

1 "Sample" means human biologic material collected in a
 2 manner specified in the department's rules or internal
 3 regulations promulgated pursuant to section -3, including but
 4 not limited to, saliva collected by means of buccal swab.

5 "Specimen" means human biologic material collected in a
 6 manner specified in the department's rules or internal
 7 regulations promulgated pursuant to section -3, including,
 8 but not limited to, blood.

9 § -2 Administration. The department shall be
 10 responsible for the management and administration of the State's
 11 DNA database and databank identification program and for liaison
 12 with the Federal Bureau of Investigation (FBI) and other
 13 relevant agencies regarding the State's participation in a
 14 national DNA database such as the FBI's Combined DNA Index
 15 System (CODIS) that allows the storage and exchange of DNA
 16 records submitted by state and local forensic DNA laboratories
 17 nationwide.

18 § -3 Implementation. (a) The department shall be
 19 responsible for implementing this chapter.

20 (b) The department, the polices department of the counties
 21 of Hawaii, Kauai, and Maui, the department of public safety, and
 22 the office of youth services shall adopt rules and internal



1 regulations for the implementation of this chapter, as
2 necessary, to give effect to the intent and purpose of this
3 chapter, and to ensure that databank blood specimens or buccal
4 swab samples, and print impressions are collected from
5 qualifying offenders in a timely manner, as soon as possible
6 after conviction, or a plea or finding of guilty, no contest, or
7 not guilty by reason of insanity, or upon the disposition
8 rendered in the case of a juvenile who is adjudicated as a law
9 violator for commission of any of this chapter's enumerated
10 qualifying offenses, or when it is determined that a qualifying
11 offender has not given the required samples.

12 (c) Records, specimens, samples, data, and other
13 information assembled pursuant to this chapter shall be
14 considered government records excepted from the general rule by
15 section 92F-13 and information in which an individual has a
16 significant privacy interest within the meaning of section
17 92F-14(b)(2) and shall not be open to public inspection.

18 **PART II. COLLECTION, ANALYSIS, AND REPOSITORY**

19 **§ -21 Collection of specimens, samples, and print**
20 **impressions at correctional facility or other detention**
21 **facility.** (a) When the specimens, samples, and print
22 impressions required by this chapter are collected at a



1 correctional facility or other detention facility, including a
2 private correctional facilities, the chief administrative
3 officer of the correctional facility or other detention facility
4 shall be responsible for ensuring all of the following:

5 (1) The requisite specimens, samples, and print
6 impressions are collected from qualifying offenders
7 during the intake process at that facility, or
8 reasonably promptly thereafter;

9 (2) The requisite specimens, samples, and print
10 impressions are collected as soon as administratively
11 practicable after a qualifying offender reports to the
12 facility for the purpose of providing specimens,
13 samples, and print impressions; and

14 (3) The specimens, samples, and print impressions
15 collected pursuant to this chapter are forwarded
16 immediately to the department, and in compliance with
17 this chapter.

18 (b) The specimens, samples, and print impressions required
19 by this section shall be collected by a person using a
20 collection kit approved by the department and in accordance with
21 the requirements and procedures set forth in section -62.



1 **§ -22 Analysis and examination of specimens for**
2 **identification purposes.** (a) The department shall authorize
3 DNA analysis and other forensic identification analysis pursuant
4 to this chapter only for identification purposes.

5 (b) The department shall perform examinations of print
6 impressions pursuant to this chapter only for identification
7 purposes.

8 **§ -23 Repository of samples and records.** (a) The
9 department may designate itself or other appropriate entities to
10 serve as repositories for blood specimens and buccal swab and
11 other biological samples collected, and the designated entity
12 shall analyze specimens and samples, and store, compile,
13 correlate, compare, maintain, and use DNA and forensic
14 identification profiles and records related to the following:

- 15 (1) Forensic casework and forensics unknown;
- 16 (2) Known and evidentiary specimens and samples from crime
17 scenes or criminal investigations;
- 18 (3) Missing or unidentified persons;
- 19 (4) Persons required to provide specimens, samples, and
20 print impressions under this chapter;
- 21 (5) Legally obtained samples; and



1 (6) Anonymous DNA records used for training, research,
2 statistical analysis of populations, quality
3 assurance, or quality control.

4 (b) The designated entity shall include files as necessary
5 to implement this chapter.

6 (c) Nothing in this section shall be construed as
7 requiring the designated entity to provide specimens or samples
8 for quality control or other purposes to those who request
9 specimens or samples.

10 (d) Submission of samples, specimens, or profiles for the
11 state DNA database and data bank program shall include
12 information as required by the department for ensuring search
13 capabilities and compliance with National DNA Index System
14 standards.

15 **PART III. OFFENDERS SUBJECT TO COLLECTION OF SPECIMENS,**
16 **SAMPLES, AND PRINT IMPRESSIONS**

17 **§ -31 Offenders subject to collection.** (a) The
18 following persons shall provide buccal swab samples and print
19 impressions of each hand, and, if required by the collecting
20 agency's rules or internal regulations, blood specimens,
21 required for law enforcement identification analysis:



1 (1) Any person, including any juvenile, who is convicted
2 of, or pleads guilty or no contest to, any felony
3 offense, even if the plea is deferred, or is found not
4 guilty by reason of insanity of any felony offense; or

5 (2) Any juvenile adjudicated as a law violator of any
6 offense that would be a felony if committed by an
7 adult.

8 (b) Any adult person who is arrested for or charged with
9 any of the following offenses shall provide buccal swab samples
10 and print impressions of each hand required for law enforcement
11 identification analysis:

12 (1) Any felony offense for which registration pursuant to
13 chapter 846E would be required if the person were to
14 be convicted of the offense;

15 (2) Murder in any degree or manslaughter; or

16 (3) Any felony offense.

17 (c) Testing pursuant to this section shall begin
18 immediately for all persons who have been convicted of murder in
19 any degree or any offense defined in chapter 846E, but shall not
20 begin for other persons until thirty days after statewide
21 publication of notice by the attorney general pursuant to
22 section 1-28.5.



1 (d) The attorney general's notice, pursuant to subsection
2 (c), may be announced in stages, beginning with notice of the
3 beginning of testing of all persons not already mandated to be
4 tested by subsection (c) who have been convicted of a class A
5 felony, then notice of the beginning of testing of all persons
6 not already mandated to be tested by subsection (c) who have
7 been convicted of a class B felony, then notice of the beginning
8 of testing of all persons not already mandated to be tested by
9 subsection (c) who have been convicted of a class C felony, then
10 notice of the beginning of testing of all class A felony
11 arrestees, then notice of the beginning of testing of all class
12 B felony arrestees, and finally notice of the beginning of
13 testing of all class C felony arrestees.

14 (e) Nothing in this section shall be construed as
15 prohibiting collection and analysis of specimens, samples, or
16 print impressions as a condition of a plea for a non-qualifying
17 offense.

18 **§ -32 Application to all qualifying persons.** (a) The
19 provisions of this chapter and its requirements for submission
20 of specimens, samples, and print impressions as soon as
21 administratively practicable shall apply to all qualifying
22 persons regardless of sentence imposed, including any sentence

1 of life without the possibility of parole, or any life or
2 indeterminate term, or any other disposition rendered in the
3 case of an adult or juvenile tried as an adult, and regardless
4 of disposition rendered or placement made in the case of
5 juvenile who is found to be responsible for having committed any
6 offense that would be a felony if committed by an adult.

7 (b) The provisions of this chapter and its requirements
8 for submission of specimens, samples, and print impressions as
9 soon as administratively practicable by qualified persons as
10 described in this section shall apply regardless of placement or
11 confinement in any mental hospital or other public or private
12 treatment facility.

13 (c) The provisions of this chapter are mandatory and apply
14 whether or not the court advises a person, including any
15 juvenile, that the person must provide the data bank and
16 database specimens, samples, and print impressions as a
17 condition of probation, parole, or any plea of guilty, no
18 contest, or not guilty by reason of insanity, or any admission
19 to any of the offenses described in subsection (a).

20 **§ -33 Notification by prosecutor and inquiry by court.**

21 (a) If at any stage of court proceedings the prosecutor
22 determines that specimens, samples, and print impressions



1 required by this chapter have not already been taken from any
2 person required to give specimens, samples, and print
3 impressions by this chapter, the prosecutor shall notify the
4 court orally on the record, or in writing, and request that the
5 court order collection of the specimens, samples, and print
6 impressions required by law. However, a failure by the
7 prosecutor or any other law enforcement agency to notify the
8 court shall not relieve a person of the obligation to provide
9 specimens, samples, and print impressions pursuant to this
10 chapter.

11 (b) Prior to final disposition or sentencing in the case
12 the court shall inquire and verify that the specimens, samples,
13 and print impressions required by this chapter have been
14 obtained and that this fact is included in the judgment or
15 dispositional order in the case of a juvenile. The judgment
16 issued by the court shall indicate that the court has ordered
17 the person to comply with the requirements of this chapter and
18 that the person shall be included in the State's DNA and
19 Forensic Identification Data Base and data bank program and be
20 subject to this chapter. However, failure by the court to enter
21 these facts in the judgment shall not invalidate a plea,



1 conviction, or disposition, or otherwise relieve a person from
2 the requirements of this chapter.

