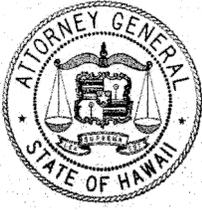


SB2128

LATE



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

ON THE FOLLOWING MEASURE:

S.B. NO. 2128, RELATING TO THE RETENTION OF BIOLOGICAL EVIDENCE.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Friday, January 24, 2014 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Room 016

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

Chair Hee and Members of the Committee:

The Department of the Attorney General strongly supports this bill.

The purpose of this bill is to establish reasonable guidelines and limitations for the post-conviction retention of biological evidence by law enforcement agencies and the courts, thereby making their retention responsibilities more reasonable and manageable. This bill also provides a procedure for defendants to oppose the disposal of biological evidence by filing an objection with the court.

Section 844D-126 of the Hawaii Revised Statutes sets out the requirements for the retention of biological evidence as follows:

All evidence in the custody or control of a police department, prosecuting attorney, laboratory, or court that is related to the investigation or prosecution of a case in which there has been a judgment of conviction and that may contain biological evidence that could be used for DNA analysis shall be retained at least until the later occurring of either:

- (1) The exhaustion of all appeals of the case to which the evidence is related; or
- (2) The completion of any sentence, including any term of probation or parole, imposed on the defendant in the case to which the evidence relates.

The current retention requirements are very broad and require the police to retain all evidence that may contain biological evidence in any case in which there has been a conviction. The requirements apply to all felony, misdemeanor, and petty misdemeanor cases that have resulted in convictions, regardless of whether the identity of the perpetrator was an issue. This means

that evidence that may only contain biological evidence must be retained regardless of whether the biological evidence was relevant to the case.

These broad requirements have caused storage problems statewide. DNA material could be on many things. DNA could be found in things like hair, saliva, blood, semen, sweat, skin, or skin cells. It could be found in mucus material from coughs or sneezes. It could be on used tissues or cigarettes, or in a car, boat, or bus.

This bill will establish reasonable and manageable requirements for the storage retention of biological evidence that will still allow defendants the opportunity to object to the disposal of biological evidence.

The Department respectfully requests the passage of this bill.



The Judiciary, State of Hawaii

Testimony to the Senate Committee on Judiciary and Labor

Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

Friday, January 24, 2014, 10:00 a.m.
State Capitol, Conference Room 016

by
Calvin Ching
Deputy Chief Court Administrator, First Circuit Court

Bill No. and Title: Senate Bill No. 2128, Relating to the Retention of Biological Evidence.

Purpose: To establish reasonable guidelines and limitations for the post conviction retention of biological evidence by law enforcement agencies and the courts; and thereby preserve a defendant's ability to test biological evidence, while making law enforcement agency retention responsibilities more reasonable and manageable.

Judiciary's Position:

The Judiciary supports the intent of Senate Bill No. 2128.

Senate Bill No. 2128 proposes to amend Section 844D-126, Hawaii Revised Statutes by establishing reasonable guidelines for post-conviction retention of biological evidence. The current statute is broad. This bill significantly reduces the number of applicable cases, thereby reducing the potential number of evidentiary items that would need to be maintained by each of the agencies, including the Judiciary; thus, making retention responsibilities more manageable.

However, we respectfully note that long-term storage issues remain as well the potential impact this measure may have on the Judiciary's workload and caseload should the defendant elect to preserve biological evidence pursuant to this bill.

Thank you for the opportunity to provide comments on this measure.

From: [Kay A. Ogasawara](#)
To: [JDLTestimony](#)
Subject: SB 2128, Relating to the Retention of Biological Evidence
Date: Thursday, January 23, 2014 11:00:03 AM

Name: Danny Matsuura, Assistant Chief
Kyle Nagano, Sergeant
Maui Police Department

Committee: Committee on Judiciary and Labor

Date/Time: January 24, 2014, 10:00 am

Measure no.: SB 2128, Relating to the Retention of Biological Evidence

Assistant Chief Matsuura and Sergeant Nagano will be present to testify.

Kay Ogasawara
Secretary to Chief Gary A. Yabuta
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January 23, 2014

Senator Clayton Hee
Chairman
COMMITTEE ON JUDICIARY AND LABOR
State Capitol
Conference Room 016
415 S. Beretania Street
Honolulu, HI 96813

RE: SUPPORT FOR SENATE BILL NO. 2128
RETENTION OF BIOLOGICAL EVIDENCE

Dear Chairman Hee:

In conjunction with members of the Police Chiefs of Hawaii Association and on behalf of the Kauai Police Department, I would like to convey our support of Senate Bill No. 2128, Relating to the Retention of Biological Evidence. As understood, it intends to amend guidelines and limitations for the post-conviction retention of biological evidence by law enforcement agencies and the courts.

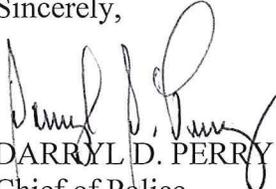
The Kauai Police Department is approaching a crisis mode in the storage and retention of items of evidence. As a result, the passing of such legislation would allow us and other law enforcement agencies to properly dispose of specific articles that are no longer required for the pursuit of Justice. In the interest of due process, we can all be assured that there is a provision that affords the involved defendant(s) to file an objection to the proposed disposal.

In closing, I would be remiss in not mentioning that at a time when all agencies are struggling with budget shortfalls, this legislation would contribute to cost savings. Essentially, there would be decreases in various operational expenses to include a reduction in personnel hours associated with the continuous maintenance and inventory of the evidence.

Chairman Hee
January 23, 2014
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Thank you for this opportunity to express my sentiments and to urge you and the committee to pass this legislation.

Sincerely,



DARRYL D. PERRY
Chief of Police

COMMUNITY ALLIANCE ON PRISONS

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

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



COMMITTEE ON JUDICIARY AND LABOR

Sen. Clayton Hee, Chair

Sen. Maile Shimabukuro, Vice Chair

Friday, January 24, 2014

10:00 a.m.

Room 016

OPPOSITION TO SB 2128 - RETENTION OF BIOLOGICAL EVIDENCE

Aloha Chair Hee, Vice Chair Shimabukuro and Members of the Committee!

Hau`oli Makahiki Hou! 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.

SB 2128 amends guidelines and limitations for the post-conviction retention of biological evidence by law enforcement agencies and the courts. It provides procedures for agencies to dispose of retained evidence and for defendants to file objections to proposed disposals.

Community Alliance on Prisons is in opposition to this measure.

Forensic science is evolving and tossing out evidence that could convict the guilty and free the innocent is a bad idea. Consider this scenario: The prosecutor is leveling charges against a person and then decides to have the case dismissed. The evidence is tossed out. Then, at a later date, the prosecutor decides to try the case that was previously dismissed, but now all the evidence has been thrown out; evidence that could free the innocent and convict the guilty is gone. How is that justice?

For years the prosecutors have been trying to limit Rule 40 - post conviction cases, despite the emergence of new science and evidence that the number of these cases has decreased over the last several years.

Community Alliance on Prisons respectfully asks the committee to hold this measure.

Mahalo for this opportunity to testify.