
A BILL FOR AN ACT

RELATING TO THE RETENTION OF BIOLOGICAL EVIDENCE.

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

1 SECTION 1. Section 844D-126, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "~~[+]§844D-126[+]~~ **Retention of biological evidence.** (a)

4 All evidence in the custody or control of a police department,
5 prosecuting attorney, laboratory, or court ~~[that]~~:

6 (1) That is related to the investigation or prosecution of
7 a case in which there has been a judgment of
8 conviction for:

9 (A) Murder;

10 (B) Manslaughter;

11 (C) Kidnapping;

12 (D) Sexual assault in the first degree;

13 (E) Sexual assault in the second degree;

14 (F) Assault in the first degree; or

15 (G) An attempt or criminal conspiracy to commit one

16 of the offenses listed above; and



1 (2) ~~[that may contain]~~ That contains biological evidence
2 that could be used for DNA analysis to reasonably do
3 the following:

4 (A) Establish the identity of the person who
5 committed the offense for which the judgment of
6 conviction was entered; or

7 (B) Exclude a person from the group of persons who
8 could have committed the offense for which the
9 judgment of conviction was entered,

10 shall be retained.

11 (b) The evidence shall be retained at least until the
12 later occurring of either:

13 (1) The exhaustion of all appeals of the case to which the
14 evidence is related; or

15 (2) The completion of any sentence, including any term of
16 probation or parole, imposed on the defendant in the
17 case to which the evidence relates.

18 ~~[(b) The attorney general shall establish procedures and~~
19 ~~protocols, which shall be uniform throughout the State, for the~~
20 ~~collection and preservation of evidence retained pursuant to~~
21 ~~this section.]~~



1 (c) Notwithstanding subsections (a) and (b), an agency may
2 dispose of evidence retained pursuant to the requirements of
3 subsections (a) and (b) if the agency files a notification of
4 proposed disposal of the evidence with the court, and either the
5 defendant does not file an objection to the proposed disposal
6 or, if the defendant does file an objection, the court allows
7 the disposal of the evidence. The filed notification shall be
8 served upon the defendant against whom the judgment of
9 conviction was filed and the defendant's attorney of record.
10 The notification shall include a description of the evidence and
11 a statement that any objection by the defendant shall be filed
12 in writing within ninety days of the date of service of the
13 notification upon defendant. The agency may dispose of the
14 evidence if an objection to the proposed disposal is not filed
15 within the ninety-day period.

16 (d) If defendant files an objection to the proposed
17 disposal of evidence, the court shall schedule a hearing on the
18 objection. If, after a hearing, the court determines by a
19 preponderance of the evidence that:

20 (1) The identity of the defendant, as the perpetrator of
21 the offense that resulted in the judgment of
22 conviction, was at issue; and

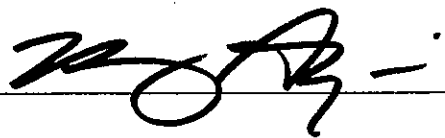


1 (2) The evidence contains biological evidence that could
2 be used for DNA analysis to reasonably establish the
3 identity of the person who committed the offense for
4 which the defendant was convicted, or exclude a person
5 from the group of persons who could have committed the
6 offense for which defendant was convicted;
7 the court may order the agency to retain the evidence for the
8 period specified in subsection (b), or if appropriate, the court
9 may enter an order authorizing the agency to dispose of the
10 evidence after taking reasonable measures to preserve the
11 biological material contained on the evidence. If, after the
12 hearing, the court is unable to make either of those findings,
13 the court shall enter an order authorizing the agency to dispose
14 of the evidence."

15 SECTION 2. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 3. This Act shall take effect upon its approval.

18

INTRODUCED BY: 
JAN 16 2014



H.B. NO. 1717

Report Title:

Retention of Biological Evidence

Description:

Establishes specific offenses for which evidence shall be retained. Allows law enforcement agencies to petition the court to dispose of biological evidence. Requires the court to use a preponderance of evidence standard in determining whether to allow the law enforcement agency to dispose of the biological evidence.

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