

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

February 3, 2011

**H.B. No. 132: RELATING TO THE COLLECTION OF DNA SAMPLES FROM  
ARRESTEES OF SEXUAL OFFENSES AGAINST MINORS**

Chair Keith-Agaran and Members of the Committee:

We oppose passage of H.B. No. 132. The bill provides for the taking of DNA samples from persons ARRESTED for a list of specified offenses when the complaining witness is a minor.

We note first that this legislation treats persons who have NOT been convicted of anything as if they were already guilty. In fact, the proposed amendment to Part III (Offenders Subject to Collection of Specimens or Samples, or Print Impressions) of Chapter 844D would include arrested persons in Section 844D-31 which is entitled "Offenders subject to collection". An arrested person is not an offender and does not become an offender unless and until the person has been convicted, pled guilty or no contest, or been acquitted by reason of a mental defense pursuant to Chapter 704.

In other words, a person is not an "offender" unless and until there has been a judicial proceeding where guilt has been established or admitted. To lump arrested persons in a category called offenders is wrong. To treat arrested persons as if they are already guilty directly contradicts a basic tenet of our justice system which is that a person is presumed innocent unless and until proven guilty.

Another problem with allowing for the collection of DNA of arrested persons would be the inherent risk of abuse by law enforcement personnel to arrest a suspect whom they know they do not have sufficient evidence to charge with a crime for the sole purpose of collecting the suspect's DNA. It is possible that the reason law enforcement wants the DNA is for investigation of a crime unrelated to a sexual offense. If this proposed legislation becomes law, it would be hard to resist using it.

There are costs associated with the collection and maintenance of DNA that are not addressed in this bill. We believe those questions need to be addressed before passage of this legislation is considered.

Finally, we note that it is a minority of states that allow for some taking of DNA from arrested persons. Hawaii should not join that minority. We should continue to stand for the principles embodied in our constitution, including the presumption of innocence.

Thank for the opportunity to comment on this measure.

# COMMUNITY ALLIANCE ON PRISONS

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## COMMITTEE ON JUDICIARY

Rep. Gil Keith-Agaran, Chair

Rep. Karl Rhoads, Vice Chair

Thursday, February 3, 2011

2:00 PM

Room 325

**HB 132 - DNA from Arrestees**

**STRONG OPPOSITION**

<http://www.capitol.hawaii.gov/emailtestimony>

Aloha Chair Aquino, Vice Chair Cullen and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative working to improve conditions of confinement for our incarcerated individuals, improve the quality of justice, and enhance community safety by promoting smart justice policies. We are always mindful that there are 6,000 individuals whose voices have been silenced by incarceration with 1,750 individuals are serving their sentences abroad, thousands of miles from their loved ones and, in many cases, from their ancestral lands.

HB 132 mandates the collection of DNA samples from arrestee for sex offenses against minors. Effective July, 1, 2012.

Community Alliance on Prisons strongly opposes this measure.

The basic tenet of our democracy is the principle of 'innocent until proven guilty'. Mandating DNA collection, which reveals much more information than fingerprints, contravenes this principle and we assert that federal and state laws seeking to collect DNA samples from people not yet convicted of a crime are unconstitutional and problematic.

According to A March 2009 Department of Justice report, recent advancements in DNA technology have created increased demand for scientific analyses. That demand has created massive backlogs of DNA evidence throughout the nation. Overzealous collection of DNA has made the backlogs even worse.

The evidence across the U.S. is showing that the backlog of DNA analysis is growing while states continue to pursue legislation that aggravates those backlogs. While scientific innovation has huge potential for the advancement of our society, it also opens the door to genetic profiling of citizens still presumed innocent. Therein lays the danger.

Permanently warehousing DNA from people not yet convicted of a crime violates their privacy, while making it more difficult to find those who have engaged in illegal activity. Therefore, increasing the backlog of DNA samples does not increase the quality of justice in Hawai'i.

Anyone wrongfully arrested becomes part of a permanent criminal database. Someone arrested for misdemeanor becomes a suspect for life. Americans who have not been proven guilty under state laws go into a DNA database with criminal offenders.

Increasing the backlog of DNA raises questions:

- Have DNA samples been taken from all convicted felons currently imprisoned?
- Have all the rape kits been processed?

