



TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FIFTH LEGISLATURE, 2009

ON THE FOLLOWING MEASURE:

H.B. NO. 336, RELATING TO DNA COLLECTION FOR ARRESTEES OF VIOLENT CRIMES.

BEFORE THE:

HOUSE COMMITTEE ON PUBLIC SAFETY

DATE: Thursday, January 29, 2009 **TIME:** 8:30 AM

LOCATION: State Capitol, Room 309
Deliver to: Committee Clerk, Room 310, 10 Copies

TESTIFIER(S): Mark J. Bennett, Attorney General
or Lance M. Goto, Deputy Attorney General

Chair Hanohano and Members of the Committee:

The Department of the Attorney General supports the intent of this bill, but submits the following concerns and comments.

The bill, while increasing the responsibilities of law enforcement and public safety agencies, does not indicate how the proposed expansion of the DNA program under chapter 844D, Hawaii Revised Statutes (HRS), would be funded. The agencies would need additional resources to collect, analyze, and store the arrestee DNA samples. Additional resources would also be needed to enter and maintain the records in the DNA database.

Section 706-603, HRS, provides that "every defendant convicted of a felony offense shall be ordered to pay a monetary assessment of \$500 or the actual cost of the DNA analysis, whichever is less." These assessments are deposited into the DNA Registry Special Fund and used to pay the costs of collecting and analyzing DNA buccal swab samples pursuant to chapter 844D. But arrestees cannot be required to pay the assessment unless they are convicted of a crime for which the assessment is required. Thus, a separate means of funding would be necessary to implement the provisions of this bill.

Additionally, the bill does not appear to take into consideration the retroactive application provisions of section 844D-41, HRS. That section provides for the retroactive application of sections 844D-31 and 844D-34, the two sections being amended by this bill. DNA collection could be required from those who have been arrested for the specified crimes before the effective date of this measure.

With respect to the proposed amendments to section 844D-34, HRS, section 3 of the bill fails to amend the title of the statutory section. Although the bill makes an amendment to provide for collection of DNA samples upon arrest, the title only refers to collection after conviction or adjudication.

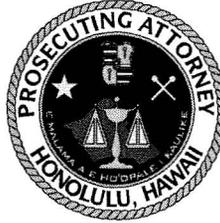
We note that section 844D-71, HRS, provides that a person who has no past or present offense requiring the person to provide a DNA sample may request expungement of the person's DNA information from the state DNA database and data bank identification program. If this bill is passed, section 844D-71 should be amended to clarify that the absence of a conviction is not a basis for expungement.

Finally, we note that DNA buccal swab samples are presently collected from arrestees who are required to provide a sample because of a prior conviction but have not yet done so.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET, HONOLULU, HAWAII 96813
AREA CODE 808 • 527-6494

PETER B. CARLISLE
PROSECUTING ATTORNEY



DOUGLAS S. CHIN
FIRST DEPUTY
PROSECUTING ATTORNEY

THE HONORABLE FAYE P. HANOHANO, CHAIR
HOUSE COMMITTEE ON PUBLIC SAFETY

Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

January 29, 2009

**RE: H.B. 336; RELATING TO DNA COLLECTION FOR ARRESTEES OF VIOLENT
CRIMES.**

Chair Hanohano and members of the House Committee on Public Safety, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following comments on H.B. 336.

The purpose of this bill is to amend Hawaii Revised Statutes sections 844D-31 and 844D-34 to expand DNA offender collection to persons arrested for murder in the first degree, murder in the second degree, manslaughter, assault in any degree, assault on a law enforcement officer in any degree, assault against an emergency worker, reckless endangering in any degree, criminally negligent storage of a firearm, terroristic threatening in any degree, sexual assault in any degree, continuous sexual assault of a minor and incest.

We note that when the legislature passed Act 271 of 1998 which made multiple amendments to Hawaii's provisions for taking DNA samples from convicted offenders, the House stated in HSCR 2869:

Your Committee finds that DNA information is an increasingly valuable tool for the investigation, prosecution, and defense of criminal cases. The development of a DNA registry is important to protect the public from further criminal acts committed by such offenders.

