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To: Representative Faye Hanohano, Chair
Representative Henry Aquino, Vice Chair and
Members of the House Committee on Public Safety

Re: HB336 Relating to DNA Collection for Arrestees of Violent Crimes
Hearing: Thursday, January 29, 2009, 8:30 a.m., Room 309

Position: STRONGLY OPPOSED

Good morning Chair Hanohano, Vice Chair Aquino and members of the Committee on Public Safety. I am testifying today in strong opposition to HB336 which proposes to collect DNA evidence from arrestees of violent crimes.

A pillar of our justice system is the presumption of innocence. This proposal is an intrusion into individual privacy and subverts the concept of innocent until proven guilty. It expands collection of evidence from being a tool of criminal investigation to population surveillance.

A standard explanation that law enforcement officials give for expanding intrusion into personal privacy is that it makes their job easier. I believe that it should be difficult to take away a person's liberty. We must not give up our right of privacy solely for the purpose of expediting law enforcement.

The U.S. Supreme Court has held that the extraction of bodily fluids or tissue for analysis constitutes a search, subject to the Fourth Amendment. Law enforcement already has ample authority to collect DNA from individuals who are arrested. Procedures are available for them to obtain warrants to require the collection. These well-established safeguards are sufficient to allow law enforcement to investigate crime without undermining individual rights.

This expansion of DNA testing is ill-advised as the current requirement to test all convicted felons has not been met. A conservative estimate is that this proposal would add at least 5,000 tests annually. The expansion of DNA collection has not been proven to make our communities safer. The additional costs of this proposal cannot be justified.

I find it disingenuous that this proposal purports to help reduce rape. Currently, police investigators do not request DNA testing for all rape kits citing limited resources and not wanting to overburden the DNA lab. It is my understanding that if the identity of the perpetrator is not an issue then the rape kit is not tested and therefore, that evidentiary DNA profile is not entered into the system. How can we require the testing of innocent people when the evidentiary

side of DNA gathering is limited? Perhaps more effort should be made to require testing of evidence before we undertake this intrusion into privacy and undermine the concept of innocent until proven guilty.

Please hold HB 336. Thank you for this opportunity to testify.