

JAN 25 2006

S.B. NO. 2243

A BILL FOR AN ACT

RELATING TO BIOLOGICAL EVIDENCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 844D-31, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) Testing pursuant to this section shall begin
4 immediately for all persons who have been convicted of murder in
5 any degree or any felony offense defined in chapter 846E, and
6 all persons convicted of any felony offense who are confined in
7 a correctional facility or other detention facility, including
8 private correctional facilities, but shall not begin for other
9 persons until thirty days after statewide publication of notice
10 by the attorney general pursuant to section 1-28.5."

11 SECTION 2. Section 844D-62, Hawaii Revised Statutes, is
12 amended by amending subsection (a) to read as follows:

13 "(a) The department of the attorney general shall provide
14 all blood specimen collectors, buccal swab sample collectors,
15 mailing [~~tubes,~~] envelopes, labels, and instructions for the
16 collection of the blood specimens, buccal swab samples, and
17 print impressions. The specimens, samples, and print
18 impressions shall thereafter be forwarded to the department [~~for~~

1 ~~analysis of DNA and other forensic identification markers.~~
2 ~~Additionally, the department of the attorney general shall~~
3 ~~provide all print impression cards, mailing envelopes, and~~
4 ~~instructions for the collection of print impressions. The print~~
5 ~~impressions shall be forwarded to the department for maintenance~~
6 ~~in a file for identification purposes]."~~

7 SECTION 3. Section 844D-62, Hawaii Revised Statutes, is
8 amended by amending subsection (d) to read as follows:

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

17 SECTION 4. Section 844D-111, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

19 "(a) A person commits the offense of refusal or failure to
20 provide specimen for forensic identification if the person is
21 required by this chapter to provide any blood specimens, buccal
22 swab samples, or print impressions and intentionally or

1 knowingly refuses or fails to provide any of the required blood
2 specimens, buccal swab samples, or print impressions after the
3 person has received written notice from the department, the
4 department of public safety, any law enforcement personnel, or
5 officer of the court that the person is required to provide each
6 and every one of the blood specimens, buccal swab samples, and
7 print impressions required by this chapter."

8 SECTION 5. Section 844D-121, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "**§844D-121 Petition for post-conviction DNA testing.**

11 Notwithstanding any other law or rule of court governing post-
12 conviction relief to the contrary, a person who was convicted of
13 and sentenced for a crime, or acquitted of a crime on the ground
14 of physical or mental disease, disorder, or defect excluding
15 responsibility, may file a motion, at any time, for DNA analysis
16 of any evidence that:

17 (1) Is in the custody or control of a police department,
18 prosecuting attorney, laboratory, or court;

19 (2) Is related to the investigation or prosecution that
20 resulted in the judgment of conviction[~~,-and~~], or of
21 acquittal of a crime on the ground of physical or

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1 mental disease, disorder, or defect excluding
2 responsibility; and

3 (3) May contain biological evidence."

4 SECTION 5. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY: 

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BY REQUEST

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO BIOLOGICAL EVIDENCE.

PURPOSE: To provide for the immediate DNA testing of all felons who are currently incarcerated, to eliminate the provision that identifies the Department of the Attorney General as the department that maintains the print impressions associated with DNA tests, to specify a state of mind element for the crime of refusal to provide a DNA sample, to replace the word "tube" with the word "envelope" in the list of items that the attorney general provides to those who obtain the DNA samples, and to allow for post conviction DNA testing for those who were not convicted but were acquitted of a crime on the ground of physical or mental disease, disorder, or defect.

MEANS: Amend sections 844D-31(b), 844D-62(a), 844D-62(d), 844D-111, and 844D-121, Hawaii Revised Statutes.

JUSTIFICATION: In addition to the procedural changes related to print impressions and the state of mind required for conviction under 844D-111 proposed by this bill, there are two substantive changes the bill would make. First, this bill would allow all persons currently incarcerated for a felony to be required to provide DNA samples. As a practical matter, it makes no sense to release a felon from incarceration only to require the felon to report back for DNA testing (assuming the felon can even be found).

Next, currently only those who are convicted of crimes may take advantage of the post-conviction DNA testing provisions of chapter 844D. However, if a person is found not

guilty on the ground of physical or mental disease, disorder, or defect, the person might want to eventually challenge the evidence against the person that formed the basis of the charge that resulted in the verdict of "not guilty on the ground of physical or mental disease, disorder, or defect excluding responsibility." Because this type of a not guilty verdict is not really an exoneration for the crime that was charged, those who have been the subject of such verdicts should have the opportunity to use the post-conviction DNA testing provisions of chapter 844D to show that the charges against them were untrue, despite the fact that they were not convicted but were, instead, found "not guilty on the ground of physical or mental disease, disorder, or defect excluding responsibility."

Impact on the public: None.

Impact on the department and other agencies:
This bill will provide clearer guidelines that will eliminate uncertainty in DNA testing procedures and reduce delays and legal challenges.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: County police, county prosecutors, and the Office of the Public Defender.

EFFECTIVE DATE: Upon approval.