3 **§ -34 Specimens, samples and print impressions required**
4 **by this chapter for present and past qualifying offenses of**
5 **record.** (a) Specimens, samples, and print impressions required
6 by this chapter shall be collected from any adult person
7 following arrest for a felony offense as specified in section
8 -31.

9 Thirty days after the statewide publication of notice by
10 the attorney general as provide by section -31, each adult
11 person arrested for a felony offense as specified in section
12 -31(b) shall provide the buccal swab samples and print
13 impressions during the booking or intake or reception center
14 process or as soon as administratively practicable after arrest,
15 but in any case, prior to release on bail or pending trial or
16 any physical release from confinement or custody.

17 (b) If, subsequent to the enactment of this chapter, the
18 person subject to this chapter did not have specimens, samples,
19 and print impressions taken immediately following arrest or
20 during booking or intake procedures or is released on bail or
21 pending trial or is not confined or incarcerated at the time of
22 sentencing or otherwise bypasses a prison inmate reception



1 center maintained by the department of public safety, the court
2 shall order the person to report within five calendar days to a
3 correctional facility or to a state, county, private, or other
4 designated facility to provide the required specimens, samples,
5 and print impressions in accordance with this chapter.

6 **§ -35 Collection from persons confined or in custody**
7 **after conviction or adjudication.** Any person, including any
8 juvenile who is imprisoned or confined or placed in a state
9 correctional facility, a county correctional facility, a
10 facility within the jurisdiction of the office of youth
11 services, the department of public safety, a residential
12 treatment program, or any state, county, private, or other
13 facility after a conviction of any felony or misdemeanor
14 offense, or any adjudication or disposition rendered in the case
15 of a juvenile, whether or not that crime or offense is one set
16 forth in section -31, shall provide buccal swab samples and
17 print impressions and, if required by the collecting agency's
18 rules or internal regulations, blood specimens, immediately at
19 intake, or during the prison reception center process, or as
20 soon as administratively practicable at the appropriate
21 custodial or receiving institution or placed in program if the
22 person has a record of any past or present conviction, or



1 adjudication as a juvenile law violator, of a qualifying offense
 2 described in section -31 or has a record of any past or
 3 present conviction or adjudication in any other court, including
 4 any state, federal, or military court, of any offense, that, if
 5 committed or attempted in this State, would have been punishable
 6 as an offense described in section -31, and the person's
 7 blood specimens, buccal swab samples, and print impressions
 8 authorized by this chapter are not in the possession of the
 9 department or have not been recorded as part of the department's
 10 DNA data bank program.

11 **§ -36 Collection from persons on probation, parole, or**
 12 **other release.** (a) Any person, including any juvenile, who has
 13 a record of any past or present conviction or adjudication for
 14 an offense set forth in section -31, and who is on probation
 15 or parole for any felony or misdemeanor offense, whether or not
 16 that crime or offense is one set forth in section -31(a),
 17 shall provide buccal swab samples and print impressions and, if
 18 required pursuant to this chapter, blood specimens if:

- 19 (1) The person has a record of any past or present
- 20 conviction or adjudication as a juvenile law violator
- 21 of a qualifying offense described in section -31 or
- 22 has a record of any past or present conviction or



1 adjudication in any other court, including any state,
 2 federal, or military court, of any offense that, if
 3 committed or attempted in this State, would have been
 4 punishable as an offense described in section -31;
 5 and

6 (2) The person's blood specimens, buccal swab samples, and
 7 print impressions authorized by this chapter are not
 8 in the possession of the department or have not been
 9 recorded as part of the department's DNA data bank
 10 program.

11 (b) The person shall have any required specimens, samples,
 12 and print impressions collected within five calendar days of
 13 being notified by the court, or a law enforcement agency or
 14 other entity authorized by the department. The specimens,
 15 samples, and print impressions shall be collected in accordance
 16 with section -21 at a correctional facility or a state,
 17 county, private, or other facility designated for this
 18 collection.

19 **§ -37 Collection from parole violators and others**
 20 **returned to custody.** If a person, including any juvenile, who
 21 has been released on parole, furlough, or other release for any
 22 offense or crime, whether or not set forth in section -31, is



1 returned to a state correctional or other institution for a
2 violation of a condition of the person's parole, furlough, or
3 other release, or for any other reason, that person shall
4 provide buccal swab samples and print impressions and, if
5 required by the collecting agency's rules or internal
6 regulations, any blood specimens or other biological samples, at
7 a state correctional or other receiving institution, if the
8 person has a record of any past or present conviction, or
9 adjudication as juvenile law violator, of a qualifying offense
10 described in section -31 or has a record of any past or
11 present conviction or adjudication in any other court, including
12 any state, federal, or military court, of any offense that, if
13 committed or attempted in this State, would have been punishable
14 as an offense described in section -31, and the person's
15 blood specimens, buccal swab samples, and print impressions
16 authorized by this chapter are not in the possession of the
17 department's DNA laboratory or have not been recorded as part of
18 the department's DNA data bank program.

19 **§ -38 Collection from persons accepted into Hawaii from**
20 **other jurisdictions.** (a) When an offender from another state
21 is accepted into this State under any interstate compact, or
22 under any other reciprocal agreement with any county, state, or



1 federal agency, or any other provision of law, whether or not
2 the offender is confined or released, the acceptance is
3 conditional on the offender providing blood specimens, buccal
4 swab samples, and print impressions pursuant to this chapter, if
5 the offender has a record of any past or present conviction or
6 adjudication in Hawaii of a qualifying offense described in
7 section -31 or has a record of any past or present conviction
8 or adjudication or had a disposition rendered in any other
9 court, including any state, federal, or military court, of any
10 offense that, if committed or attempted in this state, would
11 have been punishable as an offense described in section -31.

12 (b) If the person is not confined, the specimens, samples,
13 and print impressions required by this chapter must be provided
14 within five calendar days after the person reports to the
15 supervising agent or within five calendar days of notice to the
16 person, whichever occurs first. The person shall report to a
17 correctional facility in the county where the person resides or
18 temporarily is located to have the specimens, samples, and print
19 impressions collected pursuant to this chapter. The specimens,
20 samples, and print impressions shall be collected in accordance
21 with this chapter.



1 (c) If the person is confined, the person shall provide
2 the blood specimens, buccal swab samples, and print impressions
3 required by this chapter as soon as practicable after the
4 person's receipt in a state, county, private, or other
5 designated facility.

6 § -39 Collection from persons in federal institutions.

7 (a) Subject to the approval of the Director of the FBI, persons
8 confined or incarcerated in a federal prison or federal
9 institution who have a record of any past or present conviction
10 or juvenile adjudication for a qualifying offense described in
11 section -31 or of a similar crime under the laws of the
12 United States or any other state that would constitute an
13 offense described in section -31, are subject to this chapter
14 and shall provide blood specimens, buccal swab samples, and
15 print impressions pursuant to this chapter if any of the
16 following apply:

- 17 (1) The person committed a qualifying offense in Hawaii;
- 18 (2) The person was a resident of Hawaii at the time of the
19 qualifying offense;
- 20 (3) The person has any record of a Hawaii conviction for
21 an offense described in section -31, regardless of
22 when the crime was committed; or



1 (4) The person will be released in Hawaii.

2 (b) The department shall, upon the request of the United
3 States Department of Justice, forward portions of the specimens
4 or samples, taken pursuant to this chapter, to the United States
5 Department of Justice DNA Data Bank Laboratory. The specimens
6 and samples required by this chapter shall be taken in
7 accordance with the procedures set forth in section -21. The
8 department is authorized to analyze and upload specimens and
9 samples collected pursuant to this section upon approval of the
10 Director of the FBI.

11 § -40 Retroactive application of sections -34 to
12 -39. Sections -34 to -39 shall have retroactive
13 application. Collection shall occur pursuant to sections -34
14 to -39 regardless of when the crime charged or committed
15 became a qualifying offense pursuant to this chapter, and
16 regardless of when the person was convicted of the qualifying
17 offense described in section -31(a) or a similar crime under
18 the laws of the United States or any other state, or pursuant to
19 the United States Code of Military Justice, or when disposition
20 was rendered in the case of a juvenile who is adjudged a law
21 violator, for commission of a qualifying offense described in

1 section -31(a) or a similar crime under the laws of the
2 United States or any other state.

3 **§ -41 Collection of replacement specimen found spoiled**
4 **or unusable; collection of specimen from sex offense registrants**
5 **and out-of-state transferees.** Whenever the department notifies
6 the department of public safety or any other law enforcement
7 agency that a biological specimen or sample, or print impression
8 is not usable for any reason, the person who provided the
9 original specimen, sample, or print impression shall submit to
10 collection of additional specimens, samples, or print
11 impressions. The department of public safety or other
12 responsible law enforcement agency shall collect additional
13 specimens, samples, and print impressions from these persons as
14 necessary to fulfill the requirements of this chapter, and
15 transmit these specimens, samples, and print impressions to the
16 department.

