eyewitness evidence and enhance law enforcement's ability to zero in on true perpetrators early on in the investigative process. Failure to implement scientifically-supported best practices not only leaves innocent people vulnerable, it also puts the public at great risk since any focus on the wrong person allows the real perpetrator to remain undetected.

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**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-SEVENTH LEGISLATURE, 2014**

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**ON THE FOLLOWING MEASURE:**

H.C.R. NO. 192, REQUESTING THE CONVENING OF A TASK FORCE TO ESTABLISH STATEWIDE PROCEDURAL AND ADMINISTRATIVE REQUIREMENTS FOR EYEWITNESS IDENTIFICATION AND INTERROGATION OF SUSPECTS IN CRIMINAL INVESTIGATIONS.

**LATE**

**BEFORE THE:**

HOUSE COMMITTEE ON JUDICIARY

**DATE:** Tuesday, March 18, 2014

**TIME:** 2:00 p.m.

**LOCATION:** State Capitol, Room 325

**TESTIFIER(S):** David M. Louie, Attorney General, or  
Lance Goto, Deputy Attorney General

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Chair Rhoads and Members of the Committee:

The Department of the Attorney General opposes this resolution.

This resolution requests the convening of a task force to establish statewide procedures and administrative requirements for eyewitness identification and interrogation of suspects in criminal investigations. The resolution also specifies that the task force recommendations include certain specified requirements.

The Department opposes this resolution because law enforcement agencies in Hawaii have already adopted and implemented procedures for eyewitness identification and interrogation of suspects that are based on well established law and research. The procedures to challenge any eyewitness identification or statements of defendants are also based on long standing and well established legal principles. The resolution is based on vague allegations:

Whereas, mistaken eyewitness identification has been demonstrated to have contributed to a wrongful conviction in approximately 75 percent, and false confessions have contributed to 25 percent, of the 312 exonerations that have been recorded since 1989[.]

The resolution does not specify where these statistics come from; who collected them; how they were collected; or what jurisdictions they include. As written, the misleading suggestion is that these statistics represent the situation in Hawaii. That is completely false. If the 312 exonerations since 1989 represents a national figure, that number should be contrasted with the

total number of convictions during that entire period. It would also be interesting to see how many of the 312 cases were from Hawaii.

If a law enforcement officer engages in an identification procedure that is impermissibly or unnecessarily suggestive, the identification may be suppressed and ruled not admissible as evidence during the trial. If a law enforcement officer fails to adequately and timely advise a suspect, prior to questioning, of the person's right to remain silent and right to counsel, the suspect's statements may be suppressed and ruled not admissible as evidence during the trial.

Officers must follow procedure and the law to ensure that evidence is admissible at trial. If the evidence is ruled admissible by the court, all of the circumstances regarding the evidence may be presented to the jury at trial, and the jury will be able to determine what weight and value to give to the evidence.

The Department strives to always conduct its investigations fairly and thoroughly. It does not believe that this task force effort is necessary and appropriate.

Accordingly, the Department respectfully requests that this resolution be held.

**LATE**

**HCR192**

Submitted on: 3/17/2014

Testimony for JUD on Mar 18, 2014 14:00PM in Conference Room 325

| <b>Submitted By</b> | <b>Organization</b>                         | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---|---------------------------|---------------------------|
| Richard K. Minatoya | Maui Department of the Prosecuting Attorney | Oppose                    | No                        |

Comments: The Department of the Prosecuting Attorney, County of Maui, OPPOSES HCR 192, and joins in the testimony presented by the Office of the Prosecuting Attorney, County of Kauai. We ask that HCR 192 be HELD. Thank you very much for the opportunity to provide this testimony.

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**BERNARD P. CARVALHO, JR.**  
Mayor

**NADINE K. NAKAMURA**  
Managing Director

## POLICE DEPARTMENT COUNTY OF KAUAI

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FAX (808) 241-1604  
[www.kauaihd.org](http://www.kauaihd.org)

**LATE**

March 17, 2014



**DARRYL D. PERRY**  
Chief of Police  
[dperry@kauai.gov](mailto:dperry@kauai.gov)

**MICHAEL M. CONTRADES**  
Deputy Chief  
[mcontrades@kauai.gov](mailto:mcontrades@kauai.gov)

House Committee on Judiciary  
March 18, 2014, 2:00 p.m., Room 308

Re: TESTIMONY IN OPPOSITION TO HCR 192 – REQUESTING THE CONVENING OF A TASK FORCE TO ESTABLISH STATEWIDE PROCEDURAL AND ADMINISTRATIVE REQUIREMENTS FOR EYEWITNESS IDENTIFICATION AND INTERROGATION OF SUSPECTS IN CRIMINAL INVESTIGATIONS.