We believe that the DNA database should be expanded at some point to include arrestees for exactly those reasons. However, although we would like to achieve this at some point, we recognize that it will take time and require funding to implement a viable program.

Thank you for this opportunity to testify.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU
801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu-pd.org

MUFI HANNEMANN
MAYOR



BOISSE P. CORREA
CHIEF

PAUL D. PUTZULU
KARL A. GODSEY
DEPUTY CHIEFS

OUR REFERENCE WK-CS

January 29, 2009

The Honorable Faye P. Hanohano, Chair
and Members
Committee on Public Safety
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Hanohano and Members:

Subject: House Bill No. 336, Relating to DNA Collection for Arrestees of Violent Crimes

I am Wayne Kimoto, Acting Forensic Laboratory Director, Scientific Investigation Section, Honolulu Police Department.

The Honolulu Police Department opposes House Bill No. 336, Relating to DNA Collection for Arrestees of Violent Crimes. Passage of this bill would expand the deoxyribonucleic acid (DNA) database of convicted offenders to include individuals arrested for violent crimes.

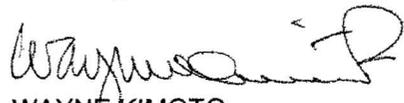
Although the Honolulu Police Department recognizes that DNA information is an invaluable tool for investigating criminal cases, this proposed expansion of the database includes an unanticipated cost to be borne by the Honolulu Police Department. There has been success with previous legislation enacted for the collection of DNA samples from convicted offenders, and we believe that its expansion to include arrestees of violent crimes will only add its success. Without the necessary funding to defray the cost of analysis, it would be difficult for the laboratory to analyze the additional samples.

Thank you for the opportunity to testify.

APPROVED:

Sincerely,

for: 
BOISSE P. CORREA
Chief of Police


WAYNE KIMOTO
Acting Forensic Laboratory Director
Scientific Investigation Section

Serving and Protecting With Aloha



CHARMAINE TAVARES
MAYOR

OUR REFERENCE
YOUR REFERENCE

POLICE DEPARTMENT COUNTY OF MAUI

55 MAHALANI STREET
WAILUKU, HAWAII 96793
(808) 244-6400
FAX (808) 244-6411



THOMAS M. PHILLIPS
CHIEF OF POLICE

GARY A. YABUTA
DEPUTY CHIEF OF POLICE

January 28, 2009

The Honorable Faye P. Hanohano, Chair
And members
Committee on Public Safety
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Hanohano and Members:

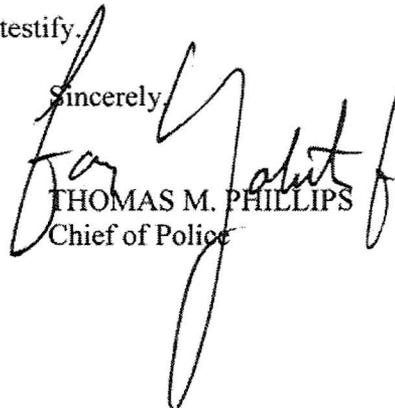
SUBJECT: House Bill No. 336, Relating to DNA Collection for Arrestees of Violent Crimes

I am Thomas M. Phillips, Chief of Police of the Maui County Police Department. We support House Bill No. 336, Relating to DNA Collection for Arrestees of Violent Crimes on its Intent.

The purpose of this bill is to require DNA collection from those arrested for violent crimes. However, it does not indicate how the expansion to the DNA program would be funded. Additional resources will be needed by all agencies, especially police departments who will be responsible for collecting DNA samples from those arrested for violent crimes during the initial intake. This bill does not specifically address the retroactive application provisions of Section 844D-41, HRS, which would require DNA collection from those who have been arrested for the specific crimes before the effective date of this measure.

Thank you for the opportunity to testify.

