

**Testimony of the Office of the Public Defender
State of Hawaii
to the House Committee on Judiciary**

January 28, 2010

H.B. No. 1996: RELATING TO THE DNA ANALYSIS FEE

Chair Karamatsu and Members of the Committee:

We have a number of concerns about this proposed legislation as well as the language of the underlying statute currently in effect.

§ 706-603 (1) currently provides that a Court shall impose a monetary assessment for DNA analysis of "\$500. or the actual cost of the DNA analysis, whichever is less", on "every defendant convicted of a felony offense". This bill proposes to change the application of 706-603 so that it applies not only to those convicted of a felony, but also to those who have NOT been convicted of a crime, but instead have been granted a deferral of their plea, or have been found NOT GUILTY by reason of insanity.

We note that the language in § 844D-31 (a), "found not guilty by reason of insanity", referenced in this proposed legislation, is not legally correct. There is no finding of "not guilty by reason of insanity" in our penal code. Rather, Chapter 704 provides, under stringent evidentiary requirements, that a court may find a defendant not guilty based upon a physical or mental disease, disorder or defect excluding responsibility. We also oppose the inclusion of those people who have not been convicted of a crime but instead have received a deferral of their plea. These people have not been convicted of a crime and should not be treated as if they have.

Another concern with this legislation is the current language, "\$500 or the actual cost of the DNA analysis". It is our understanding in informally speaking with the court, that judges have been told that the actual cost of collecting and analyzing the DNA to add to the DNA databank is in the range of \$35. to \$65. Therefore, we suggest that the language be changed to reflect the actual cost actual cost of the DNA analysis, "not to exceed \$100".

Our final concern relates to the proposed change to § 844D-37 which would require offenders from other jurisdictions who have been accepted into Hawaii under an interstate compact to pay a monetary assessment equivalent to the actual cost of the DNA analysis. The proposed change would give "the compact administrator" the authority to "waive the assessment based upon evidence that the offender is unable to pay". That would seem to give judicial powers to someone who is not authorized to have them. Additionally, the term "the compact administrator" is not defined and it is not specified to which state, sending or receiving, the term applies.

For these reasons, we oppose H. B. 1996. Thank you for the opportunity to comment on this bill.