

**SB2128**

William P. Kenoi  
Mayor



Harry S. Kubojiri  
Police Chief

Paul K. Ferreira  
Deputy Police Chief

## County of Hawai'i

### POLICE DEPARTMENT

349 Kapiolani Street • Hilo, Hawai'i 96720-3998  
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January 24, 2014

Senator Clayton Hee  
Chairperson and Committee Members  
Committee on Judiciary and Labor  
415 South Beretania Street, Room 016  
Honolulu, Hawai'i 96813

**RE: SENATE BILL 2128, RELATING TO THE RETENTION OF BIOLOGICAL EVIDENCE**

Dear Senator Hee:

The Hawai'i Police Department supports Senate Bill 2128 with its purpose being to amend guidelines and limitations for the post-conviction retention of biological evidence by law enforcement agencies and the courts.

We believe it is necessary to amend the guidelines and limitations due to the overwhelming burden that the retention of evidence places on Law Enforcement Agencies (LEA) even after cases have been adjudicated in the Courts. The guidelines and procedures as set forth allows for an LEA to dispose of retained biological evidence that is deemed no longer necessary for the pursuit of justice while at the same time providing for protections for the defendants as it allows them to file objections to proposed disposals.

The Hawai'i Police Department currently utilizes a total of 37,553 square feet of evidence storage space, which is not inclusive of the pending addition of another 3,000 square foot warehouse. Our department currently leases some of the previously identified evidence storage space at a monthly sum of approximately \$16,538. At the current pace of evidence being added, we will soon have to seek even more storage space with climate controls in order to properly maintain biological evidence. Given the cost factors involved, manpower to continuously maintain and inventory the evidence and more so, for the duration of time involved with the current requirements, this legislation as drafted will greatly aid our department.

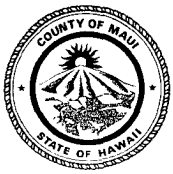
For these reasons, we urge this committee to approve this legislation.

Thank you for allowing the Hawai'i Police Department to provide comments relating to Senate Bill 2128.

Sincerely,

A handwritten signature in black ink, appearing to read "Paul K. Ferreira", is written over a horizontal line.

PAUL K. FERREIRA  
ACTING POLICE CHIEF



**ALAN M. ARAKAWA**  
MAYOR

OUR REFERENCE  
YOUR REFERENCE

# **POLICE DEPARTMENT**

## **COUNTY OF MAUI**

**55 MAHALANI STREET  
WAILUKU, HAWAII 96793  
(808) 244-6400  
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**GARY A. YABUTA**  
CHIEF OF POLICE

**CLAYTON N.Y.W. TOM**  
DEPUTY CHIEF OF POLICE

January 22, 2014

The Honorable Clayton Hee, Chair  
And Members of the Committee on Judiciary and Labor  
The Senate  
State Capitol  
Honolulu, HI 96813

**RE: Senate Bill No. 2128 – RELATING TO THE RETENTION OF  
BIOLOGICAL EVIDENCE**

Dear Chair Hee and Members of the Judiciary and Labor Committee:

The Maui Police Department supports the passage of SB No. 2128. This bill, which proposes guidelines for the post-conviction disposal of biological evidence upon filing a notification of proposed disposal with the court will help to alleviate the ever growing storage and retention issue of evidence in our facility, as well as others across the state. Providing adequate space for the storage and security of evidence has always been a challenge for the police departments, as the retention of evidence quickly outgrows the facilities provided for them. Biological evidence can affect a large array of items, from something as small as a paperclip to large items such as vehicles. All of these items, collected over time, place a great burden on the facilities that store them.

This bill proposes a method to properly approve disposal of biological evidence, which also includes input from defendants, and will greatly assist police departments throughout the state with evidence storage issues.

The Maui Police Department again asks for your support to S.B. No. 2128.

Thank you for the opportunity to testify.

Sincerely,

**GARY A. YABUTA**  
Chief of Police

**Testimony of the Office of the Public Defender  
State of Hawaii  
to the Senate Committee on Judiciary and Labor**

January 24, 2014

S.B. No. 2128: RELATING TO THE RETENTION OF BIOLOGICAL EVIDENCE

Chair Hee and Members of the Committee:

We oppose passage of S.B. No. 2128 which places the burden on an incarcerated defendant to file an objection to the government's disposal of biological evidence used to convict that defendant of a serious offense. Currently, under the law, biological evidence must be retained and preserved if the evidence is related to the investigation or prosecution of such offenses as murder, manslaughter and sexual assault. The evidence must be retained until all appeals are exhausted in the case or the sentence is completed, whichever occurs later.

