

JAN 22 2015

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 an evidence custodian,
5 including a police department, prosecuting attorney, laboratory,
6 or court ~~[that is]~~, shall be retained if the evidence:

7 (1) Is related to the investigation or prosecution of a
8 case in which there has been a judgment of conviction
9 [and that may] for:

10 (A) Murder;

11 (B) Manslaughter;

12 (C) Kidnapping;

13 (D) Sexual assault in the first degree;

14 (E) Sexual assault in the second degree;

15 (F) Assault in the first degree; or

16 (G) An attempt or criminal conspiracy to commit any

17 of the offenses set forth in this paragraph; and



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1 (2) Has been determined to contain biological evidence
2 that could reasonably be used for DNA analysis to:

3 (A) Establish the identity of the person who
4 committed the offense that resulted in the
5 judgment of conviction; or

6 (B) Exclude a person from the group of persons who
7 could have committed the offense that resulted in
8 the judgment of conviction.

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

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

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

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



1 (c) An evidence custodian may dispose of evidence retained
2 pursuant to subsection (a) and (b) before the expiration of the
3 time period specified in subsection (b) if:

4 (1) The court, pursuant to subsection (g), grants a motion
5 for disposal of the evidence, filed by the prosecuting
6 attorney before sentencing and scheduled to be heard
7 by the court immediately after sentencing or at any
8 time thereafter; or

9 (2) The prosecuting attorney or evidence custodian files
10 with the court a notification of proposed disposal of
11 the evidence under this section, and either:

12 (A) The defendant fails to file a statement of
13 objection pursuant to subsection (f); or

14 (B) If the defendant files a statement of objection
15 pursuant to subsection (f), the court, after a
16 hearing, allows disposal of the evidence pursuant
17 to subsection (g).

18 (d) The filed notification of proposed disposal of the
19 evidence shall be served upon:

20 (1) The defendant against whom the judgment of conviction
21 was entered, by actual personal service or, after a



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1 reasonable and documented good faith attempt for
2 personal service was made, at the defendant's last
3 known address;

4 (2) The defendant's parole officer or probation officer;
5 provided that service could not be made upon the
6 defendant by actual personal service and the defendant
7 continues to be under parole or probation supervision;
8 and

9 (3) The defendant's attorney of record or, if the
10 defendant's attorney of record is unavailable, the
11 public defender.

12 (e) The filed notification of proposed disposal of the
13 evidence shall include:

14 (1) A description of the evidence proposed to be disposed;
15 and

16 (2) Notice that the evidence custodian may dispose of the
17 evidence before the expiration of the time period
18 specified in subsection (b) unless, within ninety days
19 of receipt of the notification, the defendant files a
20 written statement of objection with the court and



1 serves the statement of objection on the evidence
2 custodian and prosecuting attorney.

3 (f) If within ninety days of receipt of the notification
4 of proposed disposal of the evidence, the defendant files a
5 written statement of objection with the court and serves the
6 statement of objection on the evidence custodian and prosecuting
7 attorney, the court shall schedule a hearing on the objection
8 and provide notice of the hearing to the evidence custodian and
9 the agency that prosecuted the case.

10 (g) If, after a hearing on a notification of proposed
11 disposal of the evidence or a hearing on a motion for disposal
12 of evidence, the court determines by a preponderance of the
13 evidence that:

14 (1) The identity of the defendant, as the perpetrator of
15 the offense that resulted in the judgment of
16 conviction, was not a contested issue in the case; or

17 (2) The evidence could not reasonably be used for DNA
18 analysis to:

19 (A) Establish the identity of the person who
20 committed the offense for which the defendant was
21 convicted; or



1 (B) Exclude a person from the group of persons who
2 could have committed the offense for which the
3 defendant was convicted,
4 the court may allow the evidence custodian to dispose of the
5 evidence.

6 (h) As used in this section, "biological evidence" means
7 an individual's blood, semen, hair, saliva, skin tissue,
8 fingernail scrapings, teeth, bone, bodily fluids, or other
9 identifiable biological material, including the contents of a
10 sexual assault examination kit."

11 SECTION 2. This Act does not affect rights and duties that
12 matured, penalties that were incurred, and proceedings that were
13 begun before its effective date.

14 SECTION 3. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 4. This Act shall take effect upon its approval.

17

INTRODUCED BY: *A.C. Fish*
BY REQUEST OF
ANOTHER PARTY

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Report Title:

Crime; Forensic Identification; DNA Analysis; Retention of Biological Evidence

Description:

Specifies the criminal offenses for which biological evidence must be retained for a certain period following a conviction and the standards for uses of retained evidence. Establishes a process for the disposal of biological evidence earlier than the prescribed period for retention.

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

