



The Judiciary, State of Hawai'i

Testimony to the Senate Committee on Judiciary and Labor

Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

Monday, February 2, 2015, 9:30 a.m.
State Capitol, Conference Room 016

By
Calvin Ching
Deputy Chief Court Administrator, First Circuit Court

Bill No. and Title: Senate Bill No. 152, Relating to the Retention of Biological Evidence.

Purpose: Specifies the criminal offenses for which biological evidence must be retained for a certain period following a conviction and the standards for uses of retained evidence. Establishes a process for the disposal of biological evidence earlier than the prescribed period for retention.

Judiciary's Position:

The Judiciary supports the intent of Senate Bill No. 152.

Senate Bill No. 152 proposes to amend Section 844D-126, Hawaii Revised Statutes by establishing reasonable guidelines for post-conviction retention of biological evidence. The current statute is broad. This bill significantly reduces the number of applicable cases, thereby reducing the potential number of evidentiary items that would need to be maintained by each of the agencies, including the Judiciary; thus, making retention responsibilities more manageable.

However, we respectfully note that long-term storage issues remain as well the potential impact this measure may have on the Judiciary's workload and caseload should the defendant elect to preserve biological evidence pursuant to this bill.

Thank you for the opportunity to provide comments on this measure.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2015**

ON THE FOLLOWING MEASURE:

S.B. NO. 152, RELATING TO THE RETENTION OF BIOLOGICAL EVIDENCE.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Monday, February 02, 2015 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Russell Suzuki, Attorney General, or
Lance M. Goto, Deputy Attorney General.

Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General strongly supports this bill.

The purpose of this bill is to establish reasonable guidelines and limitations for the post-conviction retention of biological evidence by law enforcement agencies and the courts. It establishes a process for the disposal of biological evidence earlier than the prescribed period of retention, and includes a procedure for defendants to oppose the disposal of biological evidence by filing an objection with the court.

Section 844D-126 of the Hawaii Revised Statutes sets out the requirements for the retention of biological evidence as follows:

All evidence in the custody or control of a police department, prosecuting attorney, laboratory, or court that is related to the investigation or prosecution of a case in which there has been a judgment of conviction and that may contain biological evidence that could be used for DNA analysis shall be retained at least until the later occurring of either:

- (1) The exhaustion of all appeals of the case to which the evidence is related; or
- (2) The completion of any sentence, including any term of probation or parole, imposed on the defendant in the case to which the evidence relates.

The current retention requirements are very broad and require the police to retain all evidence that may contain biological evidence in any case in which there has been a conviction. The requirements apply to all felony, misdemeanor, and petty misdemeanor cases that have resulted in convictions, regardless of whether the identity of the perpetrator was an issue. This means that all evidence that may contain any biological evidence must be retained even though the

actual presence of biological evidence may not have been confirmed or identified, and even thought the biological evidence may not be relevant to the case.

These broad requirements have caused storage problems statewide. DNA material could be on many things. DNA could be found in things like hair, saliva, blood, semen, sweat, skin, or skin cells. It could be found in mucus material from coughs or sneezes. DNA could be found on any surface. It could be on used tissues or cigarettes, or in a car, boat, or bus.

This bill will establish reasonable and manageable requirements for the storage retention of biological evidence that will still allow convicted defendants the opportunity to object to the disposal of biological evidence.

This bill limits the retention requirements to evidence related to cases that have resulted in convictions for specified serious felony offenses. It maintains the retention periods of the current law. And it provides for two methods for the disposal of evidence before the expiration of the required retention period. One is based on a court order allowing for the disposal. And the second is based on a notice process that gives the defendant an opportunity to have a court hearing on the issue.

The Department respectfully requests the passage of this bill.

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

February 2, 2015

S.B. No. 152: RELATING TO THE RETENTION OF BIOLOGICAL EVIDENCE

Chair Keith-Agaran and Members of the Committee:

We oppose passage of S.B. No. 152 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. 152 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. 152 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. 152 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

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KEITH M. KANESHIRO
PROSECUTING ATTORNEY



ARMINA A. CHING
FIRST DEPUTY PROSECUTING ATTORNEY

THE HONORABLE GILBERT KEITH-AGARAN, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR
Twenty-eighth State Legislature
Regular Session of 2015
State of Hawai`i

February 2, 2015

RE: S.B. 152; RELATING TO THE RETENTION OF BIOLOGICAL EVIDENCE.