Dear Chair Rhoads, Vice Chair Har, and Members of the Committee:

The County of Kauai, Kauai Police Department is opposed to HCR 192. As eloquently stated in other testimonies received by your committee, the United States and Hawaii Supreme Courts have already established stringent guidelines within our Criminal Justice System—particularly with law enforcement—relating to eye witness identification, criminal investigations and suspect interrogations.

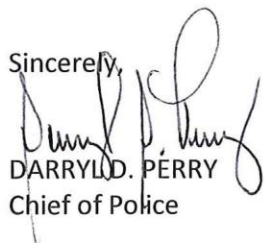
Furthermore, there are statutory remedies currently in place to address due process irregularities based on new information and/or evidence.

The proposed Task Force—however unintended—may muddy the waters of justice and become overly burdensome to law enforcement. The complex processes currently in place have taken decades to perfect to meet the interpretive intent of our respective Constitutions.

Therefore, for the stated reasons, the Kauai Police Department is in opposition to the establishment of the proposed Task Force.

Thank you very much for the opportunity to provide testimony on this concurrent resolution.

Sincerely,

  
DARRYL D. PERRY  
Chief of Police

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

ALII PLACE  
1060 RICHARDS STREET • HONOLULU, HAWAII 96813  
PHONE: (808) 547-7400 • FAX: (808) 547-7515

KEITH M. KANESHIRO  
PROSECUTING ATTORNEY

ARMINA A. CHING  
FIRST DEPUTY PROSECUTING ATTORNEY



**THE HONORABLE KARL RHOADS, CHAIR**  
**HOUSE COMMITTEE ON JUDICIARY**  
**Twenty-seventh State Legislature**  
**Regular Session of 2014**  
**State of Hawai'i**

March 18, 2014

**RE: H.C.R. 192; REQUESTING THE CONVENING OF A TASK FORCE TO  
ESTABLISH STATEWIDE PROCEDURAL AND ADMINISTRATIVE  
REQUIREMENTS FOR EYEWITNESS IDENTIFICATION AND  
INTERROGATION OF SUSPECTS IN CRIMINAL INVESTIGATIONS.**

Chair Rhoads, Vice Chair Har and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu, submits the following testimony in opposition to H.C.R. 192.

Hawai'i's caselaw, procedures, and jury instructions have greatly evolved over the years, and now go to great lengths to protect defendants' rights; juries are made well-aware--by both prosecution and defense--that eyewitness testimony is not determinative. While the Department strongly agrees that Hawai'i's law enforcement agencies should maintain high standards and protocol for eyewitness identifications, it is also our understanding that they already do so. Moreover, it is our understanding that their protocol is based on local caselaw and evidentiary requirements, as well as national law enforcement developments and discourse; all of which are constantly evolving.

To mandate a specific list of procedures would be overly restrictive, discount the value of having our courts and juries assess a "totality of circumstances," and detract from the flexibility needed for law enforcement to adjust to unique circumstances in each case. In addition, it would create an implication that if any of the listed items are missing, then the eyewitness identification is somehow substandard or unreliable. Hawai'i's caselaw on this subject does not endorse this type of checklist-approach, as shown in a multitude cases, such as State v. Mason, 130 Haw. 347, 2012 WL 603953, Hawai'i App., February 24, 2012 (emphasizing the totality of circumstances).

In addition, please note that the Hawai'i Supreme Court recently approved new jury instructions governing eyewitness testimony in 2013. This is yet another legal procedure and safeguard in place to protect defendants' rights. In addition, our courts have ample discretion to

suppress eyewitness identification if it is "impermissibly or unnecessarily suggestive," which also requires a judge to carefully consider the totality of the circumstances. Id. Furthermore, throughout the course of trials today, juries are repeatedly told to consider all of the facts and circumstances of the case--including potential biases and room for human error--by both the prosecution and defense. Their review cannot be based on a simple checklist of "do's and don'ts," but is rather a careful examination of all evidence put forth by all parties, as a "totality of circumstances."

If the Legislature were to codify and impose a specific list of procedures for conducting eyewitness identifications, the natural tendency for the public--and for juries--would be to consider the "checklist" rather than a true consideration of the totality of circumstances. To keep the focus on a totality of circumstances, and allow the type of flexibility needed for our law enforcement to adjust to each scenario as it arises, eyewitness identification procedures must be allowed to develop internally--rather than being imposed by an outside body--subject to the well-established and still-evolving caselaw developed by our courts and juries.

For all of the reasons noted above, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes H.C.R. 192. Thank for you the opportunity to testify on this matter.

