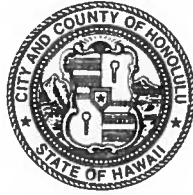


POLICE DEPARTMENT
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February 21, 2019

The Honorable Sylvia Luke, Chair
and Members
Committee on Finance
House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 308
Honolulu, Hawaii 96813

Dear Chair Luke and Members:

Subject: House Bill No. 508, H.D. 1, Relating to DNA Collection for Certain Felony Offenses

I am Wayne Kimoto, Forensic Laboratory Director of the Scientific Investigation Section, Honolulu Police Department (HPD), City and County of Honolulu.

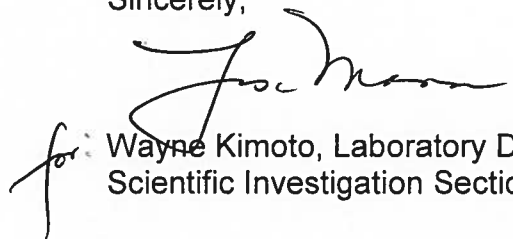
The HPD supports the intent of House Bill No. 508, H.D. 1, Relating to DNA Collection for Certain Felony Offenses with the inclusion of appropriations to provide the state and county agencies a means to deliver notification to test samples for the state DNA database and data bank identification program.

Thank you for the opportunity to testify.

APPROVED:


Susan Ballard
Chief of Police

Sincerely,


for Wayne Kimoto, Laboratory Director
Scientific Investigation Section

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
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THE HONORABLE SYLVIA LUKE, CHAIR
HOUSE COMMITTEE ON FINANCE
Thirtieth State Legislature
Regular Session of 2019
State of Hawai`i

February 21, 2019

RE: H.B. 508, H.D.1; RELATING TO DNA COLLECTION FOR CERTAIN FELONY OFFENSES.

Chair Luke, Vice-Chair Cullen, and members of the House Committee on Finance, the Department of the Prosecuting Attorney, City and County of Honolulu, submits the following testimony in strong support of H.B. 508, H.D. 1. This bill is part of the Department's 2019 legislative package.

The purpose of H.B. 508, H.D. 1, is to require persons arrested for felony sex offenses to provide DNA samples at the time of booking, as part of their standard booking/identification procedures. Buccal swabs could only be tested (and potentially eligible for upload to CODIS) upon indictment, written information charging, judicial determination of probable cause, or waiver of indictment. The bill also provides for expungement procedures, if the arrestee is ultimately not charged and/or convicted.

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, 569 U.S. 439, 133 S.Ct. 1958, 186 L.Ed.2d 1 (2013). Since that time, numerous states have upheld similar laws, including—most recently—California's Supreme Court, in April 2018 (People v. Buza, 413 P.3d 1132 (Cal. 2018)); that decision considered not only the defendant's constitutional rights under the U.S. Constitution, but also the more expansive privacy rights afforded by California's State Constitution.

As emphasized by the Court in Maryland v. King (133 S.Ct. at 1972), 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 illustrate an arrestee's "true identity," including an accurate assessment of potential dangerousness, which helps to increase 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.

Indeed, DNA is truly the most accurate form of identification currently available, impervious to any measures that a suspect could possibly take to hide or cloud their complete "identity." While some opponents to this bill may argue that fingerprinting should be sufficient to confirm a person's identity, DNA is essentially a more modern version of fingerprinting. When new fingerprints are uploaded to the FBI's national fingerprint identification system, they may match to an unsolved case(s), in much the same way that unidentified DNA profiles in CODIS may find a match when new DNA profiles are uploaded. Given the state of our modern technology, the Department strongly believes that DNA-based identification should be required of arrestees—particularly felony sex offense arrestees—because it does not make sense to rely solely on fingerprinting identification if that is not the only means of identifying someone, in much the same way that it would not make sense to rely solely on an arresting officer identifying an arrestee by face-recognition, when fingerprinting technology is readily available.

If someone is being held in custody for a felony sex offense, but may be responsible for other (unsolved) offenses, it behooves everyone around that person for the court, law enforcement and/or corrections staff to know about those other offenses. With regards to the particular type of DNA analysis used for identification purposes, our U.S. Supreme Court has emphasized—in reviewing Maryland's DNA Collection Act ("Act")—that scientific and statutory safeguards are sufficient if the DNA loci analyzed by law enforcement "do not reveal the genetic traits of the arrestee." Moreover, the Act—much like H.B. 508, H.D. 1—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. In comparing the language of H.B. 508, H.D. 1, to Maryland's DNA Collection Act, we are confident that Hawaii's provisions include the appropriate safeguards, and establish a reasonably workable and enforceable system for the collection and analysis of DNA from felony sex offense arrestees. We further note that federal laws surrounding CODIS also maintain stringent expungement requirements¹, and strictly limit disclosure of stored DNA samples and analyses,² most likely to protect the constitutionality and usefulness of the data stored therein.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu strongly supports the passage of H.B. 508, H.D. 1. Thank for you the opportunity to testify on this matter.

