

SB2128

LATE

TESTIMONY

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

February 25, 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 any type of case. 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.

Although the proposed SD1 of S.B. No. 2128 is an improvement upon the original bill because it excludes from the disposal process the most serious of offenses such as Murder, Sexual Assault 1^o and 2^o and Kidnapping, the bill continues to include the remainder of felony offenses which constitutes serious convictions on a person's record.

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. 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.