Sincerely,



THOMAS M. PHILLIPS
Chief of Police



HOUSE OF REPRESENTATIVES

STATE OF HAWAII
STATE CAPITOL
HONOLULU, HAWAII 96813

Date : Jan. 29, 2009

To : Rep. Faye Hanohano, Chair

Rep. Henry J.C. Aquino, Vice Chair

Member of the House Committee on Public Safety

Re : HB 336 - Relating to DNA COLLECTION FOR ARRESTEES OF VIOLENT CRIMES – IN FAVOR

Last session at a briefing put on by the Hawaii House Committee on Judiciary, U.S. Rep. Neil Abercrombie and City Prosecutor Peter Carlisle appeared together to urge the this Legislature to require DNA samples from all arrestees.

The Women's Caucus is sponsoring HB 336 which is similar to Katie's Law that is being proposed in Congress. Congressman Abercrombie is a strong proponent of this measure. A 23-year old New Mexico woman named Katie was brutally raped, murdered and her body set on fire. DNA from under her fingernails was recovered, but there was no match at the time despite the fact that the killer had been arrested on another crime. Three years later, when a DNA sample of the perpetrator was finally available because he was convicted for that crime, Katie's murder was finally solved.

HB 336 will save lives. Arrestee DNA testing can prevent violent crimes by providing early identification of serial offenders.

DNA testing can absolve the innocent. DNA is blind to ethnicity so it has no racial bias.

Twelve states now allow arrestee sampling.

Representative Barbara Marumoto
State Capitol Room 304, Honolulu HI 96813
Phone: (808) 586-6310, Fax: (808) 586-6311
Email: repmarumoto@capitol.hawaii.gov

Convict Janto indicted in '87 killing

Bongak "Jackie" Koja's murderer is accused in an old Hilo slaying

by Rod Thompson

thompson@starbulletin.com

HILO >> A man serving a life prison term for a notorious Oahu murder was indicted yesterday in a 1987 killing in Hilo.

Both victims were older women walking alone early in the morning, a similarity that led police to link the slayings.

A Big Island grand jury indicted Frank Janto, 44, yesterday for the Jan. 15, 1987, murder of Rose Chiquita, 65, of Hilo.

Janto is in a mainland prison for killing Bongak "Jackie" Koja, 56, early in the morning of June 9, 1997, near Leilehua High School on Oahu. He was convicted in April 1998.

That same year, Honolulu police noticed a similarity in

the two slayings and, learning that Janto had lived on the Big Island, passed along the information to Big Isle police.

Hawaii County police Lt. Randall Medeiros said Big Island police wrapped up their investigation in 2001 and turned the case over to the prosecutor. Aside from a brief additional investigation, the case has been with the prosecutor since then.

After a stint with the state attorney general's office, Deputy Prosecutor Rick Damerville rejoined the prosecutor's office in 2004 and received the Chiquita case. He declined to say anything about the delay in seeking an indictment.

"This will be a difficult trial for everyone — prosecution and defense — because of the passage of time," Damerville said without elaborating.

Chiquita apparently had almost no family ties and never married. However, she became

godmother to Norma Jean Castaneda, then a teenager and a fellow member of the Immaculate Heart of Mary Catholic Church in Papaikou just north of Hilo.

Castaneda, called yesterday to testify to the grand jury, said she was not happy at first. "After all these years, why?" she asked. But after testifying she said, "I feel kind of peaceful now."

Chiquita's body was found on the bathroom floor of a Hilo service station. Police said she bled to death from knife wounds.

For more than a decade, they had no suspect.

In the 1997 case, Koja was heard screaming as she was attacked, but witnesses told police they thought they were hearing rowdy teenagers. Koja's body was never recovered, but police determined that Janto dragged her body to the back of Leilehua High and threw it in a trash bin.

Later that day, the bin was taken to the HPOWER plant at Campbell Industrial Park, where her body was presumably destroyed in the incinerator.

Janto was convicted in Koja's murder and sentenced to life with the possibility of parole. The Hawaii Paroling Authority ordered him to serve a minimum of 75 years.