17 **§ -42 Collection of specimen from sex offense**
18 **registrants.** (a) If a person, including any juvenile, is
19 convicted of, pleads guilty or no contest to, is found not
20 guilty by reason of insanity of, or is adjudged a juvenile law
21 violator, for committing any of the offenses requiring
22 registration pursuant to chapter 846E, and has given a blood



1 specimen or other biological sample or samples to law
2 enforcement for any purpose, the department is authorized to
3 analyze, or direct a designated entity to analyze, the blood
4 specimen and other biological sample or samples for forensic
5 identification markers, including DNA markers, and to include
6 the DNA and forensic identification profiles from these
7 specimens and samples in the State's DNA and forensic
8 identification data bank and data bases.

9 (b) This subsection applies whether or not the blood
10 specimen or other biological sample originally was collected
11 from a sexual offender pursuant to the data bank and database
12 program, and whether or not the crime committed predated the
13 enactment of the State's DNA and forensic identification data
14 bank program, or any amendments thereto. This subsection does
15 not relieve a person convicted of a crime described in section
16 -31(a), or otherwise subject to this chapter, from the
17 requirement to give buccal swab samples and print impressions
18 and, if required by the collecting agency's rules or internal
19 regulations, any blood specimens, for the DNA and forensic
20 identification data bank and database program as described in
21 this chapter.



1 § -43 Collection of specimen from persons required to
2 register under chapter 846E who have not yet provided sample.

3 (a) Any person who is required to register under chapter 846E
4 who has not provided the specimens, samples, and print
5 impressions described in this chapter for any reason including
6 the release of the person prior to the enactment of the State's
7 DNA and forensic identification data base and data bank program,
8 an oversight or error, or because of the transfer of the person
9 from another state, the person shall give specimens, samples,
10 and print impressions as described in this chapter for inclusion
11 in the State's DNA and forensic identification data base and
12 data bank.

13 (b) At the time the person registers or updates the
14 person's registration, the person shall receive an appointment
15 designating a time and place for the collection of the
16 specimens, samples, and print impressions described in this
17 chapter, if the person has not already complied with this
18 chapter.

19 (c) As specified in the appointment, the person shall
20 report to a correctional facility in the county where the person
21 resides or is temporarily located to have specimens, samples,
22 and print impressions collected pursuant to this chapter or



1 other facility approved by the department for this collection.
2 The specimens, samples, and print impressions shall be collected
3 in accordance with this chapter.

4 (d) If, prior to the time of the required registration
5 update, a person is notified by the department, a probation or
6 parole officer, other law enforcement officer, or officer of the
7 court, that the person is subject to this chapter, then the
8 person shall, at a correctional facility or other facility
9 approved by the department for this collection, provide the
10 specimens, samples, and print impressions required by this
11 chapter within ten calendar days of the notification.

12 **PART IV. CRIME SCENE AND RELATED EVIDENCE;**

13 **COMPARISON AGAINST FORENSIC IDENTIFICATION DATA**

14 **§ -51 Analysis of crime scene samples.** (a) Entities
15 that are authorized to analyze crime scene samples and other
16 samples of known and unknown origin and to compare and check the
17 forensic identification profiles, including DNA profiles, of
18 these samples against available DNA and forensic identification
19 data banks and databases in order to establish identity and
20 origin of samples for identification purposes are:

21 (1) Laboratories that are accredited by the American
22 Society of Crime Laboratory Directors Laboratory



1 Accreditation Board, accredited by any certifying body
2 approved by the Laboratory Accreditation Board, or
3 accredited by the successor to the Laboratory
4 Accreditation Board;

5 (2) Any law enforcement crime laboratory designated by the
6 department that is accredited by the American Society
7 of Crime Laboratory Directors Laboratory Accreditation
8 Board, accredited by any certifying body approved by
9 the Laboratory Accreditation Board, or accredited by
10 the successor to the Laboratory Accreditation Board;
11 and

12 (3) Any other entity designated by the department by rule.

13 **§ -52 Anonymous analysis of specimens and samples.**

14 Laboratories, including law enforcement laboratories, that are
15 accredited by American Society of Crime Laboratory Directors
16 Laboratory Accreditation Board or any certifying body approved
17 by the Laboratory Accreditation Board who contract with the
18 department are authorized to perform anonymous analysis of
19 specimens and samples for forensic identification as provided in
20 this chapter.

21 **§ -53 Analysis of forensic identification profiles. A**

22 biological sample obtained from a suspect in a criminal



1 investigation for the commission of any crime may be analyzed
2 for forensic identification profiles, including DNA profiles, by
3 any private or law enforcement crime laboratory accredited by
4 the American Society of Crime Laboratory Directors Laboratory
5 Accreditation Board or any certifying body approved by the
6 Laboratory Accreditation Board and then compared by the
7 department, in and between, as many cases and investigations as
8 necessary, and searched against the forensic identification
9 profiles, including DNA profiles, stored in the files of the
10 department's DNA data bank or database or any available data
11 banks or databases as part of the department DNA database and
12 data bank program. The law enforcement investigating agency
13 submitting a specimen, sample, or print impression to the
14 department or law enforcement crime laboratory pursuant to this
15 section shall inform the department within two years whether the
16 person remains a suspect in a criminal investigation. Upon
17 written notification from a law enforcement agency that a person
18 is no longer a suspect in a criminal investigation, the
19 department shall remove the suspect sample from its data bank
20 files. However, any identification, warrant, arrest, or
21 prosecution based upon a data bank or database match shall not



1 be invalidated or dismissed due to a failure to purge or delay
2 in purging records.

3 **§ -54 Laboratories contributing DNA profiles to be**
4 **accredited.** All laboratories contributing DNA profiles for
5 inclusion in Hawaii's DNA data bank shall be accredited by the
6 American Society of Crime Laboratory Directors Laboratory
7 Accreditation Board or any certifying body approved by the
8 Laboratory Accreditation Board. Additionally, each laboratory
9 shall submit to the department for review the annual report
10 required by the American Society of Crime Laboratory Directors
11 Laboratory Accreditation Board or any certifying body approved
12 by the Laboratory Accreditation Board that documents the
13 laboratory's adherence to American Society of Crime Laboratory
14 Directors Laboratory Accreditation Board standards or the
15 standards of any certifying body approved by the Laboratory
16 Accreditation Board. The requirements of this subsection do not
17 preclude DNA profiles developed in Hawaii from being searched in
18 the national DNA database or data bank such as the FBI's
19 Combined DNA Index System.

20 **§ -55 Other law enforcement DNA laboratories.** Nothing
21 in this section precludes other law enforcement DNA laboratories
22 from maintaining local forensic databases and data banks or



1 performing forensic identification analyses, including DNA
2 profiling, independent from the department's DNA and forensic
3 identification database and data bank program.

4 **§ -56 Limitations not cause for dismissal.** The
5 limitation on the types of offenses set forth in section
6 -31(a), as subject to the collection and testing procedures
7 of this chapter is for the purpose of facilitating the
8 administration of this chapter by the department, and shall not
9 be considered cause for dismissing an investigation or
10 prosecution or reversing a verdict or a disposition.

11 **§ -57 No invalidation based on erroneous placement or**
12 **retention of specimens, samples, or print impressions.** The
13 detention, arrest, wardship, adjudication, or conviction of a
14 person based upon a data bank match or database information is
15 not invalidated if it is determined that the specimens, samples,
16 or print impressions were obtained or placed or retained in a
17 data bank or database by mistake.

18 **PART V. SUPPLY OF PARAPHERNALIA AND INSTRUCTIONS**
19 **FOR COLLECTION OF SAMPLES; CIVIL OR CRIMINAL LIABILITY**
20 **FOR COLLECTION OF SPECIMEN, AND ENTRY OF DATA**

21 **§ -61 Blood specimens, buccal swab samples, and print**
22 **impressions shall be forwarded promptly to the department.** The



1 director of public safety, the chief of police, or the
2 administrator of the correctional facility, jail, or other
3 facility at which the blood specimens, buccal swab samples, and
4 print impressions were collected shall cause these specimens,
5 samples, and print impressions to be forwarded promptly to the
6 department. The specimens, samples, and print impressions shall
7 be collected by a person using a department approved collection
8 kit and in accordance with the requirements and procedures set
9 forth in section -62.

10 **§ -62 Procedures for the collection and forwarding of**
11 **samples.** (a) The department shall provide all blood specimen
12 vials, buccal swab collectors, mailing tubes, labels, and
13 instructions for the collection of the blood specimens, buccal
14 swab samples, and thumbprints. The specimens, samples, and
15 thumbprints shall thereafter be forwarded to the department for
16 analysis of DNA and other forensic identification markers.
17 Additionally, the department shall provide all print impression
18 cards, mailing envelopes, and instructions for the collection of
19 print impressions. The print impressions, on a form prescribed
20 by the department, shall thereafter be forwarded to the
21 department for maintenance in a file for identification
22 purposes.



