

SCR134

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 Judiciary, State of Hawai'i

Testimony to the
Senate Committee on Public Safety, Intergovernmental and Military Affairs
The Honorable Will Espero, Chair
The Honorable Rosalyn H. Baker, Vice Chair

Monday, March 24, 2014, 1:35 p.m.
State Capitol, Conference Room 224

By

WRITTEN TESTIMONY ONLY

Elizabeth Zack
Supreme Court Staff Attorney

Resolution No. and Title: Senate Concurrent Resolution No. 134, 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 Senate Concurrent Resolution No. 134 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 Senate Concurrent Resolution No. 134.



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

ON THE FOLLOWING MEASURE:

S.C.R. NO. 134, REQUESTING THE CONVENING OF A TASK FORCE TO ESTABLISH STATEWIDE PROCEDURAL AND ADMINISTRATIVE REQUIREMENTS FOR EYEWITNESS IDENTIFICATION AND INTERROGATION OF SUSPECTS IN CRIMINAL INVESTIGATIONS.

BEFORE THE:

SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS

DATE: Monday, March 24, 2014 **TIME:** 1:35 p.m.

LOCATION: State Capitol, Room 224

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

Chair Espero 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 Honolulu Police Department is just completing a project to update its procedures. The procedures for defendants to challenge any eyewitness identification or statements of defendants are also based on long standing and well established legal principles. The Department also opposes this resolution because it does not provide any clear justification for the proposed task force effort. It does not indicate that there is any problem with the procedures currently employed by local law enforcement. The resolution only asserts some general and vague statistics:

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, if any, 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.

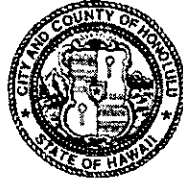
Officers must follow procedure and the law to ensure that evidence is admissible at trial. If the evidence is ruled admissible by the court, all of the circumstances regarding the evidence may be presented to the jury at trial, and the jury will be able to determine what weight and value to give to the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

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
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KIRK W. CALDWELL
MAYOR

LOUIS M. KEALOHA
CHIEF

DAVE M. KAJIHIRO
MARIE A. MCCAULEY
DEPUTY CHIEFS

OUR REFERENCE RS-NTK

March 24, 2014

The Honorable Will Espero, Chair
and Members
Committee on Public Safety, Intergovernmental
and Military Affairs
State Senate
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Espero and Members:

Subject: Senate Concurrent Resolution No. 134, 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 Schaab, Captain of the Criminal Investigation Division of the Honolulu Police Department, City and County of Honolulu.

The Honolulu Police Department opposes Senate Concurrent Resolution No. 134, 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.

Serving and Protecting With Aloha

The Honorable Will Espero, Chair
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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 Senate Concurrent Resolution No. 134, Requesting the Convening of a Task Force to Establish Statewide Procedural and Administrative Requirements for Eyewitness Identification and Interrogation of Suspects in Criminal Investigations.

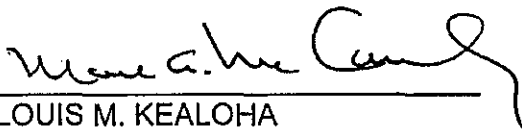
Thank you for the opportunity to testify.

Sincerely,

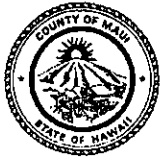


RICHARD SCHAAB, Captain
Criminal Investigation Division

APPROVED:



LOUIS M. KEALOHA
Chief of Police



ALAN M. ARAKAWA
MAYOR

OUR REFERENCE
YOUR REFERENCE

POLICE DEPARTMENT

COUNTY OF MAUI

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WAILUKU, HAWAII 96793
(808) 244-6400
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GARY A. YABUTA
CHIEF OF POLICE

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

March 19, 2014

The Honorable Will Espero, Chair
And Members of the Committee on Public Safety,
Intergovernmental and Military Affairs
The Senate
State Capitol
Honolulu, HI 96813

RE: Senate Concurrent Resolution No. 134 - 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 Espero and Members of the Committee:

The Maui Police Department opposes the passage of SCR. 134. 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 strict regulations of eyewitness identification and interrogation procedures are implemented without accounting for actual real world situations.

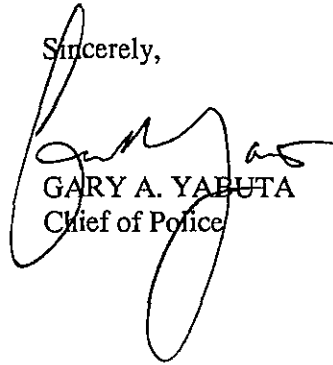
The Honorable Will Espero, Chair
And Members of the Committee on Public Safety,
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March 19, 2014
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Furthermore, we are concerned that the makeup of the proposed task force may not fully represent all 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 Maui Police Department asks that you oppose the passage of SCR 134.

Thank you for the opportunity to testify.

Sincerely,



GARY A. YABUTA
Chief of Police

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

3990 Ka'ana Street, Suite 210, Lihu'e, Hawai'i 96766
808-241-1888 ~ FAX 808-241-1758
Victim/Witness Program 808-241-1898 or 800-668-5734

**TESTIMONY IN OPPOSITION TO
SCR 134 - 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

Senate Committee on Public Safety, Intergovernmental and Military Affairs
March 24, 2014, 1:35 p.m., Room 224

Chair Espero, Vice Chair Baker, and Members of the Committee:

The County of Kauai, Office of the Prosecuting Attorney, OPPOSES SCR 134. 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 SCR 192.

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

Respectfully,

A handwritten signature in black ink, appearing to read "Justin F. Kollar", with a stylized flourish extending to the right.

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



COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS

Sen. Will Espero, Chair

Sen. Rosalyn Baker, Vice Chair

Monday, March 24, 2014

1:35 p.m.

Room 224

SUPPORT FOR SCR 134 - EYEWITNESS ID & CRIMINAL INTERROGATIONS

Aloha Chair Espero, Vice Chair Baker 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.

SCR 134 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*¹, the June 13th 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 Today², 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.

¹ *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%20Online%20Documents/Eyewitness%20Identification/a%20national%20survey%20of%20eyewitness%20identification%20procedures%20in%20law%20enforcement%20agencies%202013.pdf)

² *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 article³ 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 Summit⁴ 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 SCR 134 to improve the quality of justice in Hawai'i nei.

Mahalo for this opportunity to testify.

³ 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>

⁴ 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