James Koja, Jackie Koja's widower, now 77, said last night he is still healing from the pain of his wife's murder.

"I'm getting over it," he said. "It takes a lot of time."

As for Janto, Koja said, "I try not to think about him. It's been more than 10 years already."

Koja said he does not know whether Janto's indictment in the Hilo case matters much "since he's still in jail, and there's nothing he can do."

Janto was born in South Carolina in 1963, the youngest of seven sons. He moved to

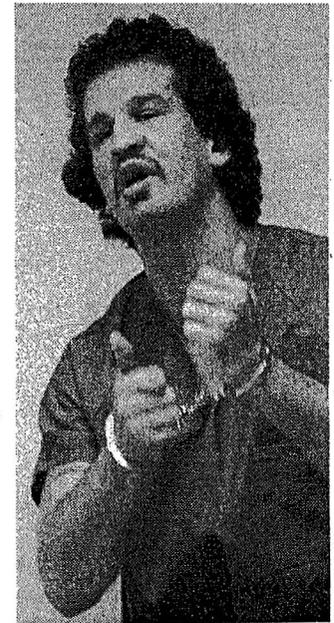
Hawaii with his mother in 1970 when his parents divorced. He eventually dropped out of school and was an alcoholic by age 15, city Prosecutor Peter Carlisle said in a statement to the parole board.

As a youth Janto was convicted of terroristic threatening, car theft and two assaults. His first felony as an adult was car theft, Carlisle said.

Janto was put on probation and given substance abuse counseling but continued to beat his girlfriend, threatening to disfigure and kill her, Carlisle said. He was also convicted of molesting his girlfriend's 7- and 9-year-old daughters.

A later conviction involved a 65-year-old woman who was beaten near the Ala Wai Canal but escaped with severe injuries.

Star-Bulletin reporter
Leila Fujimori contributed
to this report.



STAR-BULLETIN / JULY 1998

Frank Janto, convicted murderer of Wahiawa resident Bongak "Jackie" Koja, speaks to the Hawaii Paroling Authority at Halawa prison.

Killer Janto indicted in '87 Hilo cold case



Frank Charles Janto:
Convicted in 1998 of killing Bongak Koja near Leilehua High School in Wahiawa

Both were older women who liked to walk alone early in the morning.

Bongak "Jackie" Koja, 56, strolled near Leilehua High School in Wahiawa.

Rose Chiquita, 65, of Hilo collected discarded soda cans along her route.

Chiquita was found stabbed to death in 1987 in a Hilo service station, and for 10 years police had no suspect.

That changed in 1998, when Frank Janto was convicted in Koja's murder and Honolulu police noticed similarities in the cases.

With Janto as a suspect, Big Isle police renewed their investigation into the Chiquita murder. Yesterday,

after 21 years, a grand jury indicted him.

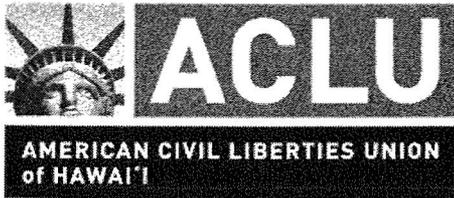
"This will be a difficult trial for everyone — prosecution and defense — because of the passage of time," said Deputy Prosecutor Rick Damerville in Hilo.

Norma Jean Castaneda, who knew Chiquita as a fellow member of Immaculate Heart of Mary Catholic Church, said yesterday she resented her grand jury subpoena at first.

But after testifying she remarked, "I feel kind of peaceful now."

Janto remains in a mainland prison, serving a minimum term of 75 years for Koja's killing.

STAR-BULLETIN / FULL STORY, A6



VIA E-MAIL: PBStestimony@capitol.hawaii.gov

Committee: Committee on Public Safety
Hearing Date/Time: Thursday, January 29, 2009, 8:30 a.m.
Place: State Capitol, Conference Room 309
Re: *Testimony of the ACLU of Hawaii in Opposition to H.B. 336, Relating to DNA Collection for Arrestees of Violent Crimes*

Dear Chair Hanohano and Members of the Committee on Public Safety:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in opposition to H.B. 336, which seeks to require the State to maintain a database of genetic information on innocent individuals. The ACLU opposes this bill because it is unconstitutional, ineffective, and costly.

