

JAN 23 2009

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# A BILL FOR AN ACT

RELATING TO FORENSIC IDENTIFICATION.

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

1           SECTION 1. Chapter 844D, Hawaii Revised Statutes, is  
2 amended by adding three new sections to be appropriately  
3 designated and to read as follows:

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

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

14           §844D-B Samples for sexual assault victims. (a) Samples  
15 collected pursuant to a medical examination of a victim of any  
16 felony sexual offense as defined in chapter 707, shall be  
17 submitted to the department for DNA testing.



1        (b) Records derived from the DNA testing in subsection (a)  
2 shall be included in the state DNA database.

3        **§844D-C Missing persons, unidentified persons, and**  
4 **unidentified human remains.** (a) The department shall designate  
5 itself or other appropriate entities to serve as repositories  
6 for blood specimens, buccal swab, and other biological samples,  
7 and the designated entity shall analyze specimens and samples,  
8 and store, compile, correlate, compare, maintain, and use DNA  
9 and forensic identification profiles and records for missing or  
10 unidentified persons and unidentified human remains.

11        (b) The department shall utilize DNA records from local,  
12 state, and federal law enforcement agencies and the coroner or  
13 medical examiner in the identification and location of missing  
14 and unidentified persons or unidentified human remains.

15        (c) Samples from unidentified persons or relatives of  
16 missing persons shall be provided to the department upon:

17        (1) The completion of a permission to search form  
18 authorizing the collection of blood specimens and  
19 buccal swab and other biological samples;

20        (2) The receipt of a properly executed search warrant; or

21        (3) Issuance of a court order.



1        (d) Samples from unidentified human remains shall be  
2 provided to the department by the coroner or medical examiner.

3        (e) Samples of reference materials from missing persons  
4 shall be provided by the investigating law enforcement agency."

5        SECTION 2. Section 844D-21, Hawaii Revised Statutes, is  
6 amended by amending the title and subsection (a) to read as  
7 follows:

8        "~~§~~844D-21~~§~~ **Collection of specimens, samples, and**  
9 **print impressions at correctional facility or other detention**  
10 **facility.** (a) When the specimens, samples, or print  
11 impressions required by this chapter are collected at a  
12 correctional facility or other detention facility, including  
13 private correctional facilities, the chief administrative  
14 officer of the correctional facility or other detention facility  
15 shall be responsible for ensuring that:

16        (1) The requisite specimens, samples, or print impressions  
17 are collected from qualifying offenders or arrestees  
18 during the intake process at that facility or  
19 reasonably promptly thereafter; or

20        (2) The requisite specimens, samples, or print impressions  
21 are collected as soon as administratively practicable  
22 after a qualifying offender or arrestee reports to the



1 facility for the purpose of providing specimens,  
2 samples, and print impressions; and  
3 (3) The specimens, samples, or print impressions collected  
4 pursuant to this chapter are forwarded immediately to  
5 the department and in compliance with this chapter."

6 SECTION 3. Section 844D-23, Hawaii Revised Statutes, is  
7 amended by amending the title and subsection (a) to read as  
8 follows:

9 "~~[+]§844D-23 [+]~~ **Repository of samples and records.** (a)  
10 The department may designate itself or other appropriate  
11 entities to serve as repositories for blood specimens and buccal  
12 swab and other biological samples, and the designated entity  
13 shall analyze specimens and samples, and store, compile,  
14 correlate, compare, maintain, and use DNA and forensic  
15 identification profiles and records related to the following:

- 16 (1) Forensic casework and forensics unknown;
- 17 (2) Known and evidentiary specimens and samples from crime  
18 scenes or criminal investigations;

19 ~~[-(3)- Missing or unidentified persons;~~  
20 ~~[-(4)-~~ (3) Persons required to provide specimens, samples,  
21 or print impressions under this chapter;

22 ~~[-(5)-~~ (4) Legally obtained samples; and



1       ~~[-6-]~~ (5) Anonymous DNA records used for training,  
 2               research, statistical analysis of populations, quality  
 3               assurance, or quality control."

