



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2026**

ON THE FOLLOWING MEASURE:

S.B. NO. 3073, S.D. 1, RELATING TO THE RETENTION OF BIOLOGICAL EVIDENCE.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

DATE: Thursday, March 19, 2026 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Mark S. Tom, Deputy Attorney General

Chair Tarnas and Members of the Committee:

The Department of the Attorney General strongly supports this bill, with suggested amendments.

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 also establishes a process for the disposal of biological evidence earlier than the prescribed retention period if certain standards are met and includes a procedure to provide defendants with the opportunity to oppose the disposal of biological evidence by filing an objection with the court.

Section 844D-126(a), Hawaii Revised Statutes, currently requires 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.

These requirements are broad, and the use of the phrase "may contain" could be interpreted to require the retention of virtually all 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 if: (1) there is almost no chance that a piece of evidence actually contains biological evidence, and/or (2) biological evidence is not relevant to the case.

These broad requirements have caused storage problems statewide. DNA material could be on many things, including any item that has been in physical contact with human hair, saliva, blood, semen, sweat, skin, skin cells, or breath. It could potentially be found on any surface within a car, boat, or bus. This bill establishes reasonable requirements for the retention of biological evidence by: (1) limiting the retention requirements to evidence related to cases that resulted in convictions for specified serious felony offenses, in which the perpetrator's identity was at issue, and the evidence in question could reasonably be used for DNA analysis to identify or exclude someone as the perpetrator; (2) maintaining the retention periods of the current law; and (3) providing two methods for the disposal of evidence before the expiration of the required retention period, one based on a court order allowing for the disposal and the second based on a notice process that affords the defendant an opportunity to have a court hearing to challenge the disposal of the evidence at issue.

The prior Committee added a definition of "contested issue of identity," however, that phrase is not used anywhere in this bill, so the Department recommends replacing the term "contested issue of identity" on page 2, line 4, and page 3, line 10, with **"contested issue in the case."** The phrase "contested issue in the case" is used repeatedly.

The current version of this bill also allows parties to request—and the court to order—retention of biological evidence in all felony cases that meet certain requirements, in section 844D-126(h), HRS, on page 10, lines 11-20. For clarity and consistency with the rest of the bill, the Department recommends that this provision be

amended as follows (Ramseyer formatting in the bill removed to reflect additional recommended changes):

(h) Notwithstanding any other provision of this chapter, upon the motion of a defendant or prosecutor or on the court's own motion, the court may order retention of ~~[biological]~~ any evidence ~~[in any]~~ related to the investigation or prosecution of a felony case, for the period ~~[otherwise required under this chapter]~~ stated in subsection (b), if ~~[the court finds, based on the record, that]:~~

- (1) ~~[Biological evidence exists or was collected in the case;]~~ The identity of the defendant, as the perpetrator of the offense that resulted in the judgment of conviction, was a contested issue in the case; and
- (2) ~~[Biological]~~ The evidence could reasonably be ~~[material to establishing or disproving]~~ used for DNA analysis to:
 - (A) Establish the identity of the ~~[perpetrator.]~~ person who committed the offense that resulted in the judgment of conviction; or
 - (B) Exclude a person from the group of persons who could have committed the offense that resulted in the judgment of conviction.

The Department respectfully requests the passage of this bill with the recommended amendments. Thank you for the opportunity to testify on this matter.

JON N. IKENAGA
PUBLIC DEFENDER

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March 18, 2026

SB 3073 SD1: RELATING TO THE RETENTION OF BIOLOGICAL EVIDENCE

Chair Tarnas, Vice Chair Poepoe, and Members of the Committee on Judiciary & Hawaiian Affairs

The Office of the Public Defender (OPD) **opposes SB 3073 SD1.**

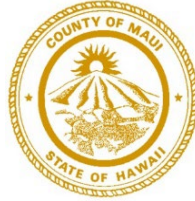
The amendment to the original bill, SB 3073, which adds proposed HRS § 844D-126(h), alleviates many of our prior concerns. However, SB 3073 SD1 continues to place the burden on defendants to prevent the destruction of evidence. Even under proposed HRS § 844D-126(h), defendants have the burden of proving that “[b]iological evidence exists or was collected in the case”. It should be the prosecution and the agency having custody of the evidence and the agency requesting the destruction of the evidence who have the burden of proving that biological evidence does not exist. In the first instance, by collecting the evidence, the agency investigating the case certainly believed it could contain biological evidence. Furthermore, the agency having custody of the evidence is in the best position to test for biological evidence.