I. DNA Collection of Arrestees is Unconstitutional

A bedrock constitutional principle is that individuals are innocent until proven guilty. House Bill 336, however, ignores this principle and treats those who are arrested as though they are guilty upon arrest.

Subjecting arrestees to DNA tests would violate arrestees’ Fourth Amendment rights to be free from unreasonable searches and seizures. In fact, one court has already ruled that this practice is unconstitutional: in *In re C.T.L.*, 722 N.W.2d 484, 491 (Min. App. 2006), the court ruled that there was “no basis for concluding that the state’s interest in taking a biological specimen from a person solely because the person has been charged outweighs the person’s right to privacy.” Unless and until an arrestee is provided with due process and is convicted, the arrestee retains the same privacy rights as any other member of society; subjecting arrestees to DNA tests therefore violates their Fourth Amendment rights, along with the analogous provisions of the Hawaii Constitution. *See* Hawaii Const. Art. I, § 6 (“The right of the people to privacy is recognized and shall not be infringed without the showing of a compelling state interest. The legislature shall take affirmative steps to implement this right.”); *id.* at § 7 (“The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches, seizures and invasions of privacy shall not be violated[.]”).

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: 808.522-5900
F: 808.522-5909
E: office@acluhawaii.org
www.acluhawaii.org

Notably, the European Court of Human Rights (“ECHR”) ruled in December 2008 that Great Britain’s program of collecting DNA from arrestees violated arrestees’ basic human rights: “the blanket and indiscriminate nature of the powers of retention of the fingerprints, cellular samples and DNA profiles of persons suspected but not convicted of offences . . . fails to strike a fair balance between the competing public and private interests[.]” *S. and Marper v. The United Kingdom*, __ Eur. Ct. H.R. __ (2008), at ¶ 125.¹ The ECHR went on to explain that government maintenance of a genetic database of innocent individuals “constitutes a disproportionate interference with the applicants’ right to respect for private life and cannot be regarded as necessary in a democratic society.”

With regard to privacy rights, the Legislature should take into account the amount of personal and private data contained in a DNA specimen. The DNA provides insights into the most personal family relationships and the most intimate workings of the human body, including the likelihood of the occurrence of over 4,000 types of genetic conditions and diseases. Because genetic information pertains not only to the individual whose DNA is sampled, but to everyone who shares in that person’s blood line, potential threats to genetic privacy posed by the collection of genetic information extends well beyond those individuals whose DNA is collected.

II. DNA Collection of Arrestees is Ineffective and Costly

We should not saddle law enforcement personnel with additional tasks like analyzing innocent individuals’ DNA – a task that has a low probability of solving or preventing crime – when they do not have the resources to investigate those areas with the highest probability of leading to an arrest or conviction. Sexual assault victims frequently have to wait upwards of a year for the state laboratory to analyze rape kits, and it may be years before law enforcement personnel complete DNA testing of all convicted felons. Although we often hear that expanding the DNA database will improve law enforcement capabilities, we cannot improve our chances of finding a needle in a haystack by increasing the size of the haystack. Instead, law enforcement personnel should spend their resources wisely, focusing on those areas that are most likely to result in an arrest or conviction.

¹ The full text of the decision is available at <http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=Marper&sessionId=18507209&skin=hudoc-en>.

