
A BILL FOR AN ACT

RELATING TO DNA COLLECTION FOR ARRESTEES OF VIOLENT CRIMES.

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

1 SECTION 1. The legislature finds that although every state
2 requires DNA collection for felony convictions, there is a
3 growing trend towards collecting DNA for felony arrests. Twelve
4 states, including California, Alaska, Arizona, and New Mexico,
5 have already enacted laws that require DNA collections from
6 those arrested on felony charges, and over half of the states
7 have begun the process of considering such legislation.

8 The supporting rationale for the enactment of Chapter 844D
9 is the same for the enactment of legislation calling for
10 collection of DNA upon felony arrest of violent crimes - the
11 ability to solve cold cases, saving lives by providing early
12 identification of serial offenders, absolving the innocent, and
13 reducing cases of wrongful incarceration and racial bias.

14 Specifically, in the case of rape, expanding DNA database
15 requirements helps prevent crimes. An offender that is not
16 apprehended in a timely manner remains free to commit more
17 crimes. For example, according to the U.S. Department of
18 Justice, the average rapist commits 8-12 sexual assaults. If



1 law enforcement were able to apprehend the rapist after the
2 first sexual assault, an average of 7 rapes could be prevented
3 per offender.

4 Many courts, including the second, third, and ninth circuit
5 courts, the Virginia supreme court, and other federal courts in
6 Maryland, New Jersey, and Oregon, have upheld the collection of
7 DNA samples at arrest as an acceptable and constitutional
8 practice.

9 The purpose of this Act is to require DNA collection for
10 felony arrests of violent crimes.

11 SECTION 2. Section 844D-31, Hawaii Revised Statutes, is
12 amended to read as follows:

13 **"§844D-31 Offenders subject to collection.** (a) Any
14 person, except for any juvenile, who is convicted of, or pleads
15 guilty or no contest to, any felony offense, even if the plea is
16 deferred, or is found not guilty by reason of insanity of any
17 felony offense, shall provide buccal swab samples and print
18 impressions of each hand, and, if required by the collecting
19 agency's rules or internal regulations, blood specimens,
20 required for law enforcement identification analysis.

21 (b) Any person, except for any juvenile, arrested for a
22 violent crime listed in this section shall provide buccal swab



1 samples and print impressions and, if required by the collecting
2 agency's rules or internal regulations, blood specimens,
3 immediately at intake or as soon as administratively practicable
4 at the appropriate custodial or receiving institution or
5 program. The violent offenses for which an arrestee shall be
6 compelled to provide a buccal swab sample include violations of:

- 7 (1) Sections 707-701, 707-701.5, 707-702;
8 (2) Any offense listed under Part III of chapter 707; or
9 (3) Any offense listed under Part V of chapter 707, with
10 the exception of 707-734.

11 ~~[(b)]~~ (c) Testing pursuant to this section shall begin
12 immediately for all persons who have been convicted of murder in
13 any degree or any felony offense defined in chapter 846E and all
14 persons convicted of any felony offense who are confined in a
15 correctional facility or other detention facility, including
16 private correctional facilities, but shall not begin for other
17 persons until thirty days after statewide publication of notice
18 by the attorney general pursuant to section 1-28.5.

19 ~~[(e)]~~ (d) The attorney general's notice, pursuant to
20 subsection ~~[(b)-7]~~ (c), may be provided in stages, beginning with
21 notice of the beginning of testing of all persons not already
22 mandated to be tested by subsection ~~[(b)]~~ (c) who have been



1 convicted of a class A felony, then notice of the beginning of
 2 testing of all persons not already mandated to be tested by
 3 subsection [~~(b)~~] (c) who have been convicted of a class B
 4 felony, and finally notice of the beginning of testing of all
 5 persons not already mandated to be tested by subsection [~~(b)~~]
 6 who have been convicted of a class C felony.

7 [~~(d)~~] (e) Nothing in this section shall be construed as
 8 prohibiting collection and analysis of specimens, samples, or
 9 print impressions as a condition of a plea for a non-qualifying
 10 offense."

11 SECTION 3. Section 844D-34, Hawaii Revised Statutes, is
 12 amended to read as follows:

13 "[~~§~~§844D-34[~~§~~] **Collection from persons arrested for**
 14 **violent crimes, confined, or in custody after conviction or**
 15 **adjudication.** A person, except for any juvenile, shall provide
 16 buccal swab samples and print impressions and, if required by
 17 the collecting agency's rules or internal regulations, blood
 18 specimens, immediately at intake, or during the prison reception
 19 center process, or as soon as administratively practicable at
 20 the appropriate custodial or receiving institution or program
 21 if:



- 1 (1) The person is imprisoned or confined or placed in a
2 state correctional facility, a county correctional
3 facility, the department of public safety, a
4 residential treatment program, or any state, county,
5 private, or other facility after a conviction of any
6 felony offense or any arrest for a violent crime
7 listed under section 844D-31;
- 8 (2) The person has a record of any past or present
9 conviction of a qualifying offense described in
10 section 844D-31 or has a record of any past or present
11 conviction or adjudication in any other court,
12 including any state, federal, or military court, of
13 any offense, that, if committed or attempted in this
14 State, would have been punishable as an offense
15 described in section 844D-31; and
- 16 (3) The person's blood specimens or buccal swab samples,
17 and print impressions authorized by this chapter are
18 not in the possession of the department or have not
19 been recorded as part of the state DNA database and
20 data bank identification program."

21 SECTION 4. Section 844D-71, Hawaii Revised Statutes, is
22 amended by amending subsection (a) to read as follows:



1 "(a) A person whose DNA profile has been included in the
2 state DNA database and data bank identification program pursuant
3 to this chapter shall have the person's DNA specimen and sample
4 destroyed and searchable database profile expunged from the
5 program pursuant to section 844D-72 if:

- 6 (1) The person has no past or present offense which
7 qualifies that person for inclusion within the state
8 DNA database and data bank identification program;
9 provided that no DNA specimens or samples collected as
10 a result of an arrest for a violent crime pursuant to
11 section 844D-31 or 844D-34 shall be expunged; and
12 (2) There otherwise is no legal basis for retaining the
13 specimen or sample or searchable profile."

14 SECTION 5. There is appropriated out of the general
15 revenues of the State of Hawaii the sum of \$ or so
16 much thereof as may be necessary for fiscal year 2010-2011 to be
17 deposited into the DNA registry special fund.

18 SECTION 6. There is appropriated out of the DNA registry
19 special fund the sum of \$ or so much thereof as may be
20 necessary for fiscal year 2010-2011 for reimbursements to county
21 police departments for expenses related to collection and



1 processing of DNA buccal swab samples and specimens made
2 pursuant to this Act.

3 The sum appropriated shall be expended by the department of
4 the attorney general for the purposes of this Act.

5 SECTION 7. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 8. This Act shall take effect upon its approval;
8 provided that sections 5 and 6 of this Act shall take effect on
9 July 1, 2010.



Report Title:

Crime

Description:

Requires DNA collection from those arrested for violent crimes.
(HB336 HD1)