1 (b) Whenever withdrawal of blood is required by this
2 chapter or by the collecting agency's rules or internal
3 regulations, the withdrawal of blood shall be performed in a
4 medically approved manner. Only health care providers trained
5 and certified to draw blood may withdraw the blood specimens for
6 purposes of this chapter.

7 (c) Buccal swab samples may be procured by law enforcement
8 or corrections personnel or other individuals trained to assist
9 in buccal swab collection.

10 (d) Print impressions of each hand shall be taken on forms
11 prescribed by the department. The print impression forms shall
12 be forwarded to and maintained by the department. Print
13 impressions taken at the time of the collection of samples and
14 specimens and shall be placed on the samples and specimens
15 container and forms as directed by the department. The samples
16 and specimens and forms shall be forwarded to and maintained by
17 the department.

18 (e) The law enforcement or custodial agency collecting
19 specimens, samples, or print impressions is responsible for
20 confirming that the person qualifies for entry into the
21 department's DNA database and data bank program prior to



1 collecting the specimens, samples or print impressions pursuant
2 to this chapter.

3 (f) The department is responsible for establishing
4 procedures for entering data bank and database information.

5 **§ -63 Limitations on civil and criminal liability.** (a)

6 Persons authorized to draw blood or obtain samples or print
7 impressions under this chapter for the data bank or database
8 shall not be civilly or criminally liable either for withdrawing
9 blood when done in accordance with medically accepted
10 procedures, or for obtaining buccal swab samples by scraping
11 inner cheek cells of the mouth, or print impressions when
12 performed in accordance with standard professional practices;

13 (b) There is no civil or criminal cause of action against
14 any law enforcement agency or the department, or any employee
15 thereof, for a mistake in confirming a person's or sample's
16 qualifying status for inclusion within the database or data bank
17 or in placing an entry in a data bank or a database; and

18 (c) The failure of the department or local law enforcement
19 to comply with this chapter shall not invalidate an arrest,
20 plea, conviction, or disposition.

21 **§ -64 Processing of offender specimens.** (a) To ensure
22 expeditious and economical processing of offender specimens and



1 samples for inclusion in the FBI's Combined DNA Index System and
2 the State's DNA database and data bank program, the department
3 is authorized to contract with other laboratories, whether
4 public or private, including law enforcement laboratories, that
5 have the capability of fully analyzing offender specimens or
6 samples within sixty days of receipt, for the anonymous analysis
7 of specimens and samples for forensic identification testing as
8 provided in this chapter and in accordance with the quality
9 assurance requirement established by the FBI for its Combined
10 DNA Index System and the American Society of Crime Laboratory
11 Directors Laboratory Accreditation Board.

12 (b) Contingent upon the availability of sufficient funds,
13 the department shall immediately contract with other
14 laboratories, whether public or private, including law
15 enforcement laboratories, for the anonymous analysis of offender
16 reference specimens or samples and any arrestee reference
17 specimens or samples collected pursuant to section -31(a),
18 for forensic identification testing as provided in subsection
19 (a) of this section and in accordance with the quality assurance
20 requirements established by the FBI for its Combined DNA Index
21 System and the American Society of Crime Laboratory Directors
22 Laboratory Accreditation Board for any specimens or samples that



1 are not fully analyzed and uploaded into the Combined DNA Index
2 System database within six months of the receipt of the
3 reference specimens or samples by the department.

4 **PART VI. REVERSAL, DISMISSAL OR ACQUITTAL;**
5 **REQUEST FOR EXPUNGEMENT OF INFORMATION; PROCEDURE;**
6 **SPECIMENS FROM PERSONS NO LONGER CONSIDERED SUSPECTS**

7 **§ -71 Person with no past or present offense or pending**
8 **charge which qualifies that person for inclusion within the**
9 **State's DNA and forensic identification database and data bank**
10 **program.** A person whose DNA profile has been included in the
11 data bank pursuant to this chapter shall have the person's DNA
12 specimen and sample destroyed and searchable database profile
13 expunged from the data bank program pursuant to the procedures
14 set forth in section -72 if the person has no past or present
15 offense or pending charge which qualifies that person for
16 inclusion within the State's DNA and forensic identification
17 database and data bank program and there otherwise is no legal
18 basis for retaining the specimen or sample or searchable
19 profile.

20 **§ -72 Written request to have the person's specimen and**
21 **sample destroyed and searchable database profile expunged from**
22 **the data bank program.** (a) Pursuant to section -71, a



1 person who has no past or present qualifying offense and for
2 whom there otherwise is no legal basis for retaining the
3 specimen or sample or searchable profile, may make a written
4 request to have the person's specimen and sample destroyed and
5 searchable database profile expunged from the data bank program
6 if:

- 7 (1) Following arrest, no accusatory pleading has been
8 filed within the applicable period allowed by law
9 charging the person with a qualifying offense as set
10 forth in section -31, or if the charges which
11 served as the basis for including the DNA profile in
12 the State's DNA database and data bank identification
13 program have been dismissed prior to adjudication by a
14 trier of fact;
- 15 (2) The underlying conviction or disposition serving as
16 the basis for including the DNA profile has been
17 reversed and the case dismissed;
- 18 (3) The person has been found factually innocent of the
19 underlying offense; or
- 20 (4) The defendant has been found not guilty or the
21 defendant has been acquitted of the underlying
22 offense.



1 (b) The person requesting the data bank entry to be
2 expunged must send a copy of the person's request to the trial
3 court of the circuit where the arrest occurred or that entered
4 the conviction or rendered disposition in the case, to the
5 department, and to the prosecuting attorney of the county in
6 which the person was arrested, convicted, or adjudicated, with
7 proof of service on all parties. The court has the discretion
8 to grant or deny the request for expungement. The denial of a
9 request for expungement is a nonappealable order and shall not
10 be reviewed by petition for writ.

11 **§ -73 Destruction of samples and expungement of**
12 **searchable DNA database profile.** (a) Except as provided below,
13 the department shall destroy the sample and expunge the
14 searchable DNA database profile pertaining to the person who has
15 no present or past qualifying offense of record upon receipt of
16 a court order that verifies the applicant has made the necessary
17 showing at a noticed hearing, and that includes all of the
18 following:

- 19 (1) The written request for expungement pursuant to this
20 section;
- 21 (2) A certified copy of the court order reversing and
22 dismissing the conviction or case, or a letter from



1 the prosecuting attorney certifying that no accusatory
2 pleading has been filed or the charges that served as
3 the basis for collecting a DNA specimen and sample
4 have been dismissed prior to adjudication by a trier
5 of fact, the defendant has been found factually
6 innocent, the defendant has been found not guilty, the
7 defendant has been acquitted of the underlying
8 offense, or the underlying conviction has been
9 reversed and the case dismissed;

10 (3) Proof of written notice to the prosecuting attorney
11 and the department that expungement has been
12 requested; and

13 (4) A court order verifying that no retrial or appeal of
14 the case is pending, that it has been at least 180
15 days since the defendant or minor has notified the
16 prosecuting attorney and the department of the
17 expungement request, and that the court has not
18 received an objection from the department or the
19 prosecuting attorney.

20 (b) Upon order of the court, the department shall destroy
21 any specimen or sample collected from the person and any
22 searchable DNA database profile pertaining to the person, unless



1 the department determines that the person is subject to the
2 provisions of this chapter because of a past qualifying offense
3 of record or is, or has otherwise become, obligated to submit a
4 blood specimen or buccal swab as a result of a separate
5 conviction, juvenile adjudication, or finding of guilty or not
6 guilty by reason of insanity for an offense described in section
7 -31, or as a condition of a plea.

8 (c) The department is not required to destroy an
9 autoradiograph or other item obtained from a blood specimen if
10 evidence relating to another person subject to the provisions of
11 this chapter would thereby be destroyed.

12 (d) Any identification, warrant, probable cause to arrest,
13 or arrest based upon a data bank match is not invalidated due to
14 a failure to expunge or a delay in expunging records.

15 (e) Notwithstanding any other provision of law, the
16 designated entity is not required to expunge DNA profile or
17 forensic identification information or destroy or return
18 specimens, samples, or print impressions taken pursuant to this
19 section based on a termination of a person's duty to register
20 pursuant to chapter 846E.

21 § -74 No authorization to relieve a person of
22 administrative duty to provide specimens, samples, or print



1 **impressions.** Notwithstanding any other provision of law, a
2 judge is not authorized to relieve a person of the separate
3 administrative duty to provide specimens, samples, or print
4 impressions required by this chapter if a person has been found
5 guilty or was adjudicated to be a law violator by a trier of
6 fact of a qualifying offense as defined in section -31, or
7 was found not guilty by reason of insanity or pleads no contest
8 to a qualifying offense as defined in section -31, or is
9 given a deferred acceptance of plea under chapter 853.