Hon. Rep. Hanohano, Public Safety Committee,
and Members Thereof
January 29, 2009
Page 3 of 3

In the United Kingdom, the enactment of arrestee testing in 2004, which has corresponded with a ballooning of the UK database from 2 million to 3 million profiles (including those of more than 125,000 people never charged with any crime), has actually corresponded with a slight *decrease* in matches with crime scene evidence. *See GeneWatch UK, The Police National DNA Database: An Update* (Human Genetics Parliamentary Briefing No. 6, July 2006).²

Finally, we suggest that this Committee should consider the cost of DNA testing of arrestees. The State of Tennessee decided not to proceed with its plans to expand its DNA databases when it determined the cost of hiring six additional DNA analysts was too high.³ Money spent on DNA testing of arrestees is money not being spent on other law enforcement strategies that have been proven to work (such as hiring additional police officers), nor are these dollars being spent on other programs that have been proven to reduce crime rates (such as education or mental health care).

The mission of the ACLU of Hawaii is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawaii fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawaii is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawaii has been serving Hawaii for over 40 years.

Thank you for this opportunity to testify.

Sincerely,



Daniel M. Gluck
Senior Staff Attorney
ACLU of Hawaii

² Available at http://www.genewatch.org/uploads/f03c6d66a9b354535738483c1c3d49_e4/MPSBrief_1.pdf.

³ *See Tania Simoncelli and Sheldon Krinsky, A New Era of DNA Collections: At What Cost to Civil Liberties?*, American Constitution Society for Law and Policy (August 2007), available at http://www.acslaw.org/files/Microsoft%20Word%20-%20Simoncelli%20&%20Krinsky%20-%20DNA%20Collection%20&%20Civil%20Liberties%20-%20September%202007_0.pdf.

American Civil Liberties Union of Hawai'i
P.O. Box 3410
Honolulu, Hawai'i 96801
T: 808.522-5900
F: 808.522-5909
E: office@acluhawaii.org
www.acluhawaii.org

COMMUNITY ALLIANCE ON PRISONS

76 North King Street, Suite 203, Honolulu, Hawai'i 96817

Phone/E-mail: (808) 533-3454/kat.caphi@gmail.com

LATE TESTIMONY



COMMITTEE ON PUBLIC SAFETY

Rep. Faye Hanohano, Chair

Rep. Henry Aquino, Vice Chair

Thursday, January 29, 2009

8:30 AM

Room 309

OPPOSITION to HB 336 - DNA Collection from Arrestees

Aloha Chair Hanohano, Vice Chair Aquino and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative working to improve conditions of confinement for our incarcerated individuals, enhance our quality of justice, and promote public safety. We come today to speak for the 6,000+ individuals whose voices have been silenced by incarceration, always mindful that more than 2,000 of those individuals are serving their sentences abroad, thousands of miles from their homes and loved ones.

HB 336 requires DNA collection from those arrested for violent crimes.

While Community Alliance on Prisons supports DNA collection from convicted individuals, we oppose this measure - collecting DNA for arrestees - on several grounds:

- It denies the basic principle of democracy - innocent until proven guilty.
- It is an invasion of privacy - unlike fingerprints; DNA reveals an individual's entire bloodline.
- Most states confine DNA collection to those individuals convicted of a crime.
- There is already a backlog of collected, but untested rape kits in Hawai'i.
- The state has not yet collected DNA samples for all incarcerated people - so expanding the program will only cause a greater backlog.
- The Minnesota Court of Appeals ruled in 2006 that taking DNA from juveniles and adults arrested for violent felonies or burglaries violated federal and state prohibitions against unreasonable searches and seizures. This would be a violation of the Fourth Amendment.
- The Tennessee legislature repealed a similar law in 2006 because of the expense of hiring six additional DNA analysts needed to process the samples
- California, which began taking DNA swabs from adults arrested for murder or rape in November 2004, experienced backlogs of 160,000 DNA samples waiting to be processed by early last year.

A January 21, 2008 editorial in the Honolulu Star Bulletin reported that only 11 states have enacted laws to take DNA from arrestees, and two of those have stopped doing so. States that have neglected to sufficiently increase the staff of analysts have experienced severe backlogs.

How then can Hawai'i afford to expand a program that hasn't even been able to meet its original goal in this austere fiscal climate? Please hold this bill. Mahalo for the opportunity to testify.