¹ See 34 U.S. Code §12592(d)(2) "Expungement of records, By States," available online at <https://www.law.cornell.edu/uscode/text/34/12592>. Last accessed February 20, 2019.

² See 34 U.S. Code §12592(b)(3) "Information," available online at <https://www.law.cornell.edu/uscode/text/34/12592>. Last accessed February 20, 2019.

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

February 21, 2019

H.B. No. 508 HD1 RELATING TO DNA COLLECTION FOR CERTAIN FELONY OFFENSES

Chair Luke and Members of the Committee:

We oppose passage of H.B. No. 508 HD1 which would allow for the collection of DNA from persons who are merely arrested for a felony sexual criminal offense. Currently Hawaii law mandates such DNA collection only following a conviction for a felony offense. In addition to buccal samples, H.B. No. 508 HD1 would allow for the collection of blood samples from arrestees if required by the collecting agency's rules.

This measure seriously encroaches upon the public's civil liberties and privacy rights. We are aware that the U.S. Supreme Court upheld Maryland's law requiring DNA collection from arrestees of crimes of violence and burglary in *Maryland v. King*, 569 U.S. 435 (2013). However, the Hawai'i Supreme Court has consistently interpreted the Hawai'i Constitution to afford our citizens greater protection of rights than the U.S. Constitution. It is certain that H.B. No. 508 HD1 would trigger an immediate constitutional challenge to its enforcement.

While it is understandable that a convicted person would be subject to the collection of a DNA specimen, an arrestee carries with him/her the presumption of innocence. Indeed, it is not uncommon for a person to be wrongfully arrested and accused of a sexual criminal offense. That person would be required to provide a DNA sample under this bill.

Although the bill provides for expungement of DNA samples where the arrest does not result in a conviction, there is no remedy if the government fails to comply with an expungement order. In fact, this bill anticipates that government will not comply with such an order evidenced by subsection (e) on page 9:

Any identification, warrant, probable cause to arrest, or arrest based upon a data bank match shall not be invalidated due to a failure to expunge or a delay in expunging records.

The government should not be encouraged to capitalize on its failures. Under this measure, there will be no incentive for the government to comply with the law.

Thank you for the opportunity to provide testimony in this matter.

HB-508-HD-1

Submitted on: 2/20/2019 1:20:58 PM

Testimony for FIN on 2/21/2019 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments:

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Date: February 21, 2019

To: The Honorable Sylvia Luke, Chair
The Honorable Ty J.K. Cullen, Vice Chair
House Committee on Finance

From: Justin Murakami, Manager, Prevention Education and Public Policy
The Sex Abuse Treatment Center
A Program of Kapi'olani Medical Center for Women & Children

RE: Testimony in Support of H.B. 508 H.D. 1
Relating to DNA Collection for Certain Felony Offenses

Good afternoon Chair Luke, Vice Chair Cullen, and members of the House Committee on Finance:

The Sex Abuse Treatment Center (SATC) supports H.B. 508 H.D. 1, which would require offenders arrested for felony sex offenses to provide DNA samples, as part of standard booking and identification procedures, with expungement provisions that would apply in cases where the arrest does not ultimately result in a conviction.

The United States Supreme Court has held that the collection and analysis of offender DNA at the time of arrest is a legitimate police booking procedure that is reasonable under the Fourth Amendment, so long as it is done with appropriate safeguards and restrictions.

Strong precedent concerning the constitutionality of collecting DNA from offenders further exists in state court findings. For example, California's Supreme Court found that this practice passes both federal and state constitutional muster, even where the California State Constitution provides more expansive privacy rights than the U.S. Constitution.

In addition to being constitutional, the use of DNA collected at the time of an offender's arrest is a best practice that benefits victims of crime, innocent arrestees, and the community at large, by ensuring the accurate and fair administration of justice.

DNA is the most accurate form of identification available, and it is the modern version of fingerprinting and taking a photograph of an offender upon arrest. The CODIS system used to match DNA profiles functions in a parallel and similar way as the FBI national fingerprint identification system, which has long been used to identify offenders and establish investigatory links between offenses committed by the same person.

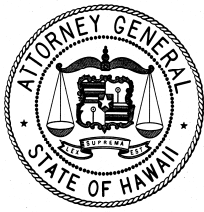
Collection of DNA from an offender at the time of arrest allows for investigators to check if they may also be responsible for other, unsolved offenses. By exposing serial perpetrators, DNA collection at the time of the arrest and subsequent DNA analysis can be of critical importance to preventing additional offenses, protecting would-be victims and enhancing general public safety.

Moreover, in cases where a person may be wrongly arrested for a felony sex crime, early collection and analyses of that person's DNA as a matter of course would be important for preventing a potential miscarriage of justice, while allowing law enforcement to timely shift to further investigating the crime and hopefully arresting the real offender.

