
A BILL FOR AN ACT

RELATING TO DNA COLLECTION FOR VIOLENT CRIMES.

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

1 SECTION 1. The legislature finds that there is a growing
2 trend towards collecting DNA from persons who are arrested for
3 felony offenses. While every state now requires a DNA sample
4 from persons convicted of a felony offense, many states have
5 also considered and enacted legislation to expand the scope of
6 their DNA database by requiring DNA sample collection from
7 persons arrested for a felony offense. Currently, almost thirty
8 states, the federal government, and the Department of Defense
9 are authorized to collect DNA samples from arrestees.

10 The United States Supreme Court supports the collection of
11 DNA samples from arrestees. In its decision in *Maryland v.*
12 *King*, 569 U.S.____ (2013), decided June 3, 2013, the Supreme Court
13 held, "Upon these considerations the Court concludes that DNA
14 identification of arrestees is a reasonable search that can be
15 considered part of a routine booking procedure. When officers
16 make an arrest supported by probable cause to hold for a serious
17 offense and they bring the suspect to the station to be detained
18 in custody, taking and analyzing a cheek swab of the arrestee's



1 DNA is, like fingerprinting and photographing, a legitimate
2 police booking procedure that is reasonable under the Fourth
3 Amendment."

4 Forensic DNA testing is a vastly more precise and reliable
5 means of human identification than other methods, including
6 fingerprinting. By collecting DNA from arrestees, law
7 enforcement can definitively identify the person arrested and,
8 in some instances, identify the perpetrator of an unsolved
9 crime, thus assisting law enforcement investigative efforts.

10 The legislature further finds that all the arguments in
11 support of the enactment of chapter 844D, Hawaii Revised
12 Statutes, are the same arguments for the enactment of
13 legislation calling for the collection of DNA upon arrest for
14 violent felonies: to assure accurate identification of the
15 arrested person; to help solve cold cases; to provide early and
16 accurate identification of serial offenders and thereby prevent
17 the commission of further violent crimes and protect potential
18 victims; to exonerate the innocent and minimize wrongful
19 incarceration; to minimize racial bias; and to reduce law
20 enforcement investigative costs.

21 Accordingly, the purpose of this Act is to:



- 1 (1) Mandate DNA collection from all persons arrested for
2 the commission of a violent felony offense;
- 3 (2) Provide for the expungement of DNA records, in certain
4 circumstances, when an individual is not convicted of
5 the offense; and
- 6 (3) Appropriate funds for the costs of DNA collection,
7 processing, storage, and expungement responsibilities.

8 SECTION 2. Chapter 844D, Hawaii Revised Statutes, is
9 amended by adding a new section to be appropriately designated
10 and to read as follows:

11 **"§844D- Arrestees subject to collection. (a) Any**
12 person, except for any juvenile, who is arrested for the
13 commission or attempted commission of any felony offense
14 involving a violent crime as defined in section 351-32 shall
15 provide buccal swab samples and print impressions of each hand
16 and, if required by the collecting agency's rules or internal
17 regulations, blood specimens, required for law enforcement
18 identification analysis.

19 (b) The person shall provide the buccal swab samples,
20 print impressions, and blood specimens, as required by
21 subsection (a), to the arresting authority at the time of



1 booking or processing for the arrest, or as soon as
2 administratively practicable by the arresting authority.

3 (c) The arresting authority shall be responsible for
4 obtaining the buccal swab samples, print impressions, and blood
5 specimens, as required by subsection (a), from the arrestee.

6 (d) The buccal swab samples, print impressions, and
7 specimens may not be required if the arresting authority
8 determines that the required samples, impressions, and specimens
9 have previously been taken and provide an adequate record, and
10 the arrestee's DNA profile has already been included in the
11 state DNA database and data bank identification program."

12 SECTION 3. Section 831-3.2, Hawaii Revised Statutes, is
13 amended to read as follows:

14 **"§831-3.2 Expungement orders.** (a) The attorney general,
15 or the attorney general's duly authorized representative within
16 the department of the attorney general, upon written application
17 from a person arrested for, or charged with but not convicted of
18 a crime, shall issue an expungement order annulling, canceling,
19 and rescinding the record of arrest; provided that an
20 expungement order shall not be issued:



- 1 (1) In the case of an arrest for a felony or misdemeanor
2 where conviction has not been obtained because of bail
3 forfeiture;
- 4 (2) For a period of five years after arrest or citation in
5 the case of a petty misdemeanor or violation where
6 conviction has not been obtained because of a bail
7 forfeiture;
- 8 (3) In the case of an arrest of any person for any offense
9 where conviction has not been obtained because the
10 person has rendered prosecution impossible by
11 absenting oneself from the jurisdiction;
- 12 (4) In the case of a person acquitted by reason of a
13 mental or physical defect under chapter 704; and
- 14 (5) For a period of one year upon discharge of the
15 defendant and dismissal of the charge against the
16 defendant in the case of a deferred acceptance of
17 guilty plea or nolo contendere plea, in accordance
18 with chapter 853.