Thank you for the opportunity to comment on this measure.

RICHARD T. BISSEN, JR.
Mayor

ANDREW H. MARTIN
Prosecuting Attorney

SHELLY C. MIYASHIRO
First Deputy Prosecuting Attorney



DEPARTMENT OF THE PROSECUTING ATTORNEY
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TESTIMONY ON
S.B. 3073 SD1
RELATING TO RETENTION OF BIOLOGICAL EVIDENCE

March 18, 2026

The Honorable David A. Tarnas
Chair
The Honorable Mahina Poepoe
Vice Chair
and Members of the Committee on Judiciary & Hawaiian Affairs

Chair Tarnas, Vice Chair Poepoe, and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui respectfully submits the following comments **in support of S.B. 3073 SD1, Relating to Retention of Biological Evidence**. This measure establishes reasonable guidelines and limitations for post-conviction retention of biological evidence by law enforcement agencies and the courts, as well as a process for earlier disposal of biological evidence if certain standards are met and an opportunity for a defendant to oppose the disposal.

We support this bill for a number of reasons. First, it clarifies the threshold for when an item contains sufficient biological evidence to require retention for the statutory period. Current retention policies do not have a minimum threshold, resulting in items with the potential to contain any amount of biological evidence being retained for the statutory period, regardless of whether it may contain sufficient biological evidence to be tested. This bill would free up much-needed storage space in government evidence storage facilities.

Second, this bill creates a disposal procedure that would allow defendants a reasonable opportunity to oppose the disposal of biological evidence. This is a significant factor in preserving a defendant's constitutional due process rights and ensures that existing convictions are not jeopardized.

For these reasons, the Department of the Prosecuting Attorney, County of Maui **supports**

S.B. 3073 SD1. Please feel free to contact our office at (808) 270-7777 if you have any questions or inquiries. Thank you very much for the opportunity to provide testimony on this bill.

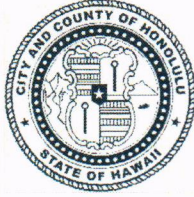
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mony submitted late may not be considered by the Committee for decision making purposes.

HONOLULU POLICE DEPARTMENT
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CITY AND COUNTY OF HONOLULU

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OUR REFERENCE VL-RZ

March 19, 2026

The Honorable David A. Tarnas, Chair
and Members
Committee on Judiciary
and Hawaiian Affairs
House of Representatives
415 South Beretania Street, Room 325
Honolulu, Hawaii 96813

Dear Chair Tarnas and Members:

SUBJECT: Senate Bill No. 3073, S.D. 1, Relating to the Retention of
Biological Evidence

I am Vince Legaspi, Captain of the Criminal Investigation Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports Senate Bill No. 3073, S.D. 1, Relating to the Retention of Biological Evidence.

Under current law, evidence custodians must retain any evidence that may contain biological material, regardless of offense severity or whether identity was ever an issue. This has created significant storage challenges for the HPD, such as retaining entire vehicles and other large items based solely on speculative forensic value, even when deoxyribonucleic acid (DNA) evidence was not relevant to the case.

This bill limits retention requirements to serious felony cases in which the identity of the perpetrator was contested, and the evidence could reasonably contain biological material suitable for DNA analysis. It also preserves due process by providing defendants with notice, an opportunity to object, and judicial oversight before evidence may be disposed of.

By clarifying retention standards and defining "biological evidence," this measure allows law enforcement agencies to manage evidence storage while continuing to protect the rights of defendants and the integrity of the justice system.

The Honorable David A. Tarnas, Chair
and Members
March 19, 2026
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The HPD urges you to support Senate Bill No. 3073, S.D. 1, Relating to the Retention of Biological Evidence.

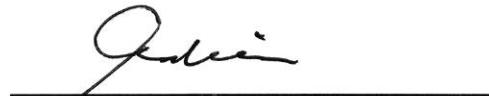
Thank you for the opportunity to testify.

Sincerely,



Vince Legaspi, Captain
Criminal Investigation Division

APPROVED:



Rade K. Vanic
Interim Chief of Police