10 **§ -75 Not a basis for invalidation of identification or**
11 **suppression of identification evidence.** Nothing in this part
12 shall be construed to invalidate an otherwise valid
13 identification of a person by means of DNA testing or to provide
14 the basis for a suppression of otherwise admissible evidence
15 related to identification of a person based on DNA testing.

16 **PART VII. EXEMPTION OF SPECIMEN FROM DISCLOSURE;**

17 **CONFIDENTIALITY**

18 **§ -81 Exemption of specimen from disclosure.** (a) All
19 DNA and forensic identification profiles and other
20 identification information retained by the department pursuant
21 to this chapter are exempt from any law requiring disclosure of



1 information to the public and shall be confidential except as
2 otherwise provided in this chapter.

3 (b) All evidence and forensic samples containing
4 biological material retained by the department or other state or
5 local law enforcement agency are exempt from any law requiring
6 disclosure of information to the public or the return of
7 biological specimens, samples, or print impressions.

8 § -82 Confidentiality. (a) Non-DNA forensic
9 identification information may be filed with the other
10 computerized data bank or database systems maintained by the
11 department.

12 (b) The DNA and other forensic identification information
13 retained by the department pursuant to this chapter shall not be
14 included in the state summary criminal history information.
15 However, nothing in this chapter precludes law enforcement
16 personnel from entering into a person's criminal history
17 information or offender file maintained by the department, the
18 fact that the specimens, samples, and print impressions required
19 by this chapter have or have not been collected from that
20 person.

21 (c) The fact that the blood specimens, buccal swab
22 samples, and print impressions required by this chapter have



1 been received by the department shall be included in the state
2 summary criminal history information as soon as administratively
3 practicable.

4 (d) The print impressions of each hand shall be filed and
5 maintained by the department, and may be included in the state
6 summary criminal history information.

7 (e) DNA samples and DNA profiles and other forensic
8 identification information shall be released only to law
9 enforcement agencies, including, but not limited to, the
10 department of the attorney general, parole officers of the
11 department of public safety, hearing officers of the parole
12 authority, probation officers, the department, and prosecuting
13 attorneys' offices, unless otherwise specifically authorized
14 this chapter.

15 (f) Dissemination of DNA specimens, samples, and DNA
16 profiles, and other forensic identification information to law
17 enforcement agencies and prosecutors outside this State shall be
18 performed in conformity with the provisions of this chapter.

19 (g) A defendant's DNA and other forensic identification
20 information developed pursuant to this chapter shall be
21 available to the person's defense counsel upon court order.



1 (h) Except as provided in subsection (g) and in order to
2 protect the confidentiality and privacy of database and data
3 bank information, the department and DNA laboratories shall not
4 otherwise be compelled in a criminal or civil proceeding to
5 provide any DNA profile or forensic identification database or
6 data bank information or its computer database program software
7 or structures to any person or party seeking such records or
8 information whether by subpoena or discovery, or other
9 procedural device or inquiry.

10 **§ -83 Knowing use or disclosure, by employee of the**
11 **department, of an offender a specimen, sample, or DNA profile**
12 **collected pursuant to this chapter for other than criminal**
13 **identification or exclusion purposes.** (a) If any employee of
14 the department knowingly uses an offender specimen, sample, or
15 DNA profile collected pursuant to this chapter for other than
16 criminal identification or exclusion purposes, or knowingly
17 discloses DNA or other forensic identification information
18 developed pursuant to this section to an unauthorized individual
19 or agency, for other than criminal identification or exclusion
20 purposes or for other than the identification of missing
21 persons, in violation of this chapter, the department shall be
22 liable in civil damages to the donor of the DNA identification



1 information in the amount of \$5,000 for each violation, plus
2 attorney's fees and costs. In the event of multiple
3 disclosures, the total damages available to the donor of the DNA
4 is limited to \$50,000 plus attorney's fees and costs.

5 (b) Notwithstanding any other law, this shall be the sole
6 and exclusive remedy against the department and its employees
7 available to the donor of the DNA. The department's employee
8 disclosing DNA identification information in violation of this
9 chapter shall be absolutely immune from civil liability under
10 this or any other law.

11 **§ -84 When disclosure is not a violation.** (a) It is
12 not a violation of this chapter for a law enforcement agency, in
13 its discretion, to publicly disclose the fact of a DNA profile
14 match, or the name of the person identified by the DNA match
15 when this match is the basis of law enforcement's investigation,
16 arrest, or prosecution of a particular person, or the
17 identification of a missing or abducted person.

18 (b) It is not a violation of this chapter to furnish DNA
19 or other forensic identification information of the defendant to
20 the person's defense counsel for criminal defense purposes in
21 compliance with discovery.



1 (c) It is not a violation of this chapter for law
2 enforcement to release DNA and other forensic identification
3 information developed pursuant to this chapter to a jury or
4 grand jury, or in a document filed with a court or
5 administrative agency, or as part of a judicial or
6 administrative proceeding, or for this information to become
7 part of the public transcript or record of proceedings when, in
8 the discretion of law enforcement, disclosure is necessary
9 because the DNA information pertains to the basis for law
10 enforcement's identification, arrest, investigation,
11 prosecution, or exclusion of a particular person related to the
12 case.

13 (d) It is not a violation of this chapter to include
14 information obtained from a file in a transcript or record of a
15 judicial proceeding, or in any other public record when the
16 inclusion of the information in the public record is authorized
17 by a court, statute, or decisional law.

18 (e) It is not a violation of this chapter for the
19 department, or an organization retained as an agent of the
20 department, or a local public laboratory to use anonymous
21 records or criminal history information obtained pursuant to



1 this chapter for training, research, statistical analysis of
2 populations, or quality assurance or quality control.

3 **§ -85 Methodology and procedures to be made public.** The
4 department shall make public the methodology and procedures to
5 be used in its DNA program prior to the commencement of DNA
6 testing in its laboratories or thirty days after the effective
7 date of this chapter, whichever is later. The department shall
8 review and consider on an ongoing basis the findings and results
9 of any peer review and validation studies submitted to the
10 department by members of the relevant scientific community
11 experienced in the use of DNA technology. This material shall
12 be available to criminal defense counsel upon court order.

13 **§ -86 Confidentiality of computer software and database**
14 **structures.** In order to maintain the computer system security
15 of the department's DNA and forensic identification database and
16 databank program, the computer software and database structures
17 used by the DNA laboratory of the department to implement this
18 chapter are confidential.

19 **PART VIII. DATA SHARING; POPULATION DATABASE OR DATA BANK**
20 **INFORMATION; PROTOCOL, QUALITY CONTROL OR METHODOLOGY;**
21 **SAMPLE SHARING; LOCAL DNA LABORATORIES; DISPOSAL**



1 § -91 Department permitted to share data, information,
2 and samples. (a) Nothing in this chapter shall prohibit the
3 department from the sharing or disseminating of population
4 database or data bank information or DNA profile or forensic
5 identification database or data bank information or analytical
6 data and results generated for forensic identification database
7 and data bank purposes or protocol and forensic DNA analysis
8 methods and quality assurance or quality control procedures with
9 any of the following:

- 10 (1) Federal, state, or local law enforcement agencies;
- 11 (2) Crime laboratories, whether public or private, that
12 serve federal, state, and local law enforcement
13 agencies that have been approved by the department;
- 14 (3) The attorney general's office of any state;
- 15 (4) Any state or federally authorized auditing agent or
16 board that inspects or reviews the work of the
17 department for the purpose of ensuring that the
18 department meets American Society of Crime Laboratory
19 Directors Laboratory Accreditation Board LAB and FBI
20 standards for accreditation and quality assurance
21 standards necessary under this chapter and for the
22 State's participation in the FBI's Combined DNA Index



1 System and other national or international crime-
2 solving networks; or

3 (5) Any third party that the department deems necessary to
4 assist the department's crime laboratory with
5 statistical analyses of the population data base or to
6 assist in the recovery or identification of human
7 remains for humanitarian purposes, including
8 identification of missing persons.

9 (b) The population databases and data banks of the
10 department may be made available to and searched by the FBI and
11 any other agency participating in the FBI's Combined DNA Index
12 System or any other national or international law enforcement
13 database or data bank system.

14 (c) The department may provide portions of biological
15 samples, including blood specimens, saliva samples, and buccal
16 swab samples collected pursuant to this chapter to local public
17 law enforcement DNA laboratories for identification purposes
18 provided that the privacy provisions of this section are
19 followed by the local public law enforcement laboratory and if
20 each of the following conditions is met:

21 (1) The procedures used by the local public DNA laboratory
22 for the handling of specimens and samples and the



1 disclosure of results are the same as those
2 established by the department pursuant to this
3 chapter;

4 (2) The methodologies and procedures used by the local
5 public DNA laboratory for DNA or forensic
6 identification analysis are compatible with those used
7 by the department, or otherwise are determined by the
8 department to be valid and appropriate for
9 identification purposes;

10 (3) Only tests of value to law enforcement for
11 identification purposes are performed and a copy of
12 the results of the analysis are sent to the
13 department;

14 (4) All provisions of this section concerning privacy and
15 security are followed; and

16 (5) The local public law enforcement DNA laboratory
17 assumes all costs of securing the specimens and
18 samples and provides appropriate tubes, labels, and
19 materials necessary to secure the specimens and
20 samples.

