

LATE TESTIMONY

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**THE HONORABLE WILL ESPERO, CHAIR
SENATE COMMITTEE ON PUBLIC SAFETY,
INTERGOVERNMENTAL AND MILITARY AFFAIRS
Twenty-Seventh State Legislature
Regular Session of 2014
State of Hawai'i**

January 28, 2014

RE: S.B. 2615; RELATING TO DNA COLLECTION FOR VIOLENT CRIMES.

Chair Espero, Vice-Chair Baker, and members of the Senate Committee on Public Safety, Intergovernmental and Military Affairs, the Department of the Prosecuting Attorney, City and County of Honolulu, submits the following testimony in overall **support** of Senate Bill 2615. If this measure passes, we do recommend that appropriations be added for the Honolulu Police Department, to facilitate their anticipated influx of DNA analyses, and further recommend that the Committee reconsider the current language in the expungement provisions.

On June 3, 2013, the U.S. Supreme Court issued a landmark decision, unequivocally holding that "taking [and analyzing] a cheek swab of the arrestee's DNA is, like fingerprinting and photographing, a legitimate police booking procedure that is reasonable under the Fourth Amendment," so long as it is done in accordance with appropriate safeguards and restrictions. See Maryland v. King, --- U.S. ---, 133 S.Ct. 1958, 1980, 186 L.Ed.2d 1 (2013). In less than 8 months since then, over a dozen more cases across the country have cited Maryland v. King on this issue, spanning California, Washington, Iowa, New York, New Jersey, and others.

As emphasized by the Court in Maryland v. King, an arrestee's "identification" is not merely the name on his or her drivers license, but "his or her public persona, as reflected in records of his or her actions that are available to the police." Id., at 1972. Thus, the information obtained through DNA analysis helps to confirm the arrestee's true identity, and also helps to provide background information that increases the safety of staff, the safety of the detainee population, and the safety of the new detainee. Id. This information also assists the State in

calculating the risk that an arrestee will attempt to flee the instant charges; assists the pre-trial court in assessing appropriate release, conditions for release or bail amounts; and may even free a person wrongfully imprisoned for the same offense. Id., at 1973-1974.

As of June 3, 2013, 28 other U.S. states, as well the federal government, maintained statutes permitting the collection and analysis of DNA samples from certain types of arrestees. In reviewing Maryland's DNA Collection Act ("Act"), the Court emphasized that sufficient scientific and statutory safeguards were in place, where the DNA loci that are analyzed by law enforcement "do not reveal the genetic traits of the arrestee," and the Act expressly limits the purpose for which law enforcement may analyze a DNA sample, as well as the DNA records that may be collected and stored. Id., at 1979. California's DNA collection law has also been upheld, by its Fourth District Court of Appeals, on similar bases. See People v. Lowe, 221 Cal.App.4th 1276, 1296-1297, 165 Cal.Rptr.3d 107, 121-122 (December 4, 2013).

In order to ensure that Hawai'i's provisions include appropriate safeguards, and establish a workable and enforceable system for the collection and analysis of DNA from "violent crime" arrestees, the Department believes the current bill is a suitable "work in progress," which will require a number of revisions in order reasonably be enacted and put into practice. If the legislature is willing to appropriate sufficient funding to allow Honolulu Police Department to shoulder the additional lab analyses, and can fashion a more workable method for the expungement and destruction of DNA samples and/or records, that could significantly increase the viability of this bill, for all parties involved.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports S.B. 2615, with a request that the Committee work with the appropriate agencies on the aforementioned issues. Thank for you the opportunity to testify on this matter.