POLICE DEPARTMENT  
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813  
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu.gov

# LATE TESTIMONY

KIRK W. CALDWELL  
MAYOR



LOUIS M. KEALOHA  
CHIEF

DAVE M. KAJIHIRO  
MARIE A. MCCAULEY  
DEPUTY CHIEFS

OUR REFERENCE RR-NTK

March 18, 2014

The Honorable Karl Rhoads, Chair  
and Members  
Committee on Judiciary  
House of Representatives  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Rhoads and Members:

Subject: House Concurrent Resolution No. 192, Requesting the Convening of a Task Force to Establish Statewide Procedural and Administrative Requirements for Eyewitness Identification and Interrogation of Suspects in Criminal Investigations

I am Richard Robinson, Major of the Criminal Investigation Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department opposes House Concurrent Resolution No. 192, Requesting the Convening of a Task Force to Establish Statewide Procedural and Administrative Requirements for Eyewitness Identification and Interrogation of Suspects in Criminal Investigations.

The Honolulu Police Department currently adheres to nearly all of the recommendations of the National Institute of Justice for eyewitness evidence and suspect interrogations. We believe that the determination of the validity of any evidence is best handled by the Judiciary. In addition, the Judiciary is able to more quickly adapt to changes in court procedures and/or rules of evidence that may result from judicial findings of higher courts.

# LATE TESTIMONY

The Honorable Karl Rhoads, Chair  
Page 2  
March 18, 2014

The Honolulu Police Department is constantly striving to adhere to best practices and in turn needs to maintain the ability to update policy, procedure, and training in accordance with the most up-to-date court decisions.

The Honolulu Police Department urges you to oppose House Concurrent Resolution No. 192, Requesting the Convening of a Task Force to Establish Statewide Procedural and Administrative Requirements for Eyewitness Identification and Interrogation of Suspects in Criminal Investigations.

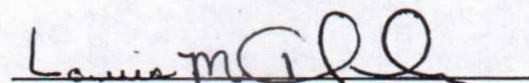
Thank you for the opportunity to testify.

Sincerely,



RICHARD ROBINSON, Major  
Criminal Investigation Division

APPROVED:

  
LOUIS M. KEALOHA  
Chief of Police



ALAN M. ARAKAWA  
MAYOR

OUR REFERENCE  
YOUR REFERENCE

# POLICE DEPARTMENT

## COUNTY OF MAUI

55 MAHALANI STREET  
WAILUKU, HAWAII 96793  
(808) 244-6400  
FAX (808) 244-6411



GARY A. YABUTA  
CHIEF OF POLICE

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

March 18, 2014

## LATE TESTIMONY

The Honorable Karl Rhoads, Chair  
And Members of the Committee on Judiciary  
House of Representative  
State Capitol  
Honolulu, HI 96813

RE: House Concurrent Resolution No. 192 - Requesting the Convening of a Task Force to Establish Statewide Procedural and Administrative Requirements for Eyewitness Identification and Interrogation of Suspects in Criminal Investigations

Dear Chair Rhoads and Members of the Committee:

The Maui Police Department opposes the passage of H.C.R. No. 192. The passage of this bill requests the convening of a task force to establish statewide procedural and administrative requirements for eyewitness identification and interrogation of suspects in criminal investigations.

The Maui Police Department is concerned that this resolution will lead to unnecessary regulation of eyewitness identification and interrogation procedures. Our officers are highly trained and follow nationally recognized standards through law enforcement accreditation. Our policy and procedures are also already similar to the suggested changes that this task force is seeking to implement.

We also feel that possible changes suggested by the task force may actually hinder criminal investigations as it may not allow for every unexpected situation that may occur in fast paced and evolving investigations. Applying requirements for officers on the street to record confessions electronically is not always practical as the street is not a controlled environment. In addition to this not having the option to obtain a statement from someone that chooses not to be recorded would provide a barrier if proposed changes by the task force prohibit this. These are only a few examples that could prove to be problematic if too strict regulation of eyewitness identification and interrogation procedures are implemented without accounting for actual real world situations.

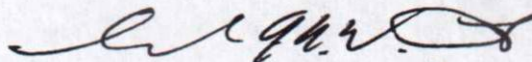
Furthermore we are concerned that the makeup of the proposed task force may not fully represent all of the county law enforcement agencies as it currently is proposed. This is a valid concern because the county law enforcement agencies will be the first line for any changes.

The Honorable Karl Rhoads, Chair  
And Members of the Committee on Judiciary  
March 18, 2014  
Page 2

The Maui Police Department asks that you oppose the passage of H.C.R. No. 192.

Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to read "Gary A. Yabuta". The signature is fluid and cursive, with a large initial "G" and "Y".

GARY A. YABUTA *for*  
Chief of Police