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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 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



- 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 subsections (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



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;  
10          provided that if the defendant does not have any attorney of  
11          record or the defendant's attorney of record is unavailable,  
12          service could not be made upon the defendant by actual personal  
13          service, the defendant is no longer under parole or probation  
14          supervision, and the facts shall appear by affidavit or  
15          otherwise to the satisfaction of the court, the court may order  
16          that service be made by publication of the notice in at least  
17          one newspaper published in the State and having a general  
18          circulation in the circuit in which the judgment of conviction  
19          was rendered, in a manner and for a time as the court may order,  
20          but no less than once each week in four successive weeks, the  
21          last publication to be not less than twenty-one days prior to



1 the return date stated therein unless a different time is  
2 prescribed by order of the court.

3 (e) The filed notification of proposed disposal of the  
4 evidence shall include:

5 (1) A description of the evidence proposed to be disposed;

6 and

7 (2) Notice that the evidence custodian may dispose of the  
8 evidence before the expiration of the time period  
9 specified in subsection (b) unless, within ninety days  
10 of receipt of the notification, the defendant files a  
11 written statement of objection with the court and  
12 serves the statement of objection on the evidence  
13 custodian and prosecuting attorney.

14 (f) If within ninety days of receipt of the notification  
15 of proposed disposal of the evidence, the defendant files a  
16 written statement of objection with the court and serves the  
17 statement of objection on the evidence custodian and prosecuting  
18 attorney, the court shall schedule a hearing on the objection  
19 and provide notice of the hearing to the evidence custodian and  
20 the agency that prosecuted the case.



1       (g) If, after a hearing on a notification of proposed  
2 disposal of the evidence or a hearing on a motion for disposal  
3 of evidence, the court determines by a preponderance of the  
4 evidence that:

5       (1) The identity of the defendant as the perpetrator of  
6 the offense that resulted in the judgment of  
7 conviction was not a contested issue in the case; or

8       (2) The evidence could not reasonably be used for DNA  
9 analysis to:

10       (A) Establish the identity of the person who  
11 committed the offense for which the defendant was  
12 convicted; or

13       (B) Exclude a person from the group of persons who  
14 could have committed the offense for which the  
15 defendant was convicted,

16 the court may allow the evidence custodian to dispose of the  
17 evidence or any appropriate portions thereof.

18       (h) As used in this section, "biological evidence" means  
19 an individual's blood, semen, hair, saliva, skin tissue,  
20 fingernail scrapings, teeth, bone, bodily fluids, or other



1 identifiable biological material, including the contents of a  
2 sexual assault examination kit."

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

6 SECTION 3. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8 SECTION 4. This Act shall take effect on January 7, 2059.



**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. Effective 01/07/2059. (SD1)

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