S.B. No. 2128 seeks to provide the government with an opportunity to dispose of the evidence through the filing of a notice with the court. Under this proposed procedure, the affected defendant would be required to file an objection with the court to have the evidence preserved. We believe that the current law is appropriate and operates to assure that any injustices which occur in our justice system can be rectified.

According to the Innocence Project, there have been 312 post-conviction exonerations in the United States based upon DNA evidence. The average prison sentence served by exonerees has been 13.6 years and 18 exonerees had been sentenced to death before their release. These statistics underscore the importance of the preservation of biological evidence taken from crime scenes.

The procedure proposed by S.B. No. 2128 is a step backwards in DNA technology and undoubtedly will contribute to injustice in our legal system. The U.S. criminal justice system is fallible and has been proven to produce wrongful convictions. When such an event occurs, it is essential that evidence in the case be preserved for review. Protection of the defendant is insufficient if he/she must file an objection to the destruction of the evidence in court. Following a conviction and subsequent incarceration, many defendants lose their legal representation. In particular, if a defendant has been privately represented, oftentimes, there are no resources for the retained lawyer to continue representation in the case beyond an appeal. Thus, at the point that the government may seek to destroy evidence, the defendant will have no legal representative to file an objection in court.

The public defender cannot be reasonably expected to assume responsibility over all convicted defendants. At the point where destruction of evidence would be sought, oftentimes the public defender will have no information on the defendant's case and will have had no attorney-client relationship with the defendant.

Therefore, we strongly oppose passage of S.B. No. 2128 and respectfully request that the current statute remain unamended. Thank you for the opportunity to testify in this matter.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

ALII PLACE  
1060 RICHARDS STREET • HONOLULU, HAWAII 96813  
PHONE: (808) 547-7400 • FAX: (808) 547-7515

KEITH M. KANESHIRO  
PROSECUTING ATTORNEY

ARMINA A. CHING  
FIRST DEPUTY PROSECUTING ATTORNEY



**THE HONORABLE CLAYTON HEE, CHAIR**  
**SENATE COMMITTEE ON JUDICIARY AND LABOR**  
**Twenty-seventh State Legislature**  
**Regular Session of 2014**  
**State of Hawai`i**

January 16, 2014

**RE: S.B. 2128; RELATING TO RETENTION OF BIOLOGICAL EVIDENCE.**

Chair Hee, Vice-Chair Shimabukuro and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following comments in support of Senate Bill 2128. This bill amends guidelines and limitations for the post-conviction retention of biological evidence by law enforcement agencies and the courts. It also provides procedures for agencies to dispose of retained evidence and for defendants to file objections to proposed disposals.

The current law relating to retention of biological evidence is causing storage problems for police departments across the State because all evidence with potential biological evidence must be retained, including large items like vehicles. Senate Bill 2128 will help the storage problem by requiring retention of potential biological evidence where there has been a conviction for murder, manslaughter, kidnapping, sexual assault in the first degree, sexual assault in the second degree, assault in the first degree, or attempt or criminal conspiracy to commit one of these offenses. The biological evidence is used for identifying the person who committed the offense or excluding a person from the offense.

For the reasons stated, the Department of the Prosecuting Attorney of the City and County of Honolulu supports the passage of Senate Bill 2128. Thank you for the opportunity to testify on this matter.



DEPARTMENT OF THE PROSECUTING ATTORNEY  
COUNTY OF MAUI  
150 S. HIGH STREET  
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CONTACT: RICHARD. K. MINATOYA  
Deputy Prosecuting Attorney  
Supervisor, Appellate, Asset Forfeiture and Administrative Services Division

TESTIMONY  
ON  
SB 2128 - RELATING TO THE RETENTION OF BIOLOGICAL EVIDENCE  
January 24, 2014

The Honorable Clayton Hee  
Chair  
The Honorable Maile S. L. Shimabukuro  
Vice Chair  
and Members  
Senate Committee on Judiciary and Labor

Chair Hee, Vice Chair Shimabukuro and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui, **STRONGLY SUPPORTS** SB 2128 - Relating to the Retention of Biological Evidence. The bill amends guidelines and limitations for post-conviction retention of biological evidence by law enforcement agencies and courts, and provides procedures for agencies to dispose of retained evidence and for defendants to file objections to proposed disposals.