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

6       "~~[-]~~§844D-71~~[+]~~ **Expungement of DNA information from state**  
 7 **DNA database and data bank identification program.** (a) A  
 8 person whose DNA profile has been included in the state DNA  
 9 database and data bank identification program pursuant to this  
 10 chapter shall have the person's DNA specimen and sample  
 11 destroyed and searchable database profile expunged from the  
 12 program pursuant to section 844D-72 if:

- 13       (1) The person has no past or present offense ~~[which]~~ that  
 14               qualifies ~~[that]~~ the person for inclusion within the  
 15               state DNA database and data bank identification  
 16               program; and
- 17       (2) There otherwise is no legal basis for retaining the  
 18               specimen or sample or searchable profile~~[-]~~; or
- 19       (3) The specimen, sample, or print impression was taken  
 20               pursuant to section 844D-A and the arrest that led to  
 21               the taking of the specimen, sample, or print  
 22               impression has:



- 1           (A) Resulted in a felony charge that has been
- 2                     resolved by dismissal, nolle prosequi, a
- 3                     misdemeanor conviction, or acquittal; or
- 4           (B) Has not resulted in a felony charge within one
- 5                     year of the person's arrest.

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

8           (1) May make a written request to have the person's  
9 specimen and sample destroyed and searchable database  
10 profile expunged from the state DNA database and data  
11 bank identification program if ~~the~~:

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

15           (B) The person's specimen, sample, or print  
16                     impression falls within the purview of subsection  
17                     (a) (3); and

18           (2) Shall send a copy of the person's request to the trial  
19 court of the circuit that entered the conviction or  
20 rendered disposition in the case, to the department,  
21 and to the prosecuting attorney of the county in which

1           the person was arrested, convicted, or adjudicated,  
2           with proof of service on all parties.

3           (c) A court considering a request for expungement made  
4 pursuant to this section, shall grant the request by order  
5 pursuant to section 844D-72(a) if the criteria for expungement  
6 under subsection (a) are met[-]; provided that a person's  
7 specimen, sample, print impression, or searchable database  
8 profile shall not be destroyed or expunged pursuant to section  
9 844D-72 if the person has a prior felony conviction or pending  
10 felony charge."

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

14           "~~§844D-72~~ **Destruction of samples and expungement of**  
15 **searchable DNA database profile.** (a) Except as provided below,  
16 the department shall destroy the sample, specimen, and print  
17 impressions and shall expunge the searchable DNA database  
18 profile pertaining to the person who has no present or past  
19 qualifying offense or arrest of record upon receipt of a court  
20 order that verifies the applicant has made the necessary showing  
21 at a noticed hearing, and that includes all of the following:



- 1           (1) The written request for expungement pursuant to  
2           section 844D-71;
- 3           (2) A certified copy of the court order reversing and  
4           dismissing the conviction or case, a certified copy of  
5           the court order showing dismissal, nolle prosequi, a  
6           misdemeanor conviction, or acquittal, or a letter from  
7           the prosecuting attorney certifying that no felony  
8           charges arising out of the arrest have been filed  
9           within one year of the arrest or that the underlying  
10          conviction has been reversed and the case dismissed;
- 11          (3) A finding that written notice has been provided to the  
12          prosecuting attorney and the department of the request  
13          for expungement; and
- 14          (4) A court order verifying that no retrial or appeal of  
15          the case is pending, that it has been at least one  
16          hundred eighty days since the defendant or minor has  
17          notified the prosecuting attorney and the department  
18          of the expungement request, and that the court has not  
19          received an objection from the department or the  
20          prosecuting attorney."

21          SECTION 6. Statutory material to be repealed is bracketed  
22          and stricken. New statutory material is underscored.





# S.B. NO. 235

1           SECTION 7. If any provision of this Act, or the  
2 application thereof to any person or circumstance is held  
3 invalid, the invalidity does not affect other provisions or  
4 applications of the Act, which can be given effect without the  
5 invalid provision or application, and to this end the provisions  
6 of this Act are severable.

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

10          SECTION 9. In codifying the new sections added by section  
11 1 of this Act, the revisor of statutes shall substitute  
12 appropriate section numbers for the letters used in designating  
13 the new sections in this Act.

14          SECTION 10. This Act shall take effect upon its approval.

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INTRODUCED BY:

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**Report Title:**

DNA; Forensic Identification; Forensic Sample Collection;  
Forensic Sample Reposit; Forensic Sample Expungement

**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. Requires that samples collected pursuant to a medical examination of a victim of any felony sexual offense be submitted to the city and county of Honolulu police department for DNA testing. Provides for the collection of samples to assist with identification of missing persons, unidentified persons, and unidentified human remains.