21 **§ -92 Local DNA laboratories.** Any local DNA laboratory
22 that produces DNA profiles of known reference samples for



1 inclusion within the permanent files of the State's DNA data
2 bank program shall follow the instructions of the department for
3 production of DNA profiles.

4 **§ -93 Disposal of unused and expired specimens.** The
5 department is authorized to dispose of unused specimens and
6 samples, unused portions of specimens and samples, and expired
7 specimens and samples in the normal course of business and in
8 compliance with part XI of this chapter and in a reasonable
9 manner as long as the disposal method is designed to protect the
10 identity and origin of specimens and samples from disclosure to
11 third persons who are not a part of law enforcement.

12 **PART IX. POWERS NOT AFFECTED**

13 **§ -101 Law enforcement officer powers under other laws**
14 **not affected.** Nothing in this chapter shall limit or abrogate
15 any existing authority of law enforcement officers to take,
16 maintain, store, and utilize DNA or forensic identification
17 markers, blood specimens, buccal swab samples, saliva samples,
18 or print impressions for identification purposes.

19 **§ -102 Authority under other laws not affected.** (a)
20 Nothing in this chapter shall be construed to restrict the
21 authority of local law enforcement to maintain its own DNA-
22 related databases or data banks, or to restrict the department



1 with respect to data banks and databases created by other
2 statutory authority, including, but not limited to, databases
3 related to fingerprints, firearms and other weapons, child
4 abuse, domestic violence deaths, child deaths, driving offenses,
5 missing persons, sex offender registration, and criminal justice
6 statistic.

7 (b) Nothing in this chapter shall be construed to limit
8 the authority of the medical examiner of the city and county of
9 Honolulu or county coroners or their agents, in the course of
10 their scientific investigation, to utilize genetic and DNA
11 technology to inquire into and determine the circumstances,
12 manner, and cause of death, or to employ or use outside
13 laboratories, hospitals, or research institutions that utilize
14 genetic and DNA technology.

15 **PART X. CRIMES**

16 **§ -111 Refusal or failure to provide specimen for**
17 **forensic identification.** (a) A person commits the offense of
18 refusal or failure to provide specimen for forensic
19 identification if the person refuses or fails to give any of the
20 blood specimens, buccal swab samples, print impressions required
21 by this chapter, after the person has received written notice
22 from the department, the department of public safety, any law



1 enforcement personnel, or officer of the court that the person
2 is required to provide each and every one of the blood
3 specimens, buccal swab samples, and print impressions required
4 by this chapter.

5 (b) Refusal or failure to provide specimen for forensic
6 identification is a misdemeanor.

7 **§ -112 Fraudulent use or manipulation of biometric**
8 **sample or information.** (a) A person commits the offense of
9 fraudulent use or manipulation of biometric sample or
10 information if the person is required to submit a specimen
11 sample or print impression pursuant to this chapter and
12 intentionally or knowingly:

13 (1) Facilitates the collection of a wrongfully attributed
14 blood specimen, buccal swab sample, or print
15 impression, with the intent that a government agent or
16 employee be deceived as to the origin of a DNA profile
17 or as to any identification information associated
18 with a specimen, sample, or print impression required
19 for submission pursuant to this chapter; or

20 (2) Tamper with any specimen, sample, print, or the
21 collection container for any specimen or sample, with
22 the intent that any government agent or employee be



1 deceived as to the identity of the person to whom the
2 specimen, sample, or print relates.

3 (b) Fraudulent use or manipulation of biometric sample or
4 information is a class C felony.

5 **§ -113 Unauthorized disclosure of DNA sample or profile.**

6 (a) A person commits the offense of unauthorized disclosure of
7 DNA sample or profile if the person intentionally or knowingly,
8 in violation of this chapter:

9 (1) Uses an offender sample or DNA profile for other than
10 criminal identification or exclusion purposes; or

11 (2) Discloses DNA or other forensic identification
12 information developed pursuant to this section to an
13 unauthorized individual or agency, for other than
14 criminal identification or exclusion.

15 (b) Unauthorized disclosure of DNA sample or profile
16 purposes is a misdemeanor.

17 **§ -114 Use of DNA sample or profile for financial gain.**

18 (a) A person commits the offense of use of DNA sample or
19 profile for financial gain if the person, for the purpose of
20 financial gain, intentionally or knowingly, in violation of this
21 chapter:



1 (1) Uses an offender sample or DNA profile for other than
2 criminal identification or exclusion purposes; or

3 (2) Discloses DNA or other forensic identification
4 information developed pursuant to this chapter to an
5 unauthorized individual or entity, for other than
6 criminal identification or exclusion purposes.

7 (b) Use of DNA sample or profile for financial gain is a
8 misdemeanor for which, in addition to any other penalty provided
9 by the penal code for a misdemeanor, a fine shall be imposed
10 that is an amount three times that of any financial gain
11 received or \$10,000, whichever is greater.

12 **PART XI. POSTCONVICTION DNA TESTING**

13 **§ -121 Petition for postconviction DNA testing.**

14 Notwithstanding any other provision of law governing
15 postconviction relief, a person convicted of a crime may at any
16 time file a petition requesting the forensic DNA testing of any
17 evidence that was secured in relation to the investigation or
18 prosecution that resulted in the judgment of conviction, and
19 that may contain biological evidence. Persons eligible for
20 testing shall include any and all of the following:

21 (1) Persons convicted on a plea of not guilty, guilty, or
22 nolo contendere;



1 (2) Persons currently incarcerated, serving a sentence of
2 probation, or who have already been released on
3 parole; and

4 (3) Persons who have finished serving their sentences.

5 **§ -122 Proceedings.** The petitioner shall be granted
6 full, fair, and prompt proceedings upon the filing of a motion
7 under this part. The petitioner shall serve a copy of such
8 motion upon the attorney for the State. The State shall file
9 its response to the motion within thirty days of the receipt of
10 service. The court shall, no sooner than thirty and no later
11 than ninety days after such motion is filed, hear the motion.

12 **§ -123 Order for postconviction DNA testing.** (a) Upon
13 the filing of a motion for postconviction DNA testing the court
14 shall provide the State with notice and an opportunity to
15 respond.

16 (b) After a hearing on the motion, the court shall order
17 testing if it finds that:

18 (1) A reasonable probability exists that the petitioner
19 would not have been convicted, or would have received
20 a lesser sentence, if favorable results had been
21 obtained through DNA testing at the time of the
22 original prosecution;



- 1 (2) One or more of the items of evidence that the
2 petitioner seeks to have tested is still in existence;
- 3 (3) The evidence to be tested was secured in relation to
4 the offense that is the basis of the challenged
5 conviction, and:
6 (A) Was not previously subjected to DNA testing; or
7 (B) Although previously subjected to DNA testing, can
8 be subjected to additional DNA testing that
9 provides a reasonable likelihood of more
10 probative results;
- 11 (4) The chain of custody of the evidence to be tested
12 establishes that the evidence has not been tampered
13 with, replaced, or altered in any material respect or,
14 if the chain of custody does not establish the
15 integrity of the evidence, the testing itself has the
16 potential to establish the integrity of the evidence.
17 For purposes of this part, evidence that has been in
18 the custody of law enforcement, other government
19 officials, or a public or private hospital shall be
20 presumed to satisfy the chain-of-custody requirement
21 of this subsection, absent specific evidence of
22 material tampering, replacement, or alteration; and



1 (5) The application for testing is made for the purpose of
2 demonstrating innocence or the appropriateness of a
3 lesser sentence, and not to unreasonably delay the
4 execution of sentence or the administration of
5 justice.

6 **§ -124 Counsel.** (a) The court, at any time, during
7 proceedings under this part, may appoint counsel for an indigent
8 petitioner.

9 (b) If the petitioner has filed pro se, upon a showing
10 that DNA testing may be material to the petitioner's claim of
11 wrongful conviction, the court shall appoint counsel for the
12 petitioner.

13 (c) The Court, in its discretion, may refer pro se
14 requests for DNA testing to qualified parties for further
15 review, including, but not limited to, indigent defense
16 organizations or clinical legal education programs, without
17 appointing the parties as counsel at that time.

18 (d) If the petitioner has retained private pro bono
19 counsel (including, but not limited to, counsel from a nonprofit
20 organization that represents indigent persons), the court, in
21 its discretion, may award reasonable attorney's fees and costs
22 at the conclusion of the litigation.



