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# 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 that may  
3                    reasonably:

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) Evidence shall be retained at least until the later  
12 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 a 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 evidence contained in the evidence. If, after the  
12 hearing, the court is unable to make either of those  
13 conclusions, the court shall enter an order authorizing the  
14 agency to dispose 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 on July 1, 2050.



**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. Effective July 1, 2050. (HB1717 HD1)

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