We further note that it is our understanding that DNA collection and analysis for the purpose of identification in the context of law enforcement does not reveal the genetic traits of the arrestee, which is a privacy concern sometimes raised by critics of procedures for collecting DNA from an offenders.

Moreover, the specific language of H.B. 508 H.D. 1, in Section 5 of the bill's amendment of the existing H.R.S. Section 844D-83 and in Section 6 of the bill's amendment of the existing H.R.S. Section 844D-113, further strongly prohibits any use of the DNA collected upon arrest, or the profile derived from that sample, for any purpose other than criminal identification and exclusion purposes.

We appreciate this opportunity to testify in support of H.B. 508 H.D. 1, and ask that the Committee please pass this important measure.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019**

LATE

ON THE FOLLOWING MEASURE:

H.B. NO. 508, H.D. 1, RELATING TO DNA COLLECTION FOR CERTAIN FELONY OFFENSES.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Thursday, February 21, 2019 **TIME:** 1:30 p.m.

LOCATION: State Capitol, Room 308

TESTIFIER(S): Clare E. Connors, Attorney General, or
Lance Goto, Deputy Attorney General

Chair Luke and Members of the Committee:

The Department of the Attorney General supports this bill.

The purposes of this bill are to require the collection of DNA from all persons arrested for the commission of specified felony sexual offenses; provide for the expungement of DNA records, in certain circumstances, when an individual is not convicted of the offense; and appropriate funds for the costs of DNA collection, processing, storage, and expungement responsibilities.

There is a growing trend to collect DNA samples from persons arrested for felony offenses. While every state now requires a DNA sample from persons convicted of a felony offense, thirty-one states and the federal government are now authorized to collect DNA samples from persons arrested or charged with felony offenses. The practice of collecting DNA at the initiation of criminal cases, rather than after convictions, can help to assure accurate identification of the arrested person, solve crimes, provide early and accurate identification of serial offenders and thereby prevent the commission of further violent crimes and protect potential victims, exonerate the innocent and minimize wrongful incarceration, minimize racial bias, and reduce law enforcement investigative costs. The prosecution of a serious felony offense can take months or years before there is a final disposition of the case. The collection of DNA

from the offender at the initiation of the case could help to solve or prevent crimes during that period of time.

The United States Supreme Court supports the collection of DNA samples from arrestees. In its decision in *Maryland v. King*, 569 U.S. 435, 133 S. Ct. 1958 (2013), the Supreme Court found the collection of a cheek swab of an arrestee's DNA to be a legitimate police booking procedure that is reasonable under the Fourth Amendment, like fingerprinting and photographing.

In its decision, the Supreme Court discussed how DNA collection and identification plays a critical role in serving legitimate government interests. It went into great detail describing the interests:

First, "[i]n every criminal case, it is known and must be known who has been arrested and who is being tried." *Hiibel v. Sixth Judicial Dist. Court of Nev., Humboldt Cty.*, 542 U.S. 177, 191, 124 S.Ct. 2451, 159 L.Ed.2d 292 (2004). An individual's identity is more than just his name or Social Security number, and the government's interest in identification goes beyond ensuring that the proper name is typed on the indictment.

. . . . Second, law enforcement officers bear a responsibility for ensuring that the custody of an arrestee does not create inordinate "risks for facility staff, for the existing detainee population, and for a new detainee." *Florence*, supra, at —, 132 S.Ct., at 1518. DNA identification can provide untainted information to those charged with detaining suspects and detaining the property of any felon. For these purposes officers must know the type of person whom they are detaining, and DNA allows them to make critical choices about how to proceed.

. . . . Third, looking forward to future stages of criminal prosecution, "the Government has a substantial interest in ensuring that persons accused of crimes are available for trials."

. . . . Fourth, an arrestee's past conduct is essential to an assessment of the danger he poses to the public, and this will inform a court's determination

whether the individual should be released on bail. "The government's interest in preventing crime by arrestees is both legitimate and compelling."

. . . . Finally, in the interests of justice, the identification of an arrestee as the perpetrator of some heinous crime may have the salutary effect of freeing a person wrongfully imprisoned for the same offense. "[P]rompt [DNA] testing . . . would speed up apprehension of criminals before they commit additional crimes, and prevent the grotesque detention of . . . innocent people." J. Dwyer, P. Neufeld, & B. Scheck, *Actual Innocence* 245 (2000).

569 U.S. at 450-456, 133 S.Ct. at 1971-1974.

Forensic DNA testing is a vastly more precise and reliable means of human identification than other methods, including fingerprinting. By collecting DNA samples from those arrested for serious sexual assault offenses, law enforcement can definitively identify the person arrested and, in some instances, identify the perpetrator of an unsolved crime, thus assisting law enforcement investigative efforts.

The Department respectfully requests that this measure be passed.