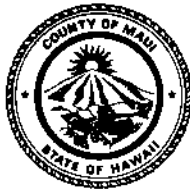
Chair Keith-Agaran, Vice-Chair Shimabukuro and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in support of Senate Bill 152.

The purpose of this bill is to establish reasonable guidelines and limitations for the post-conviction retention of biological evidence by law enforcement agencies and the courts, including a hearings process by which courts can determine early-on whether prolonged retention is warranted.

The current language of HRS §884D-126(a) contains a blanket requirement that law enforcement agencies retain, in all felony cases, any and all evidence that "may contain biological evidence that could be used for DNA analysis," regardless of whether DNA analysis is relevant to the issues in dispute. While police departments across the State are doing their best to comply with the current laws, this also forces them to maintain vast storage facilities to store items, sometimes needlessly, without actually furthering the intent of these evidence retention requirements. Senate Bill 152 seeks to address these issues by establishing reasonable procedures and standards for evidence custodians to retain or dispose of relevant biological evidence, and allows courts to determine early-on whether prolonged retention is appropriate for these purposes.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports the passage of Senate Bill 152. Thank you for the opportunity to testify on this matter.

ALAN M. ARAKAWA
Mayor



JOHN D. KIM
Acting Prosecuting Attorney

ROBERT D. RIVERA
Acting First Deputy Prosecuting Attorney

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 152 - RELATING TO THE RETENTION OF BIOLOGICAL EVIDENCE

February 2, 2015

The Honorable Gilbert S. C. Keith-Agaran
Chair
The Honorable Maile S. L. Shimabukuro
Vice Chair
and Members
Senate Committee on Judiciary and Labor

Chair Keith-Agaran, Vice Chair Shimabukuro and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui, **STRONGLY SUPPORTS** SB 152 - Relating to the Retention of Biological Evidence. The bill specifies criminal offenses for which biological evidence must be retained for a certain period following a conviction, sets standards for uses of retained evidence, and establishes a process for the disposal of biological evidence earlier than the prescribed period for retention.

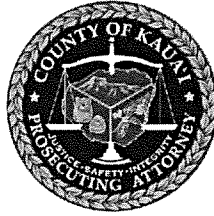
The current biological evidence law requires wholesale retention of biological evidence in felony cases. This is a onerous requirement on law enforcement agencies to keep all evidence which may contain biological evidence, even when identification of the perpetrator is not at issue. Specifying the offenses for which biological evidence must be retained will help ease the burden of space and manpower for the agencies. Furthermore, the bill will allow for a process to seek approval to dispose of evidence prior to the completion of the required retention period, which will also be of tremendous assistance to the law enforcement agencies.

Accordingly, the Department of the Prosecuting Attorney, County of Maui, **STRONGLY SUPPORTS** the passage of this bill. We ask that the committee **PASS** SB 152.

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
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
SB 152 – RELATING TO THE RETENTION OF BIOLOGICAL EVIDENCE

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

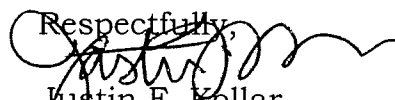
Senate Committee on Judiciary & Labor
February 2, 2015, 9:30 a.m., Conference Room 016

Chair Keith-Agaran, Vice Chair Shimabukuro, and Members of the Committee:

The County of Kaua'i, Office of the Prosecuting Attorney, **STRONGLY SUPPORTS** SB152 – Relating to the Retention of Biological Evidence. The Bill specifies criminal offenses for which biological evidence must be retained for a certain period following a conviction, sets standards for uses of retained evidence, and establishes a process for the disposal of biological evidence earlier than the prescribed period for retention.

The current biological evidence law requires wholesale retention of biological evidence in felony cases. This is an onerous requirement for law enforcement agencies; particularly when identification of the perpetrator is not at issue. Specifying the offenses for which biological evidence must be retained will help ease the burden of space and manpower for the agencies. Furthermore, the Bill will allow for a process to seek approval for disposal of evidence prior to the completion of the required retention period, which will also be beneficial to the law enforcement agencies.

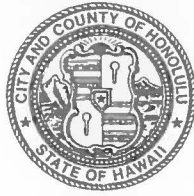
Accordingly, we are in **STRONG SUPPORT** of this bill. We request that your Committee **PASS** the Bill.

