

JAN 18 2008

A BILL FOR AN ACT

RELATING TO FORENSIC IDENTIFICATION.

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

1 SECTION 1. The legislature finds that unlike fingerprints,
2 many states do not take DNA samples of persons arrested for
3 serious crimes. Recently there has been a push to require that
4 persons arrested for felony offenses provide DNA samples to help
5 determine whether the arrestee has committed a rape or murder.
6 As of 2007, eleven states have enacted laws to require that
7 felony arrestees provide DNA samples.

8 The purpose of this Act is to require felony arrestees to
9 provide buccal swab samples, hand print impressions, and blood
10 specimens, when appropriate, for inclusion in the DNA database
11 and data bank identification program. This Act also provides
12 protections to allow arrestees to expunge these samples from the
13 database and data bank identification program under certain
14 circumstances.

15 SECTION 2 Chapter 844D, Hawaii Revised Statutes, is
16 amended by adding a new section to be appropriately designated
17 and to read as follows:



1 "§844D-A Collection from persons arrested. (a) A person,
2 except for any juvenile, who is arrested for the commission of
3 any felony offense, shall provide buccal swab samples and print
4 impressions for each hand, and, if required by the collecting
5 agency's rules, or internal regulations, blood specimens
6 required for law enforcement identification analysis.

7 (b) Specimens, samples, and print impressions shall not be
8 required if it is determined that a specimen, sample, or print
9 impression has previously been taken and is included in the
10 state DNA database and data bank identification program."

11 SECTION 3. Section 844D-21, Hawaii Revised Statutes, is
12 amended by amending the title and subsection (a) to read as
13 follows:

14 "~~{}~~§844D-21~~{}~~ Collection of specimens, samples, and
15 print impressions at correctional facility or other detention
16 facility. (a) When the specimens, samples, or print
17 impressions required by this chapter are collected at a
18 correctional facility or other detention facility, including
19 private correctional facilities, the chief administrative
20 officer of the correctional facility or other detention facility
21 shall be responsible for ensuring that:



- 1 (1) The requisite specimens, samples, or print impressions
2 are collected from qualifying offenders or arrestees
3 during the intake process at that facility or
4 reasonably promptly thereafter; or
- 5 (2) The requisite specimens, samples, or print impressions
6 are collected as soon as administratively practicable
7 after a qualifying offender or arrestee reports to the
8 facility for the purpose of providing specimens,
9 samples, and print impressions; and
- 10 (3) The specimens, samples, or print impressions collected
11 pursuant to this chapter are forwarded immediately to
12 the department and in compliance with this chapter."

13 SECTION 4. Section 844D-71, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "[-]§844D-71[+] Expungement of DNA information from state
16 DNA database and data bank identification program. (a) A
17 person whose DNA profile has been included in the state DNA
18 database and data bank identification program pursuant to this
19 chapter shall have the person's DNA specimen and sample
20 destroyed and searchable database profile expunged from the
21 program pursuant to section 844D-72 if:



1 (1) The person has no past or present offense [~~which~~] that
2 qualifies that person for inclusion within the state
3 DNA database and data bank identification program;
4 [~~and~~]

5 (2) There otherwise is no legal basis for retaining the
6 specimen or sample or searchable profile[-]; and

7 (3) The specimen, sample, or print impression was taken
8 pursuant to section 844D-A and the arrest that led to
9 the taking of the specimen, sample, or print
10 impression:

11 (A) Has resulted in a felony charge that has been
12 resolved by dismissal, nolle prosequi, a
13 misdemeanor conviction, or acquittal; or

14 (B) Has not resulted in a felony charge within one
15 year of the person's arrest.

16 (b) A person requesting expungement of their DNA specimen,
17 sample, and profile:

18 (1) May make a written request to have the person's
19 specimen and sample destroyed and searchable database
20 profile expunged from the state DNA database and data
21 bank identification program if [~~the~~]:



1 (A) The underlying conviction or disposition serving
2 as the basis for including the DNA profile has
3 been reversed and the case dismissed; ~~and~~ or

4 (B) The person's specimen, sample, or print
5 impression falls within the purview of subsection
6 (a) (3); and

7 (2) Shall send a copy of the person's request to the trial
8 court of the circuit that entered the conviction or
9 rendered disposition in the case, to the department,
10 and to the prosecuting attorney of the county in which
11 the person was arrested, convicted, or adjudicated,
12 with proof of service on all parties.

13 (c) A court considering a request for expungement made
14 pursuant to this section, shall grant the request by order
15 pursuant to section 844D-72(a) if the criteria for expungement
16 under subsection (a) are met[-]; provided that a person's
17 specimen, sample, print impression, or searchable database
18 profile shall not be destroyed or expunged pursuant to section
19 844D-72 if the person has a prior felony conviction or pending
20 felony charge."



1 SECTION 5. Section 844D-72, Hawaii Revised Statutes, is
2 amended by amending the title and subsection (a) to read as
3 follows:

4 "[~~§~~844D-72~~§~~] Destruction of samples and expungement of
5 searchable DNA database profile. (a) Except as provided below,
6 the department shall destroy the sample, specimen, and print
7 impressions and shall expunge the searchable DNA database
8 profile pertaining to the person who has no present or past
9 qualifying offense or arrest of record upon receipt of a court
10 order that verifies the applicant has made the necessary showing
11 at a noticed hearing, and that includes all of the following:

- 12 (1) The written request for expungement pursuant to
13 section 844D-71;
- 14 (2) A certified copy of the court order reversing and
15 dismissing the conviction or case, a certified copy of
16 the court order showing dismissal, nolle prosequi, a
17 misdemeanor conviction, or acquittal, or a letter from
18 the prosecuting attorney certifying that no felony
19 charges arising out of the arrest have been filed
20 within one year of the arrest or that the underlying
21 conviction has been reversed and the case dismissed;



1 (3) A finding that written notice has been provided to the
2 prosecuting attorney and the department of the request
3 for expungement; and

4 (4) A court order verifying that no retrial or appeal of
5 the case is pending, that it has been at least one
6 hundred eighty days since the defendant or minor has
7 notified the prosecuting attorney and the department
8 of the expungement request, and that the court has not
9 received an objection from the department or the
10 prosecuting attorney."

11 SECTION 6. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 7. If any provision of this Act, or the
14 application thereof to any person or circumstance is held
15 invalid, the invalidity does not affect other provisions or
16 applications of the Act, which can be given effect without the
17 invalid provision or application, and to this end the provisions
18 of this Act are severable.

19 SECTION 8. This Act does not affect rights and duties that
20 matured, penalties that were incurred, and proceedings that were
21 begun, before its effective date.



1 SECTION 9. In codifying the new section added by section 2
2 of this Act, the revisor of statutes shall substitute the
3 appropriate section number for the letter used in designating
4 the new section in this Act.

5 SECTION 10. This Act shall take effect upon its approval.
6

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Report Title:

DNA; Forensic Identification

Description:

Requires the taking of buccal swab samples and print impressions of persons arrested for felony offenses. Allows samples taken of persons arrested to be expunged under certain circumstances. Makes conforming amendments to chapter 844D, Hawaii Revised Statutes.

