

SB2128



THE HAWAII INNOCENCE PROJECT
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COMMITTEE ON JUDICIARY AND LABOR
Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice-Chair
Hearing Date: Tuesday, February 25, 2014
10:30 a.m., Conference Room 016
Hawai'i State Capitol
415 South Beretania Street, Honolulu, Hawai'i 96813

STRONG OPPOSITION TO SB 2128

Honorable Chair Hee, Honorable Vice-Chair Shimabukuro, and Honorable Members of the Senate Committee: Senator Mike Gabbard; Senator Malama Solomon; Senator Brickwood Galuteria; Senator Sam Slom, and Senator Les Ihara, Jr.:

Senate Bill 2128, which would amend Chapter 844D, pertaining to DNA Evidence is of great concern to me, both as a citizen, as a victim of violent crime, and as Director of the Hawai'i Innocence Project. Senate Bill 2128 would it provide little, if any, benefit to the people of Hawai'i if it were adopted, but it would cause great harm:

First, preserving DNA evidence, including all items which may contain biological material, as specified in HRS Chapter 844D, preserves the ability to solve closed cases- and to exonerate the innocent. Preserving biological evidence from crime scenes is critically important because DNA can provide the best evidence of innocence - or guilt - upon review of a case.

None of the nation's 312 DNA exonerations would have been possible had the biological evidence not been available to test. Had the evidence been destroyed, the innocence of these individuals would never have come to light. In approximately half of the DNA exonerations, the

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DNA testing which cleared the wrongly convicted person also allowed for the identification of the actual perpetrator.

While storage space may be a concern, Senate Bill 2128 would free up little space, if any. DNA testable material is found in only approximately ten percent of all cases, and the items which may contain biologically testable material will typically be few, and not bulky. Thus, allowing the destruction of potentially testable material will free up little space, and will benefit no one, apart from the actual murderer or rapist in a case in which the wrong person has been convicted.

In 2004, The United States Congress enacted the Justice for All Act (H.R. 5107), which provides financial incentives for states to preserve evidence, and withholds those same monies for states that do not adequately preserve evidence. If additional storage space is needed, it would be far preferable to seek funding to upgrade and expand storage facilities, rather than to destroy crucial evidence AND potentially become ineligible for federal assistance for needed facilities.

One of the worst provisions of Senate Bill 2821 is that it would allow destruction of evidence at the end of an appeal. An appeal is a vehicle for reviewing legal error, and by the very appellate rules, no new evidence can be considered on appeal. The provisions for a petition for a writ of *habeas corpus*, or for relief pursuant to HRPP Rule 40 are the vehicles by which newly discovered evidence are not considered part of the appeals process. SB 2128 would therefore preclude testing of evidence for purposes of relief based on newly discovered evidence under HRPP Rule 40, and would thwarting any relief based on DNA testing that might be allowed under a petition for a writ of *habeas corpus* in the federal courts.

Senate Bill 2821 attempts to provide for notice to the person convicted, but the provisions fall far short of what would be required, in practice, to guard against wrongful destruction of

evidence. It will be difficult or impossible in many cases to notify persons who may wish to object to the destruction of evidence. Attorneys die, retire, move to other jurisdictions, or otherwise become unavailable. Notices directly to inmates are subject to the errors of outdated addresses, name confusion, prison lockdowns, or other problems which can prevent the inmate from receiving timely notice directly. A substantial number of Hawai'i inmates are functionally illiterate, so that even if they receive notice, they may well fail to understand or be able to respond in an adequate and timely manner.

Chapter 844D of the Hawai'i Revised Statutes intentionally provided for the preservation of all items of physical evidence relating to felony crimes and it remains in the best interests of Hawai'i's people to maintain the ability to prosecute cold cases and exonerate the innocent.

I strongly urge that the Hawai'i State Senate reject SB 2128 and retain HRS Chapter 844 D in its present form.

Sincerely,


VIRGINIA E. HENCH

Director, Hawai'i Innocence Project.