Respectfully,

Justin F. Kollar
Prosecuting Attorney

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR



LOUIS M. KEALOHA
CHIEF

DAVE M. KAJIHIRO
MARIE A. McCAULEY
DEPUTY CHIEFS

OUR REFERENCE GK-DNK

February 2, 2015

The Honorable Gilbert S. C. Keith-Agaran, Chair
and Members
Committee on Judiciary and Labor
State Senate
Hawaii State Capitol, Room 016
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran and Members:

SUBJECT: Senate Bill No. 152, Relating to the Retention of Biological Evidence

I am Captain Gerald Kaneshiro of the Records and Identification Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports Senate Bill No. 152, 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.

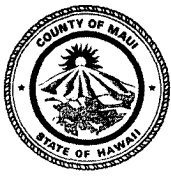
Sincerely,

A handwritten signature in black ink that reads "AC Paul Manganey".

For Gerald K. Kaneshiro, Captain
Records and Identification Division

APPROVED:

A handwritten signature in black ink that reads "Louis M. Kealoha".
Louis M. Kealoha
Chief of Police



ALAN M. ARAKAWA
MAYOR

OUR REFERENCE
YOUR REFERENCE

POLICE DEPARTMENT
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TIVOLI S. FAAUMU
CHIEF OF POLICE

DEAN M. RICKARD
DEPUTY CHIEF OF POLICE

January 30, 2015

The Honorable Gilbert S.C. Keith-Agaran, Chair
Committee on Judiciary and Labor
The Senate
State Capitol
Honolulu, HI 96813

Re: Senate Bill No. 152, RELATING TO THE RETENTION OF BIOLOGICAL EVIDENCE

Dear Chair Keith-Agaran and Members of the Committee:

The Maui Police Department strongly supports the passage of S.B. No. 152.

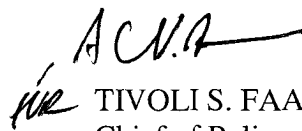
This proposed bill specifies the criminal offenses for which biological evidence must be retained for a certain period following a conviction and the standards for uses of retained evidence. It also establishes a process for the disposal of biological evidence earlier than the prescribed period for retention.

This bill will allow for a fair process to seek approval to dispose of evidence prior to the completion of the required retention period. This will help alleviate the future potential problem of lack of manpower and storage costs for evidence that will be shouldered by Hawaii law enforcement agencies and in turn the taxpayers of our state.

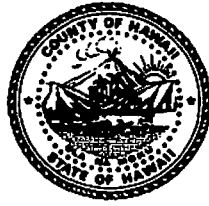
The Maui Police Department asks your committee to **STRONGLY SUPPORT** S.B. No 152.

Thank you for the opportunity to testify.

Sincerely,


TIVOLI S. FAAUMU
Chief of Police

William P. Kenoi
Mayor



Harry S. Kubojiri
Police Chief

Paul K. Ferreira
Deputy Police Chief

County of Hawai`i

POLICE DEPARTMENT

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January 30, 2015

Senator Gilbert S.C. Keith-Agaran
Chairperson and Committee Members
Committee on Judiciary and Labor
415 South Beretania Street, Room 016
Honolulu, Hawai`i 96813

RE: SENATE BILL 152, RELATING TO THE RETENTION OF BIOLOGICAL EVIDENCE

Dear Senator Keith-Agaran:

The Hawai`i Police Department supports the passage of Senate Bill 152 that seeks to amend the 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 in excess of 38,000 square feet of evidence storage space, which includes storage space that is being leased at a monthly sum in excess of \$16,000. 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 the opportunity to provide testimony relating to Senate Bill 152.

Sincerely,

PAUL K. FERREIRA
DEPUTY POLICE CHIEF

COMMUNITY ALLIANCE ON PRISONS

P.O. Box 37158, Honolulu, HI 96837-0158

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COMMITTEE ON JUDICIARY and LABOR

Chair: Sen. Gil Keith-Agaran

Vice Chair: Sen. Maile Shimabukuro

Monday, February 2, 2015

9:30 a.m.

Room 016

STRONG OPPOSITION TO SB 152 - DESTROYING EVIDENCE

Aloha Chair Keith-Agaran, Vice Chair Shimabukuro and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies for almost two decades. This testimony is respectfully offered on behalf of the 5,600 Hawai'i individuals living behind bars, always mindful that more than 1,600, and soon to be rising number of Hawai'i individuals who are serving their sentences abroad, thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, far from their ancestral lands.