1 § -125 **Discovery.** (a) At any time after a petition has
2 been filed under this part, the court may order the following:

3 (1) The court may order the State to locate and provide
4 the petitioner with any documents, notes, logs, or
5 reports relating to items of physical evidence
6 collected in connection with the case, or otherwise
7 assist the petitioner in locating items of biological
8 evidence that the State contends have been lost or
9 destroyed;

10 (2) The court may order the State to take reasonable
11 measures to locate biological evidence that may be in
12 its custody, or to assist the petitioner in locating
13 evidence that may be in the custody of a public or
14 private hospital, public or private laboratory, or
15 other facility; and

16 (3) If evidence had previously been subjected to DNA
17 testing, the court may order production of laboratory
18 reports prepared in connection with the DNA testing,
19 as well as the underlying data, and the laboratory
20 notes.

21 (b) If any DNA or other biological evidence testing was
22 previously conducted by either the prosecution or defense



1 without knowledge of the other party, the testing shall be
2 revealed in the motion for testing or response, if any.

3 (c) If the court orders DNA testing in connection with a
4 proceeding brought under this part, the court shall order the
5 production of any laboratory reports prepared in connection with
6 the DNA testing, and may in its discretion order production of
7 the underlying data, bench notes, or other laboratory notes.

8 (d) The results of any postconviction DNA testing
9 conducted under this part shall be disclosed to the prosecution,
10 the petitioner, and the court.

11 **§ -126 Preservation of evidence.** (a) Notwithstanding
12 any other provision of law, all appropriate governmental
13 entities shall retain all items of physical evidence that
14 contain biological material that is secured in connection with a
15 criminal case for the period of time that any person remains
16 incarcerated, on probation or parole, civilly committed, or
17 subject to registration as a sex offender in connection with
18 that case unless a court order permits the destruction of such
19 items. This requirement shall apply with or without the filing
20 of a petition for postconviction DNA testing, as well as during
21 the pendency of proceedings under this part. The agency or
22 court authorizing the release of a person from incarceration,



1 parole, probation, or civil commitment, or release from sex
2 offender registration requirements, shall notify in writing the
3 agency in custody of any physical evidence related to the
4 released person's custody as soon as practicable after the
5 release of the person. In cases where a petition for
6 postconviction DNA testing has been filed under this part, the
7 State shall prepare an inventory of the evidence related to the
8 case and submit a copy of the inventory to the defense and the
9 court. If evidence is intentionally destroyed after the filing
10 of a petition under this part, the court may impose appropriate
11 sanctions on the responsible party or parties.

12 (b) For the purposes of this section, "biological
13 evidence" means:

14 (1) The contents of a sexual assault examination kit; or

15 (2) Any item that contains blood, semen, hair, saliva,
16 skin tissue, or other identifiable biological
17 material, whether that material is catalogued
18 separately (i.e., on a slide, swab, or in a test tube)
19 or is present on other evidence (including, but not
20 limited to, clothing, ligatures, bedding or other
21 household material, drinking cups, cigarettes, etc.).



1 **§ -127 Choice of laboratory.** If the court orders DNA
2 testing, the testing shall be conducted by a facility mutually
3 agreed upon by the petitioner and by the State and approved by
4 the court. If the parties are unable to agree, the court shall
5 designate the testing facility and provide parties with a
6 reasonable opportunity to be heard on the issue of choice of
7 laboratory. The court shall impose reasonable conditions on the
8 testing to protect the parties' interests in the integrity of
9 the evidence and the testing process.

10 **§ -128 Payment.** If DNA testing under this part is
11 performed at a state or county crime laboratory, the State shall
12 bear the costs of the testing. If testing is performed at a
13 private laboratory, the court may require either the petitioner
14 or the State to pay for the testing, as the interests of justice
15 require. If the state or county crime laboratory does not have
16 the ability or resources to conduct the type of DNA testing to
17 be performed, the State shall bear the costs of testing at a
18 private laboratory that does have those capabilities.

19 **§ -129 Appeal.** The petitioner shall have the right to
20 appeal a decision denying postconviction DNA testing.

21 **§ -130 Successive petitions.** (a) If the petitioner has
22 filed a prior petition for DNA testing under this part or any



1 other provision of law, the petitioner may file, and the court
2 shall adjudicate, a successive petition or petitions under this
3 part; provided that the petitioner asserts new or different
4 grounds for relief, including, but not limited to, factual,
5 scientific, or legal arguments not previously presented, or the
6 availability of more advanced DNA technology.

7 (b) The court also, in its discretion, may adjudicate any
8 successive petition if the interests of justice so require.

9 § -131 **Additional orders.** (a) The court may in its
10 discretion make such other orders as may be appropriate. These
11 include, but are not limited to:

- 12 (1) Designating the type of DNA analysis to be used;
 - 13 (2) Designating the testing procedures to be followed;
 - 14 (3) Designating the preservation of some portion of the
15 sample for replicating the testing;
 - 16 (4) Ordering additional DNA testing, if the results of the
17 initial testing are inconclusive or otherwise merit
18 additional scientific analysis; and
 - 19 (5) Ordering the collection and DNA testing of elimination
20 samples from third parties.
- 21 (b) DNA profile information from biological samples taken



1 from any person pursuant to a motion for postconviction DNA
2 testing shall be exempt from any law requiring disclosure of
3 information to the public.

4 **§ -132 Procedure after testing results are obtained.**

5 (a) If the results of forensic DNA testing ordered under this
6 part are favorable to the petitioner, the court shall schedule a
7 hearing to determine the appropriate relief to be granted.
8 Based on the results of the testing and any evidence or other
9 matter presented at the hearing, the court shall thereafter
10 enter any order that serves the interests of justice, including
11 any of the following:

- 12 (1) An order setting aside or vacating the petitioner's
13 judgment of conviction, judgment of not guilty by
14 reason of mental disease or defect, or adjudication of
15 delinquency;
- 16 (2) An order granting the petitioner a new trial or fact-
17 finding hearing;
- 18 (3) An order granting the petitioner a new sentencing
19 hearing, commitment hearing, or dispositional hearing;
- 20 (4) An order discharging the petitioner from custody;
- 21 (5) An order specifying the disposition of any evidence
22 that remains after the completion of the testing;



1 (6) An order granting the petitioner additional discovery
2 on matters related to DNA test results or the
3 conviction or sentence under attack, including, but
4 not limited to, documents pertaining to the original
5 criminal investigation, or the identities of other
6 suspects; and

7 (7) An order directing the State to place any unidentified
8 DNA profile obtained from postconviction DNA testing
9 into state or federal databases, or both.

10 (b) If the results of the tests are not favorable to the
11 petitioner, the court:

12 (1) Shall dismiss the petition; and

13 (2) May make any further orders that are appropriate,
14 including either or both of the following:

15 (A) An order providing that the parole board or a
16 probation department be notified of the test
17 results; or

18 (B) An order requesting that the petitioner's DNA
19 profile be added to the State's DNA database if
20 the profile is not already in the database.

21 § -133 **Consent.** Nothing in this part shall be
22 interpreted to prohibit a convicted person and the State from



1 consenting to and conducting postconviction DNA testing by
2 agreement of the parties and without filing a motion for
3 postconviction DNA testing under this part. Notwithstanding any
4 other provision of law governing postconviction relief, if DNA
5 test results are obtained under testing conducted upon consent
6 of the parties which are favorable to the petitioner, the
7 petitioner may file, and the court shall adjudicate, a motion
8 for postconviction relief under the provisions of this part,
9 based on the DNA test results."

10 SECTION 2. Section 701-108, Hawaii Revised Statutes, is
11 amended by amending subsection (3) to read as follows:

12 "(3) If the period prescribed in subsection (2) has
13 expired, a prosecution may nevertheless be commenced for:

14 (a) Any offense an element of which is either fraud or a
15 breach of fiduciary obligation within three years
16 after discovery of the offense by an aggrieved party
17 or by a person who has a legal duty to represent an
18 aggrieved party and who is oneself not a party to the
19 offense, but in no case shall this provision extend
20 the period of limitation by more than six years from
21 the expiration of the period of limitation prescribed
22 in subsection (2); [~~and~~]



1 (b) Any offense based on misconduct in office by a public
2 officer or employee at any time when the defendant is
3 in public office or employment or within two years
4 thereafter, but in no case shall this provision extend
5 the period of limitation by more than three years from
6 the expiration of the period of limitation prescribed
7 in subsection (2) [-]; and

8 (c) Any felony offense involving evidence containing
9 deoxyribonucleic acid, if a test confirming the
10 presence of deoxyribonucleic acid is performed prior
11 to expiration of the period of limitation prescribed
12 in subsection (2), but in no case shall this provision
13 extend the period of limitation by more than ten years
14 from the expiration of the period of limitation
15 prescribed in subsection (2)."