This bill is unfair and in our humble opinion, diminishes the quality of justice in Hawai'i.

Mahalo for the opportunity to share our thoughts on this bill.

February 2, 2011

Via E-mail: JUDtestimony@capitol.hawaii.gov  
Committee: Committee on Judiciary  
Hearing Date/Time: Thursday, February 3, 2011, 2:00 p.m.  
Place: Room 325  
Re: Testimony of Matthew Tuthill, Ph.D., in Opposition to:  
H.B. 132 RELATING TO THE COLLECTION OF DNA SAMPLES FROM ARRESTEES  
OF SEXUAL OFFENSES AGAINST MINORS

Dear Chair Keith-Agaran and Members of the Committee on Judiciary:

Based on my twenty years of firsthand experience with laboratory human DNA research, field expertise and instructional experience, I write in strong opposition to this bill. DNA collection and analyses are fallible, manipulations of data are possible, and the invasion of personal privacy would exceed any method currently allowed within our legal system.

### **1. DNA analyses are fallible, sample cross-contamination does occur**

Pure DNA is a very stable compound that remains intact at room temperature and modern DNA methods require minimal amounts of starting material (such as one billionth of a gram). Consequently, the presence of residual DNA (in lab stock solutions, surfaces, or even the air) within a lab may allow for the tainting of subsequent experiments. When a technician is routinely processing hundreds of samples on any given day the conditions are ideal for errors such as cross contamination, mislabeling and misfiling. Numerous research facilities around the world have experienced such contamination of DNA samples, and it is very possible that something similar could occur within a local forensics lab.

### **2. DNA methods are simple, efficient and capable of manipulation/abuse**

Purifying DNA and replicating it to levels required for crime analyses are straightforward methods that may be done by anyone with reasonable dexterity. Contrary to common reports, these protocols are quite simple and merely require some initial guidance and a select group of tools. For example, extracting DNA takes only one hour, and an additional two hours are required to replicate it. In the lab we routinely charge high school students with these tasks, however individuals much younger could do them as well. Our visiting high school students also perform an abbreviated form of the CODIS (Combined DNA Index System, the framework of forensic identification currently used), and interpret the results just as a technician would.

Numerous contemporary research articles are freely accessible on the Internet detailing methods to not only manipulate DNA, but also outline inherent flaws within the CODIS system. The creation, planting, and falsification of DNA have been shown, and more importantly its illegitimacy was not detected at independent testing facilities. Taken as a whole, this illustrates that not only is DNA manipulation rather pedestrian, the potential for abuse is also possible.

### **3. The information contained within DNA extends far beyond current privacy laws**

The DNA contained within a buccal (mouth) or blood sample provides insight into many things that a person most likely doesn't even know about her- or himself. It contains information about the person's past (geographical ancestry, ethnicity) and future (predisposition to behaviors and sexual orientation, drug and disease sensitivities, the likelihood of various cancers, etc.). This information goes beyond simply societal tracking systems like social security numbers: it is a repository of everything that makes that person unique.

As you know, scientists are currently able to clone other animals such as mice, cows, sheep and dogs. One day soon, it will be possible to clone a human being. While there are certainly philosophical and religious limitations on what we can and should do with DNA, the technology exists (or will soon exist) to apply cloning technologies to human beings. Therefore, the person, organization, or government entity that possesses a DNA tissue sample could, someday soon, be able to clone the individuals whose samples are held. The time frame for these achievements is moving rapidly, just within the last few years various researchers have been able to take normal body cells and turn them into stem cells (in humans the ultimate stem cell is a fertilized egg).

Of more immediate concern, however, is the possibility that this DNA information could be released to insurance companies or health care providers. DNA is written as a simple code of 4 letters. Copying or downloading this information requires very little space on a computer; and once accessed, the information contained within DNA can be analyzed in various ways, annotated, archived, and utilized by various groups. It is also not unreasonable to believe that the government databases maintaining the DNA information would be "hacked" or simply lost, given the rather large (and perpetual) number of security breaches of government data and files. Subsequent genetic discrimination could also be utilized by life insurance companies, banks, schools or possibly even the government. Biomedical/pharmaceutical firms could also exploit one's genetic information by replicating unique genes, modifying them, and patenting and/or profiting from them.

