
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 Hawaii Revised Statutes, is the same for the enactment of
10 legislation calling for collection of DNA upon arrest for felony
11 violent crimes - the ability to solve cold cases, saving lives
12 by providing early identification of serial offenders, absolving
13 the innocent, and reducing cases of wrongful incarceration and
14 racial bias.

15 Specifically, in the case of rape, expanding DNA database
16 requirements helps prevent crimes. An offender that is not
17 apprehended in a timely manner remains free to commit more
18 crimes. For example, according to the United States Department



1 of Justice, the average rapist commits eight to twelve sexual
2 assaults. If law enforcement were able to apprehend the rapist
3 after the first sexual assault, an average of seven rapes could
4 be prevented per offender.

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

10 The purpose of this Act is to require DNA collection for
11 arrests involving certain violent crimes.

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

14 ."§844D-31 Offenders subject to collection. (a) Any
15 person, except for any juvenile, who is convicted of, or pleads
16 guilty or no contest to, any felony offense, even if the plea is
17 deferred, or is found not guilty by reason of insanity of any
18 felony offense, 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 **(b)** Any person, except for any juvenile, arrested for a
2 violent crime listed in this subsection shall provide buccal
3 swab samples and print impressions and, if required by the
4 collecting agency's rules or internal regulations, blood
5 specimens, immediately at intake or as soon as administratively
6 practicable at the appropriate custodial or receiving
7 institution or program. The violent crimes for which an
8 arrestee shall be compelled to provide a buccal swab sample
9 shall be:

10 **(1)** Offenses under sections 707-701, 707-701.5, and 707-
11 702;

12 **(2)** Any offense listed under part III of chapter 707; and

13 **(3)** Any offense listed under part V of chapter 707, with
14 the exception of 707-734.

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



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

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

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

17 " ~~[(f)]~~ §844D-34 ~~[(f)]~~ Collection from persons arrested for
18 violent crimes, confined, or in custody after conviction or
19 adjudication. A person, except for any juvenile, shall provide
20 buccal swab samples and print impressions and, if required by
21 the collecting agency's rules or internal regulations, blood
22 specimens, immediately at intake, or during the prison reception



1 center process, or as soon as administratively practicable at
2 the appropriate custodial or receiving institution or program
3 if:

4 (1) The person is imprisoned or confined or placed in a
5 state correctional facility, a county correctional
6 facility, the department of public safety, a
7 residential treatment program, or any state, county,
8 private, or other facility after a conviction of any
9 felony offense[+] or any arrest for a violent crime
10 listed under section 844D-31(b);

11 (2) The person has a record of any past or present
12 conviction of a qualifying offense described in
13 section 844D-31 or has a record of any past or present
14 conviction or adjudication in any other court,
15 including any state, federal, or military court, of
16 any offense, that, if committed or attempted in this
17 State, would have been punishable as an offense
18 described in section 844D-31; and

19 (3) The person's blood specimens or buccal swab samples,
20 and print impressions authorized by this chapter are
21 not in the possession of the department or have not



1 been recorded as part of the state DNA database and
2 data bank identification program."

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

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

10 (1) The person has no past or present offense which
11 qualifies that person for inclusion within the state
12 DNA database and data bank identification program;
13 provided that no DNA specimens or samples collected as
14 a result of an arrest for a violent crime pursuant to
15 section 844D-31 or 844D-34 shall be expunged; and

16 (2) There otherwise is no legal basis for retaining the
17 specimen or sample or searchable profile."

18 SECTION 5. There is appropriated out of the general
19 revenues of the State of Hawaii the sum of \$ or so
20 much thereof as may be necessary for fiscal year 2011-2012 to be
21 deposited into the DNA registry special fund.

Report Title:

Violent Crimes; DNA Collection; Arrests

Description:

Requires DNA collection from those arrested for certain violent crimes.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