16 SECTION 3. Section 701-118, Hawaii Revised Statutes, is
17 amended by amending the definition of "person," "he," "him,"
18 "actor," and "defendant" to read as follows:

19 "(7) "Person," "he," "him," "actor," and "defendant"
20 include any natural person, including any natural person whose
21 identity can be established by means of scientific analysis,
22 including, but not limited to, scientific analysis of DNA and

1 fingerprints, whether or not the natural person's name is known,
2 and, where relevant, a corporation or an unincorporated
3 association;"

4 SECTION 4. Section 706-603, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "§706-603 [~~Mental and medical examination,~~
7 ~~deoxyribonucleic acid collection.~~ (1) ~~As used in this section,~~
8 ~~unless the context otherwise requires:~~

9 "~~Conviction~~" ~~means that a verdict has been rendered by a~~
10 ~~judge or jury, or a plea of guilty or nolo contendere has been~~
11 ~~accepted by the court.~~

12 "~~DNA~~" ~~means deoxyribonucleic acid.~~

13 "~~Licensed psychologist~~" ~~means psychologists licensed under~~
14 ~~chapter 465 but also includes psychologists exempt from~~
15 ~~licensure under section 465-3(a)(3).~~

16 "~~Sexual offense~~" ~~means an offense as defined in chapter~~
17 ~~846E as a sexually violent offense or a criminal offense against~~
18 ~~a victim who is a minor.~~

19 "~~Violent offense~~" ~~means murder, or attempted murder, in any~~
20 ~~degree.~~

21 (2) ~~Before imposing sentence, the court may order a~~
22 ~~defendant who has been convicted of a felony or misdemeanor to~~



1 ~~submit to mental or other medical observation and examination~~
2 ~~for a period not exceeding sixty days or a longer period, not to~~
3 ~~exceed the length of permissible imprisonment, as the court~~
4 ~~determines to be necessary for the purpose. In addition thereto~~
5 ~~or in the alternative, the court may appoint one or more~~
6 ~~qualified psychiatrists, physicians, or licensed psychologists~~
7 ~~to make the examination. The examiner or examiners shall be~~
8 ~~appointed from a list of certified examiners as determined by~~
9 ~~the state department of health. The report of the examination~~
10 ~~shall be submitted to the court.~~

11 ~~(3) After entry of a plea of guilty or no contest or~~
12 ~~return of a verdict of guilty, a defendant who has been~~
13 ~~convicted of a sexual or violent offense shall provide two~~
14 ~~samples of blood for DNA analysis.~~

15 ~~(4) A defendant who has been convicted of a sexual or~~
16 ~~violent offense and who is in custody at a jail, prison,~~
17 ~~hospital, school, or other institution shall provide two samples~~
18 ~~of blood for DNA analysis. The person in charge of such an~~
19 ~~institution, or that person's designee, shall arrange for the~~
20 ~~sample to be collected and analyzed.~~

21 ~~(5) A defendant who has been convicted of a sexual or~~
22 ~~violent offense and who is not in custody shall report in person~~



1 ~~to any police station in the county in which the defendant~~
2 ~~resides or is present to schedule an appointment to provide two~~
3 ~~samples of blood for DNA analysis. A defendant required to~~
4 ~~report to a police station under this subsection shall do so~~
5 ~~within:~~

6 ~~(a) Thirty days of July 20, 1998;~~

7 ~~(b) Thirty days of conviction; or~~

8 ~~(c) Thirty days after arrival in this State, if the~~
9 ~~defendant expects to be present in this State for a~~
10 ~~period exceeding thirty days.~~

11 ~~(6) A defendant who has been charged with a sexual or~~
12 ~~violent offense and who has been found unfit to proceed or~~
13 ~~acquitted pursuant to chapter 704, or any state, federal, or~~
14 ~~military law similar to chapter 704 shall provide two samples of~~
15 ~~blood for DNA analysis. The person in charge of the jail,~~
16 ~~prison, hospital, school, or other institution where the~~
17 ~~defendant is in custody, or that person's designee, shall~~
18 ~~arrange for the sample to be collected and analyzed. A~~
19 ~~defendant who is not in custody and who is required to provide~~
20 ~~blood under this subsection shall report in person to any police~~
21 ~~station in the county in which the defendant resides or is~~
22 ~~present to schedule an appointment to provide two samples of~~



1 ~~blood. A defendant required to report to a police station under~~
2 ~~this subsection shall do so within:~~

3 ~~(a) Thirty days of July 20, 1998;~~

4 ~~(b) Thirty days of the release following an acquittal or~~
5 ~~finding of unfitness to proceed under chapter 704; or~~
6 ~~any state, federal, or military law similar to chapter~~
7 ~~704; or~~

8 ~~(c) Thirty days after arrival in the State,~~
9 ~~if the defendant resides or expects to be present in the~~
10 ~~State for a period exceeding thirty days.~~

11 ~~(7) Blood withdrawn pursuant to this section shall be~~
12 ~~withdrawn only by a person authorized to withdraw blood under~~
13 ~~section 291E 12. The results shall be recorded, preserved, and~~
14 ~~disseminated in a manner consistent with the requirements of~~
15 ~~chapter 846. A defendant who has already provided the necessary~~
16 ~~samples of blood pursuant to this section shall be relieved of~~
17 ~~any further requirement to provide blood for DNA analysis,~~
18 ~~unless the court orders otherwise.~~

19 ~~(8)]~~ **DNA analysis monetary assessment; DNA registry special**
20 **fund.** (1) In addition to any disposition authorized by chapter
21 706 or 853, [a] every defendant convicted of [a ~~sexual or~~
22 ~~violent~~];

- 1 (a) A felony offense [after July 20, 1998 may] shall be
2 ordered to pay a monetary assessment of \$500 or the
3 actual cost of the DNA analysis, whichever is less.
4 The court [~~shall not order the defendant to pay~~] may
5 reduce the monetary assessment [unless] if the court
6 finds, based on evidence presented by the defendant
7 and not rebutted by the State, that the defendant is
8 [~~or~~] not and will not be able to pay the full monetary
9 assessment[-] and, based on the finding, shall instead
10 order the defendant to pay an assessment that the
11 defendant will be able to pay within five years.
- 12 (b) For the purpose of implementing chapter , there
13 shall be levied an additional penalty of \$1 for every
14 \$10 or fraction thereof, upon every fine or penalty
15 imposed and collected by the courts for all criminal
16 offenses and all traffic offenses, including all fines
17 or penalties imposed pursuant to title 17, but not
18 including fines for parking offenses.
- 19 (c) Notwithstanding any other law to the contrary, the
20 assessment provided by this section shall be in
21 addition to, and not in lieu of, and shall not be used
22 to offset or reduce, any fine or restitution



1 authorized or required by law. All assessments shall
2 be paid into the DNA registry special fund established
3 in subsection ~~[(9)-]~~ (2).

4 ~~[(9)-]~~ (2) There is established a special fund to be known
5 as the DNA registry special fund which shall be administered by
6 the attorney general. The fund shall consist of:

7 (a) All assessments ordered pursuant to subsection ~~[(8)-]~~
8 (1);

9 (b) All other moneys received by the fund from any other
10 source; and

11 (c) Interest earned on any moneys in the fund.

12 Moneys in the DNA registry special fund shall be used for DNA
13 collection, DNA testing, and related costs of recording,
14 preserving, and disseminating DNA information pursuant to this
15 section~~[-]~~ and chapter .

16 ~~[(10)-]~~ (3) Restitution to the victim of a sexual or
17 violent crime shall be made before payment of the monetary
18 assessment.

19 ~~[(11)- Any person required to provide blood samples under
20 this section who negligently or recklessly fails to comply shall
21 be guilty of a misdemeanor; and any person who intentionally or~~



1 ~~knowingly fails to provide blood samples under this section~~
2 ~~shall be guilty of a class C felony.]"~~

3 SECTION 5. There is appropriated out of the DNA registry
4 special fund, created in section 706-603, Hawaii Revised
5 Statutes, the sum of \$550,000, or so much thereof as may be
6 necessary, for fiscal year 2006-2007 to carry out the purposes
7 of this Act. The sum appropriated shall be expended by the
8 department of the attorney general to carry out the purposes of
9 this Act including, but not limited to, reimbursement to the
10 county police departments and the department of public safety
11 for costs incurred in carrying out the purposes of this Act.

12 SECTION 6. There is appropriated out of the general
13 revenues of the State of Hawaii the sum of \$200,000, or so much
14 thereof as may be necessary for fiscal year 2006-2007, to be
15 deposited into the DNA registry special fund. The sum
16 appropriated shall be expended by the department of the attorney
17 general to carry out the purposes of this Act including, but not
18 limited to, reimbursement to the county police departments and
19 the department of public safety for costs incurred in carrying
20 out the purposes of this Act.

21 SECTION 7. Statutory material to be repealed is bracketed



SB 2146

Report Title:
Identification

Description:

Provides for identification by means of DNA testing of all felons, and provides for less intrusive and more economical methods of testing. Requires DNA testing of each person arrested for a felony. Extends the statute of limitations in cases where DNA has been recovered as evidence. Provides for post-conviction DNA testing, and funding (\$750,000) to implement the new DNA testing program.

