



The Judiciary, State of Hawaii

Testimony to the Senate Committee on Judiciary and Labor

Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

Tuesday, February 25, 2014, 10:30 a.m.
State Capitol, Conference Room 016

by
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Bill No. and Title: Senate Bill No. 2128, Proposed S.D. 1, Relating to the Retention of Biological Evidence.

Purpose: To establish reasonable guidelines and limitations for the post conviction retention of biological evidence by law enforcement agencies and the courts; and thereby preserve a defendant's ability to test biological evidence, while making law enforcement agency retention responsibilities more reasonable and manageable.

Judiciary's Position:

The Judiciary is in support of the original SB2128 and supports the intent of SB2128, Proposed S.D. 1, but does have concerns.

SB2128 proposed to amend Section 844D-126, Hawaii Revised Statutes by establishing reasonable guidelines for post-conviction retention of biological evidence. The bill as originally proposed would significantly reduce the number of applicable cases, thereby reducing the potential number of evidentiary items that would need to be maintained by agencies and the Judiciary.

However, SB2128, Proposed SD1 eliminates the required time periods for the retention of evidence in certain specified felony offenses and adds Robbery in the First Degree. Assault in the First Degree is already a sizeable caseload and the addition of Robbery 1st will further increase the caseload monitoring. SB2128, Proposed SD1 requires that for the specified cases



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evidence must be retained indefinitely with no exceptions and this will place an even greater burden on the courts and law enforcement to maintain custody over evidence.

SB2128, Proposed SD1 proposes to create a process for an agency to obtain a court order to dispose of evidence related to a case "in which there has been a judgment of conviction for any felony other than those enumerated in subsection (a)....". It appears that the Proposed SD1 will require a court order to allow for the disposal of evidence whether the evidence may contain biological evidence or not. The proposed notice and hearing process does not appear to address the situation in which a defendant chooses not to file an objection. It appears that the courts must hold a hearing and issue an order allowing for disposal even though the defendant does not file an objection.

The process of requiring notice and hearing for every case in which evidence is retained will place a heavy burden on the courts with an increase in hearings, monitoring of conviction sentences and storage for retention of evidence.

The increase in hearings would also place an additional burden on the courts and staff to provide notice to defendants, parties, excluded persons, counsel and other agencies; calendar cases for hearing; and the subsequent filing and issuing of the courts orders.

Thank you for the opportunity to provide comments.