The current law relating to the retention of biological evidence is causing storage problems statewide because all evidence with potential biological evidence, including large items like vehicles, must be retained even when identification through biological evidence is not at issue. SB 2128 will solve the storage problem by limiting the required retention to specific offenses, and creates a method for disposal with input from defendants.

Accordingly, the Department of the Prosecuting Attorney, County of Maui, **STRONGLY SUPPORTS** the passage of this bill. We ask that the committee **PASS** SB 2128HB 1341.

Thank you very much for the opportunity to provide testimony on this bill.

**Justin F. Kollar**  
Prosecuting Attorney

**Kevin K. Takata**  
First Deputy



**Rebecca A. Vogt**  
Second Deputy

**Diana Gausepohl-White, LCSW**  
Victim/Witness Program Director

**OFFICE OF THE PROSECUTING ATTORNEY**

**County of Kaua'i, State of Hawai'i**

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Victim/Witness Program 808-241-1898 or 800-668-5734

**TESTIMONY IN SUPPORT OF  
S.B. NO. 2128 – RELATING TO THE RETENTION OF BIOLOGICAL EVIDENCE**

Justin F. Kollar, Prosecuting Attorney  
County of Kaua'i

Senate Committee on Judiciary and Labor  
January 24, 2014

Chair Hee, Vice Chair Shimabukuro and Members of the Committee:

The County of Kauai, Office of the Prosecuting Attorney, **STRONGLY SUPPORTS** SB 2128 – Relating to the Retention of Biological Evidence. The bill amends guidelines and limitations for post-conviction retention of biological evidence by law enforcement agencies and courts, and provides procedures for agencies to dispose of retained evidence and for defendants to file objections to proposed disposals.

The current law relating to the retention of biological evidence is causing storage problems statewide because all evidence with potential biological evidence, including large items like vehicles, must be retained even when identification through biological evidence is not an issue. SB 2128 will solve the storage problem by limiting the required retention to specific offenses, and creates a method for disposal with input from defendants.

Based on the foregoing, the County of Kauai, Office of the Prosecuting Attorney, **STRONGLY SUPPORTS** the passage of this bill. We ask that the Committee **PASS** 21 2128.

Respectfully,

A handwritten signature in black ink, appearing to read "Justin F. Kollar".

Justin F. Kollar  
Prosecuting Attorney  
County of Kaua'i



# POLICE CHIEFS OF HAWAII ASSOCIATION

C/O 801 SOUTH BERETANIA STREET  
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## POLICE CHIEFS

LOUIS M. KEALOHA  
Honolulu  
HARRY S. KUBOJIRI  
Hawaii County  
DARRYL D. PERRY  
Kauai  
GARY A. YABUTA  
Maui



## DEPUTY POLICE CHIEFS

MICHAEL M. CONTRADES  
Kauai  
PAUL K. FERREIRA  
Hawaii County  
DAVE M. KAJIHIRO  
Honolulu  
MARIE A. McCAULEY  
Honolulu  
CLAYTON N. Y. W. TOM  
Maui

OUR REFERENCE TN/DMK-DK

January 23, 2014

The Honorable Clayton Hee, Chair  
and Members  
Committee on Judiciary and Labor  
State Senate  
Hawaii State Capitol, Room 016  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Hee and Members:

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

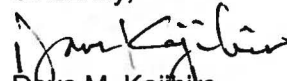
I am Deputy Chief Dave M. Kajihiro of the Honolulu Police Department (HPD), City and County of Honolulu.

The members of the Police Chiefs of Hawaii Association support Senate Bill No. 2128, Relating to the Retention of Biological Evidence.


This bill defines the offenses for which biological evidence shall be retained. It also requires a nexus for which the biological evidence shall be used in establishing the identity of the defendant or the exclusion of possible suspects. The proposed amendments additionally provide a process for disposal of retained evidence to release critical storage space.

Thank you for the opportunity to testify.

Sincerely,

  
Dave M. Kajihiro  
Deputy Chief of Police

Approved:

  
Louis M. Kealoha  
Chief of Police

cc: Chief Harry S. Kubojiri  
Chief Darryl D. Perry  
Chief Gary A. Yabuta