In sum, DNA is not infallible. Laboratories may become contaminated; crime scene evidence can be planted; and personal private data can leak out to insurance companies and be used for a whole host of improper purposes. I strongly believe that, given the risks inherent in relying so heavily on DNA analysis and identification, the Legislature should decline to proceed with such an expansive DNA program.

This testimony represents my personal views, and not those of the University of Hawaii or those of Kapiolani Community College.

Thank you for this opportunity to testify, feel free to contact me anytime.

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Via e-mail: [JUDtestimony@capitol.hawaii.gov](mailto:JUDtestimony@capitol.hawaii.gov)  
House Committee on Judiciary  
Thursday, February 3, 2011, 2:00 p.m.  
Hawai'i State Capitol – Room 325.

Testimony in **OPPOSITION** to **HB 132**, Relating to DNA Collection of Arrestees of Sexual Offenses Against Minors

Dear Chair Keith-Agaran and Members of the Committee,

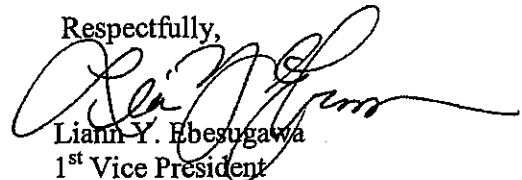
The Japanese American Citizens League (JACL) Honolulu Chapter is opposed to the passage of House Bill 132, which would permit collection of DNA samples from arrestees of sexual offenses against minors.

JACL is the nation's oldest and largest Asian Pacific American civil rights organization with over 20,000 members. Locally our organization has consistently opposed efforts to erode the broad constitutional protections provided in our Hawai'i State Constitution.

A cornerstone of our legal system is that individuals are presumed innocent, until the government has proven their guilt in a court of law. This bill tramples on that principle. DNA collection, by coerced provision of a buccal (mouth) or blood sample, of these individuals violates Hawai'i's constitutional provisions including the right to privacy, the right to be free from unreasonable search and seizure by the government, and the right to due process of law before a deprivation of liberty can occur. An arrest can occur on a mere accusation, and is rife with potential for abuse, by law enforcement or the accuser. It is dangerous, unjust, and unwise to allow government collection of private genetic material, to be permanently stored in government hands forever, based on preliminary information that has not been corroborated nor investigated, where police have not completed their investigation, and where no prosecutor has reviewed evidence to determine whether the individual should be charged.

This proposal is unconstitutional, and we urge you to defer this bill. Thank you for the opportunity to testify.

Respectfully,



Liann Y. Ebesugawa  
1<sup>st</sup> Vice President

Testimony for JUD 2/3/2011 2:00:00 PM HB132

Conference room: 325

Testifier position: support

Testifier will be present: No

Submitted by: Karen Foster

Organization: Surviving Parents Coalition

Address: 1414 22nd Street NW # 4 Washington, DC 20037

Phone: 561-212-7769

E-mail: Karen.dynamic@gci.net

Submitted on: 2/1/2011

Comments:

I am so sorry I could not be present to testify. The Surviving Parents Coalition has a board meeting this Saturday and, unfortunately we all have flights booked to attend this conference.

Collection of DNA on all felony arrests is one of our main missions. Please don't hesitate to contact us if further information is needed.

Sincerely,

Karen Foster  
DNA Chair

# Jeanne Y. Ohta

February 3, 2011

To: Rep. Gilbert Keith-Agaran, Chair  
Rep. Karl Rhoads, Vice Chair and  
Members of the Committee on Judiciary

RE: HB 132 Relating to Collection of DNA Samples  
Hearing: February 3, 2011, 2:00 p.m., Room 325

POSITION: Opposed

Good afternoon members of the committee. I am testifying today in opposition to HB 132 Relating to Collection of DNA Samples from arrestees of sexual offenses against minors. It makes no sense to mandate the collect of DNA samples from arrestees when there is no mandate to process the collection of samples in a rape kit.

It is also unfair to place a person accused, not convicted of a crime into the criminal database. This does not square with our innocent until proven guilty tenant on which the criminal justice system is based.

The current policy of the police is to decide which rape kits will be processed, they do not process all kits, even when the case has not been solved. It is unfair to every rape victim that all evidence is not processed. This mandatory collection will be costly and may take funds away from the processing of evidence from rapes.

I respectfully ask that you hold this bill. Thank you for the opportunity to testify.