SB 152 specifies the criminal offenses for which biological evidence must be retained for a certain period following a conviction and the standards for uses of retained evidence. Establishes a process for the disposal of biological evidence earlier than the prescribed period for retention.

Community Alliance on Prisons is in STRONG OPPOSITION to this bill.

Preserved evidence can help solve closed cases; convicting the guilty and exonerating the innocent. Preserving biological evidence from crime scenes is critically important because DNA can provide the best evidence of innocence - or guilt - upon review of a case. Forensic science is evolving and tossing out evidence that could convict the guilty and free the innocent is a bad idea.

Consider this scenario: The prosecutor is leveling charges against a person and then decides to have the case dismissed. The evidence is tossed out. Then, at a later date, the prosecutor decides to try the case that was previously dismissed, but now all the evidence has been thrown out; evidence that could free the innocent and convict the guilty is gone. How is that justice?

The Innocence Project webpage¹ DNA Exoneree Case Profiles reports:

There have been 325 post-conviction DNA exonerations in United States history. These stories are becoming more familiar as more innocent people gain their freedom through post-conviction testing. They are not proof, however, that our system is righting itself.

¹ DNA Exoneree Case Profiles, the Innocence Project. <http://www.innocenceproject.org/know/>

The common themes that run through these cases – from global problems like poverty and racial issues to criminal justice issues like eyewitness misidentification, invalid or improper forensic science, overzealous police and prosecutors and inept defense counsel – cannot be ignored and continue to plague our criminal justice system.

- *Twenty people had been sentenced to death before DNA proved their innocence and led to their release.*
- *The average sentence served by DNA exonerees has been 13.6 years.*
- *About 70 percent of those exonerated by DNA testing are people of color.*
- *In almost 50 percent of DNA exoneration cases, the actual perpetrator has been identified by DNA testing.*
- *Exonerations have been won in 38 states and Washington, D.C.*
- *The Innocence Project was involved in 173 of the 325 DNA exonerations. Others were helped by Innocence Network organizations, private attorneys and by pro se defendants in a few instances.*

None of the nation's 325 DNA exonerations would have been possible had the biological evidence not been available to test. Had the evidence been destroyed, tainted, contaminated, mislabeled, or otherwise corrupted, the innocence of these individuals would never have come to light.

The proponents of similar bills in prior sessions asserted that their duty to preserve evidence is a great economic and administrative burden. Community Alliance on Prisons asserts that biological evidence is not collected in the majority of criminal cases.²

While storage space may be a concern, this bill would free up little space. DNA testable material is found in only approximately ten percent (10%) of all cases, and the items which may contain biologically testable material will typically be few, and not bulky. Thus, allowing the destruction of potentially testable material will free up little space, and will benefit no-one, apart from the actual murderer or rapist in a case in which the wrong person has been convicted.

The proponents have said that they are running out of room because they have to store large items such as cars. However, the government is not required to keep and store bulky, oversized pieces of physical evidence. When biological material is found on large pieces of evidence, the government would only be required to extract a sample of the biological material in a sufficient quantity to allow DNA testing.³

² Convicted By Juries, *supra* note 15, at xxiii (stating it is unlikely that the perpetrator of a crime will leave biological material at the crime scene in cases other than sexual assault); John T. Rago, "Truth or Consequences" and Post-Conviction DNA Testing: Have You Reached Your Verdict?, 107 DICK. L. REV. 845, 851-52 (2002-2003) (estimating that in approximately 80% of serious felony cases there is no biological evidence); see also Findley, *supra* note 18, at 22 (stating in most cases the perpetrator does not leave biological evidence).

³ E.g., D.C. CODE [section] 22-4134(c) (2001) ("The District of Columbia shall not be required to preserve evidence that must be returned to its rightful owner, or is of such a size, bulk, or physical character as to render retention impracticable. If practicable, the District of Columbia shall remove and preserve portions of this material evidence sufficient to permit future DNA testing before returning or disposing of it."); Accord Innocence Protection Act of 2004, 18 U.S.C. [section] 3600A (c)(4)(A)-(B) (Supp.

In 2004, Congress passed the Justice for All Act (H.R. 5107), which provides financial incentives for states to preserve evidence, and withholds those same monies for states that do not adequately preserve evidence. If additional storage space is needed, it would be far better to seek funding for adequate facilities, rather than to destroy crucial evidence AND potentially become ineligible for federal assistance for needed facilities.