19 Any person entitled to an expungement order hereunder may
20 by written application also request return of all fingerprints
21 or photographs taken in connection with the person's arrest.
22 The attorney general or the attorney general's duly authorized



1 representative within the department of the attorney general,
2 within 120 days after receipt of the written application, shall,
3 when so requested, deliver, or cause to be delivered, all
4 fingerprints or photographs of the person, unless the person has
5 a record of conviction or is a fugitive from justice, in which
6 case the photographs or fingerprints may be retained by the
7 agencies holding such records.

8 (b) Upon the issuance of the expungement certificate, the
9 person applying for the order shall be treated as not having
10 been arrested in all respects not otherwise provided for in this
11 section.

12 (c) Upon the issuance of the expungement order, ~~[all]~~ the
13 attorney general or the attorney general's duly authorized
14 representative within the department of the attorney general,
15 shall deliver a copy of the order to the law enforcement
16 authority retaining the arrest records sought to be expunged
17 and, if the arrest records include DNA samples, specimens, and
18 profiles obtained pursuant to section 844D- , shall also
19 deliver a copy of the order to the police department of the city
20 and county of Honolulu. All arrest records pertaining to the
21 arrest, other than DNA samples and specimens, which are in the
22 custody or control of any law enforcement agency of the state or



1 any county government, and which are capable of being forwarded
2 to the attorney general without affecting other records not
3 pertaining to the arrest, shall be so forwarded for placement of
4 the arrest records in a confidential file. The police
5 department of the city and county of Honolulu shall destroy the
6 DNA samples and specimens pertaining to the arrest which were
7 obtained pursuant to section 844D- , shall expunge the DNA
8 information from the state DNA database and databank
9 identification program, shall ensure that the DNA information is
10 also expunged from any other database to which the information
11 was uploaded, and shall send written confirmation to the
12 department of the attorney general that these expungement
13 requirements have been complied with.

14 (d) The police department shall not be required to destroy
15 the DNA samples and specimens, nor expunge the DNA profiles from
16 the databases, if the person has a record of conviction or is a
17 fugitive from justice, or has a pending court case that could
18 result in a felony conviction.

19 (e) Any identification, warrant, probable cause to arrest,
20 or arrest based upon a data bank match shall not be invalidated
21 due to a failure to expunge or a delay in expunging records.



1 ~~(d)~~ (f) Records filed under subsection (c) shall not be
2 divulged except upon inquiry by:

3 (1) A court of law or an agency thereof which is preparing
4 a presentence investigation for the court;

5 (2) An agency of the federal or state government which is
6 considering the subject person for a position
7 immediately and directly affecting the national or
8 state security; or

9 (3) A law enforcement agency acting within the scope of
10 their duties.

11 Response to any other inquiry shall not be different from
12 responses made about persons who have no arrest records.

13 ~~(e)~~ (g) The attorney general or the attorney general's
14 duly authorized representative within the department of the
15 attorney general shall issue to the person for whom an
16 expungement order has been entered, a certificate stating that
17 the order has been issued and that its effect is to annul the
18 record of a specific arrest. The certificate shall authorize
19 the person to state, in response to any question or inquiry,
20 whether or not under oath, that the person has no record
21 regarding the specific arrest. Such a statement shall not make



1 the person subject to any action for perjury, civil suit,
2 discharge from employment, or any other adverse action.

3 ~~[(f)]~~ (h) The meaning of the following terms as used in
4 this section shall be as indicated:

5 ~~[(1)]~~ "Conviction" means a final determination of guilt
6 whether by plea of the accused in open court, by
7 verdict of the jury or by decision of the court.

8 ~~-(2)]~~ "Arrest record" means any existing ~~[photographic]~~
9 photographs, DNA specimens or samples, DNA profiles, and
10 fingerprint cards relating to the arrest.

11 "Conviction" means a final determination of guilt whether
12 by plea of the accused in open court, by verdict of the jury, or
13 by decision of the court.

14 "DNA" means deoxyribonucleic acid.

15 ~~[(g)]~~ (i) The attorney general shall adopt rules pursuant
16 to chapter 91 necessary for the purpose of this section.

