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February 23, 2026

SB 3073: RELATING TO THE RETENTION OF BIOLOGICAL EVIDENCE

Chair Rhoads, Vice Chair Gabbard, and Members of the Committee on Judiciary

The Office of the Public Defender (OPD) **strongly opposes SB 3073**, which will effectively eliminate the requirement that, for all criminal cases resulting in judgments of conviction, all evidence “that may contain biological evidence that could be used for DNA analysis shall be retained” for specified periods, Hawaii Revised Statutes (“HRS”) Section 844D-126 (2014).

SB 3073 limits the retention of biological evidence in five major ways: 1) forcing defendants to go to trial on the sole issue of disputing their identification as the perpetrators, 2) restricting the crimes that qualify for evidence retention, 3) freezing the progress of science, 4) shifting the burden to defendants to justify the preservation of evidence, and 5) requiring the actual testing of evidence for useful biological material.

First, SB 3073 unconstitutionally requires defendants to “contest” their identification as the perpetrators in order to preserve biological evidence, proposed HRS § 844D-126(a)(1) & (g)(1). There is only one way to contest identification: a trial.¹ In addition to forcing a trial on identification, SB 3073 violates Due Process by dictating the trial defense to the exclusion of other viable but contradictory defenses. In fact, by forcing the defense of identity, proposed HRS § 844D-

¹ Conversely, defendants who accept plea bargains must forever give up their right to analyze the biological evidence.

126(a)(1) & (g)(1) will require testing of all possible biological evidence by either the defense or the prosecution thereby obviating the need for future storage.

Second, SB 3073 reduces the crimes that qualify for evidence retention to a handful, proposed HRS § 844D-126(a)(2). There is no explanation why retention is limited to these crimes. For example, why does SB 3073 not require retention for sexual assault in the third degree or for burglaries where perpetrators often leave biological evidence? HRS § 844D-126(a)(2) (2014) already provides the appropriate balance by mandating a retention period corresponding to the severity of the crime.

Third, by limiting retention only for evidence the “could reasonably be determined to contain biological evidence that could be used for DNA analysis,” proposed HRS § 844D-126(a)(3), see also proposed HRS § 844D-126(g)(2) & proposed HRS § 844D-121(3), SB 3073 in effect requires retention based only on current science, and ignores the rapid progress that led to the development of DNA identification in the first instance. Since the passage of HRS §§ 844D-121 and 126 in 2005, science has reduced the amount of DNA needed to generate a full profile to just 50 picograms of DNA, developed DNA phenotyping that can be used to predict hair and eye colors, and created genetic genealogy that enables the identification of distant relatives. It is this genetic genealogy technology that enabled the identification in 2024 of a body found in Manoa in 2010.² It is a certainty that the amount of DNA reasonably needed for analysis will be less in the future than it is today. And what if there is DNA evidence in a case but in an amount or of a kind unusable for testing using today’s technology? Will the defendant still have to “contest” identity at a trial in order to preserve this evidence? Will the evidence not qualify for preservation under SB 3073 because it is currently not usable for analysis? Given the progress of science and the exponential reduction in cost of DNA testing, there should be no curtailment in the ability to prove innocence.

Fourth, SB 3073 places the burden on defendants to prevent the destruction of evidence. Proposed HRS § 844D-126(c)(2)(A) will require defendants, who are likely incarcerated in facilities with notoriously slow mail distribution, to timely file legal pleadings objecting to the destruction of evidence.³ The agency requesting the destruction of evidence will present to a court a mere letter stating it is more likely than not that useful biological evidence does not exist and will not even present a witness to testify about the evidence because the Hawai‘i Rules of Evidence would not apply to proposed HRS § 844D-126(f) hearings. Thus, proposed HRS § 844D-

² <https://www.hawaiinewsnow.com/2024/07/17/police-identify-victim-unsolved-manoa-murder/>

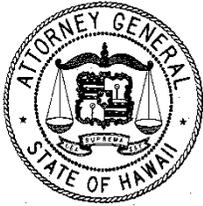
³ The incarcerated defendant will even be required to serve the correct prosecutor, proposed HRS § 844D-126(e)(2).

126(g)(2) will shift the burden and require defendants to actually test the evidence for DNA in order to show the court that there is useful DNA evidence worth preserving.

Finally, considering the combined consequences of all the points above, SB 3073 does away with preserving virtually all biological evidence. Requiring defendants to have trials contesting identification as well as to prove that the evidence “contains biological evidence that could reasonably be used for DNA analysis” in effect requires defendants to test the evidence themselves.

SB3073 effectively repeals HRS § 844D-126 (2014) while dangling the illusory promise of relief of HRS § 844D-121 (2014). The OPD opposes SB3073.

Thank you for the opportunity to comment on this measure.



**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, RELATING TO RETENTION OF BIOLOGICAL EVIDENCE.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Tuesday, February 24, 2026 **TIME:** 9:45 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Michelle M. Puu, Deputy Attorney General

Chair Rhoads 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 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 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 disposal of the evidence at issue.

The Department respectfully requests the passage of this bill.

HONOLULU POLICE DEPARTMENT
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NĀ HOPE LUNA NUI MĀKA'I KŪIKAWA

OUR REFERENCE **VL-RZ**

February 24, 2026

The Honorable Karl Rhoads, Chair
and Members
Committee on Judiciary
State Senate
415 South Beretania Street, Room 016
Honolulu, Hawai'i 96813

Dear Chair Rhoads and Members:

SUBJECT: Senate Bill No. 3073, 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, 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.

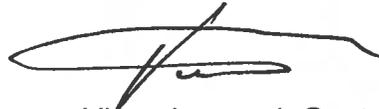
By clarifying retention standards and defining "biological evidence," this measure allows law enforcement agencies to manage evidence storage while continuing to protect the rights of defendants and the integrity of the justice system.

The Honorable Karl Rhoads, Chair
and Members
February 24, 2026
Page 2

The HPD urges you to support Senate Bill No. 3073, 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

RICHARD T. BISSEN, JR.
Mayor

ANDREW H. MARTIN
Prosecuting Attorney

SHELLY C. MIYASHIRO
First Deputy Prosecuting Attorney



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TESTIMONY ON
S.B. 3073
RELATING TO RETENTION OF BIOLOGICAL EVIDENCE

February 23, 2026

The Honorable Karl Rhoads
Chair
The Honorable Mike Gabbard
Vice Chair
and Members of the Committee on Judiciary

Chair Rhoads, Vice Chair Gabbard, 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, 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. 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.