The proponents cite the expense of having to comply with the law. Under the current state of technology, DNA analysis can be successfully performed on biological material as long as the evidence is stored in a dry, dark, air-conditioned room.⁴ No costly refrigeration is required. In fact, the biological evidence successfully analyzed in many DNA exonerations had previously been stored for many years in un-refrigerated evidence storage rooms.⁵

SB 152 would allow destruction of evidence can occur after: (1) the exhaustion of all appeals of the case to which the evidence is related; or (2) the completion of any sentence, including any term of probation or parole, imposed on the defendant in the case to which the evidence relates.

This would preclude testing of evidence for purposes of relief based on newly discovered evidence under HRPP Rule 40, as well as thwarting any relief based on DNA testing that may be allowed under a petition for a writ of habeas corpus in the federal courts. A direct appeal is a vehicle for reviewing legal error, so to limit the preservation of biological evidence to the direct appeal would entirely preclude relief based on new DNA testing.

For years Hawai'i prosecutors have been trying to limit Rule 40 – post conviction cases, despite the emergence of new forensic science and evidence that the number of these cases has decreased over the last several years.

Preserved evidence (most of which had been thrown out) freed the Maui man who served more than 20 years in prison for a rape he did not commit. This is a miscarriage of justice.

There have been 325 post-conviction DNA exonerations. These stories are becoming more familiar as more innocent people gain their freedom through post-conviction testing. About 70 percent of those exonerated by DNA testing are people of color.

According to the National Exoneration Registry, 2014 was a record-breaking year for exonerations, according to the in the United States. The National Registry of Exonerations has recorded 125 exonerations in 2014. The previous highest total was 91 in 2012 and again in 2013, followed by 87 in 2001. All told, the Registry now lists 1,535 exonerations in the United States, from 1989 through January 20, 2015.⁶

2005); ARK. CODE ANN. [section] 12-12-104 (c)-(d) (2003); 725 ILL. COMP. STAT. 5/116-4(C)(1)-(2) (Supp. 2005); MD CODE ANN., CRIM. PROC. [section] 8-201 (j)(4)(ii) (Supp. 2004); N.M. STAT. ANN. [section] 31-1a-2 (M)(3)-(4) (Supp. 2003); VA. CODE ANN. [section] 19.2-270.4:1(D) (2004).

⁴ S. REP. NO. 107-315 at 20.

⁵ ARTICLE; *EVIDENCE DESTROYED, INNOCENCE LOST; THE PRESERVATION OF BIOLOGICAL EVIDENCE UNDER INNOCENCE PROTECTION STATUTES*, Cynthia E. Jones, *American Criminal Law Review*, 42 *Arn. Crim. L. Rev.* 1239, Fall 2005. <http://leg.mt.gov/content/Committees/Interim/2011-2012/Law-and-Justice/Meeting-Documents/15-16dec11/evidence.pdf>

⁶ EXONERATIONS IN 2014, The National Registry of Exonerations, January 27, 2015. http://www.law.umich.edu/special/exoneration/Documents/Exonerations_in_2013_Report.pdf

None of the nation's 325 DNA exonerations would have been possible had the biological evidence not been available to test. Had the evidence been destroyed, tainted, contaminated, mislabeled, or otherwise corrupted, the innocence of these individuals would never have come to light.

Biological evidence retention is a crucial piece of justice and must be retained. Post-conviction DNA is needed to prosecute the guilty and free the innocent. Fiscal and administrative concerns should not dictate whether evidence is preserved to exonerate the innocent.

Lastly, in our humble opinion, the notification process is flawed. In practice, it will be difficult or impossible in many cases to notify persons who may wish to object to the destruction of evidence. Attorneys die, retire, move to other jurisdictions, or otherwise become unavailable. Notices directly to inmates are subject to the errors of outdated addresses, name confusion, prison lockdowns, or other problems which can prevent the inmate from receiving timely notice directly.

Chapter 844D of the Hawai'i Revised Statutes intentionally provided for the preservation of all items of physical evidence relating to felony crimes and it remains in the best interests of Hawai'i's people to maintain the ability to prosecute cold cases and exonerate the innocent.

Community Alliance on Prisons, therefore, respectfully asks the committee to hold this measure and retain HRS Chapter 844 D in its present form.

Mahalo for this opportunity to testify.