17 ~~[(h)]~~ (j) Nothing in this section shall affect the
18 compilation of crime statistics or information stored or
19 disseminated as provided in chapter 846."

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



1 "~~[+]~~§844D-71~~[+]~~ **Expungement of DNA information from state**
2 **DNA database and data bank identification program.** (a) A
3 person whose DNA profile has been included in the state DNA
4 database and data bank identification program pursuant to [~~this~~
5 ~~chapter~~] section 844D-31 shall have the person's DNA specimen
6 and sample destroyed and searchable database profile expunged
7 from the program pursuant to section 844D-72 if:

8 (1) The person has no past or present offense which
9 qualifies that person for inclusion within the state
10 DNA database and data bank identification program; and
11 (2) There otherwise is no legal basis for retaining the
12 specimen or sample or searchable profile.

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

15 (1) May make a written request to have the person's
16 specimen and sample destroyed and searchable database
17 profile expunged from the state DNA database and data
18 bank identification program if the underlying
19 conviction or disposition serving as the basis for
20 including the DNA profile has been reversed and the
21 case dismissed; and



1 (2) Shall send a copy of the person's request to the trial
2 court of the circuit that entered the conviction or
3 rendered disposition in the case, to the department,
4 and to the prosecuting attorney of the county in which
5 the person was convicted or adjudicated, with proof of
6 service on all parties.

7 (c) A court considering a request for expungement made
8 pursuant to this section, shall grant the request by order
9 pursuant to section 844D-72(a) if the criteria for expungement
10 under subsection (a) are met.

11 (d) This section shall not apply to the expungement of DNA
12 samples, specimens, and profiles provided by arrestees pursuant
13 to section 844D- . A person whose DNA profile has been
14 included in the state DNA database and data bank identification
15 program pursuant to section 844D- may request an expungement
16 of the person's DNA sample, specimen, and profile pursuant to
17 section 831-3.2."

18 SECTION 5. Section 844D-83, Hawaii Revised Statutes, is
19 amended by amending subsection (a) to read as follows:

20 "(a) If any employee of the department knowingly uses an
21 arrestee or offender specimen, sample, or DNA profile collected
22 pursuant to this chapter for other than criminal identification



1 or exclusion purposes, or knowingly discloses DNA or other
2 forensic identification information developed pursuant to this
3 section to an unauthorized individual or agency for other than
4 criminal identification or exclusion purposes or for other than
5 the identification of missing persons, in violation of this
6 chapter, the department shall be liable in civil damages to the
7 donor of the DNA identification information in the amount of
8 \$5,000 for each violation, plus attorney's fees and costs. In
9 the event of multiple violations, total damages shall not exceed
10 \$50,000 plus attorney's fees and costs."

11 SECTION 6. Section 844D-113, Hawaii Revised Statutes, is
12 amended by amending subsection (a) to read as follows:

13 "(a) A person commits the offense of unauthorized
14 disclosure of DNA sample or profile if the person intentionally
15 or knowingly, in violation of this chapter:

16 (1) Uses an arrestee or offender sample or DNA profile for
17 other than criminal identification or exclusion
18 purposes; or

19 (2) Discloses DNA or other forensic identification
20 information developed pursuant to this section to an
21 unauthorized individual or agency, for other than
22 criminal identification or exclusion."



1 SECTION 7. Section 844D-114, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) A person commits the offense of use of DNA sample or
4 profile for financial gain if the person, for the purpose of
5 financial gain, intentionally or knowingly, in violation of this
6 chapter:

7 (1) Uses an arrestee or offender sample or DNA profile for
8 other than criminal identification or exclusion
9 purposes; or

10 (2) Discloses DNA or other forensic identification
11 information developed pursuant to this chapter to an
12 unauthorized individual or entity, for other than
13 criminal identification or exclusion purposes."

14 SECTION 8. 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 2014-2015 to
17 cover expenses associated with DNA collection and expungement,
18 including the training of law enforcement personnel, analysis,
19 and the hiring of support personnel.

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



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

4 SECTION 10. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 11. This Act, upon its approval, shall take effect
7 on January 1, 2015; provided that section 8 shall take effect on
8 July 1, 2014.



Report Title:

Forensic Identification; DNA; Expungement; Violent Crime;
Appropriation

Description:

Requires persons arrested for a felony offense involving a violent crime to provide a DNA sample. Provides for the destruction of DNA samples and expungement of a DNA database profile when appropriate. Makes an appropriation for the costs of DNA collection, processing, storage, and expungement responsibilities. (SD1)

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