

JAN 23 2015

A BILL FOR AN ACT

RELATING TO DNA COLLECTION.

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
13 Court held, "Upon these considerations the Court concludes that
14 DNA identification of arrestees is a reasonable search that can
15 be considered part of a routine booking procedure. When
16 officers make an arrest supported by probable cause to hold for
17 a serious offense and they bring the suspect to the station to



1 be detained in custody, taking and analyzing a cheek swab of the
2 arrestee's DNA is, like fingerprinting and photographing, a
3 legitimate police booking procedure that is reasonable under the
4 Fourth Amendment."

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

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



1 Accordingly, the purpose of this Act is to:

2 (1) Mandate DNA collection from all persons arrested for
3 the commission of a violent felony offense;

4 (2) Provide for the expungement of DNA records, in certain
5 circumstances, when an individual is not convicted of
6 the offense; and

7 (3) Appropriate funds for the costs of DNA collection,
8 processing, storage, and expungement responsibilities.

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

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

20 (b) The person shall provide the buccal swab samples,
21 print impressions, and blood specimens, as required by



1 subsection (a), to the arresting authority at the time of
2 booking or processing for the arrest, or as soon as
3 administratively practicable by the arresting authority.

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

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

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

15 "§831-3.2 **Expungement orders.** (a) The attorney general,
16 or the attorney general's duly authorized representative within
17 the department of the attorney general, upon written application
18 from a person arrested for, or charged with but not convicted of
19 a crime, shall issue an expungement order annulling, canceling,
20 and rescinding the record of arrest; provided that an
21 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.



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

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

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



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

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



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

4 [~~d~~] (f) Records filed under subsection (c) shall not be
5 divulged except upon inquiry by:

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

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

12 (3) A law enforcement agency acting within the scope of
13 their duties.

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

16 [~~e~~] (g) The attorney general or the attorney general's
17 duly authorized representative within the department of the
18 attorney general shall issue to the person for whom an
19 expungement order has been entered, a certificate stating that
20 the order has been issued and that its effect is to annul the
21 record of a specific arrest. The certificate shall authorize



1 the person to state, in response to any question or inquiry,
2 whether or not under oath, that the person has no record
3 regarding the specific arrest. Such a statement shall not make
4 the person subject to any action for perjury, civil suit,
5 discharge from employment, or any other adverse action.

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

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

11 ~~(2)~~] "Arrest record" means any existing [~~photographie~~]
12 photographs, DNA specimens or samples, DNA profiles, and
13 fingerprint cards relating to the arrest.

14 "Conviction" means a final determination of guilt whether
15 by plea of the accused in open court, by verdict of the jury, or
16 by decision of the court.

17 "DNA" means deoxyribonucleic acid.

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



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

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

6 "[~~+~~]§844D-71[~~+~~] Expungement of DNA information from state
7 DNA database and data bank identification program. (a) A
8 person whose buccal swab samples and print impressions have been
9 collected pursuant to section 844D-31 and whose DNA profile has
10 been included in the state DNA database and data bank
11 identification program pursuant to this chapter shall have the
12 person's DNA specimen and sample destroyed and searchable
13 database profile expunged from the program pursuant to section
14 844D-72 if:

- 15 (1) The person has no past or present offense which
16 qualifies that person for inclusion within the state
17 DNA database and data bank identification program; and
18 (2) There otherwise is no legal basis for retaining the
19 specimen or sample or searchable profile.

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



- 1 (1) May make a written request to have the person's
2 specimen and sample destroyed and searchable database
3 profile expunged from the state DNA database and data
4 bank identification program if the underlying
5 conviction or disposition serving as the basis for
6 including the DNA profile has been reversed and the
7 case dismissed; and
- 8 (2) Shall send a copy of the person's request to the trial
9 court of the circuit that entered the conviction or
10 rendered disposition in the case, to the department,
11 and to the prosecuting attorney of the county in which
12 the person was convicted or adjudicated, with proof of
13 service on all parties.
- 14 (c) A court considering a request for expungement made
15 pursuant to this section, shall grant the request by order
16 pursuant to section 844D-72(a) if the criteria for expungement
17 under subsection (a) are met.
- 18 (d) This section shall not apply to the expungement of DNA
19 samples, specimens, and profiles provided by arrestees pursuant
20 to section 844D- . A person whose DNA profile has been
21 included in the state DNA database and data bank identification



1 program pursuant to section 844D- may request an expungement
2 of the person's DNA sample, specimen, and profile pursuant to
3 section 831-3.2."

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

6 "(a) If any employee of the department knowingly uses an
7 arrestee or offender specimen, sample, or DNA profile collected
8 pursuant to this chapter for other than criminal identification
9 or exclusion purposes, or knowingly discloses DNA or other
10 forensic identification information developed pursuant to this
11 section to an unauthorized individual or agency for other than
12 criminal identification or exclusion purposes or for other than
13 the identification of missing persons, in violation of this
14 chapter, the department shall be liable in civil damages to the
15 donor of the DNA identification information in the amount of
16 \$5,000 for each violation, plus attorney's fees and costs. In
17 the event of multiple violations, total damages shall not exceed
18 \$50,000 plus attorney's fees and costs."

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



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

4 (1) Uses an arrestee or offender sample or DNA profile for
5 other than criminal identification or exclusion
6 purposes; or

7 (2) Discloses DNA or other forensic identification
8 information developed pursuant to this section to an
9 unauthorized individual or agency, for other than
10 criminal identification or exclusion."

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

13 "(a) A person commits the offense of use of DNA sample or
14 profile for financial gain if the person, for the purpose of
15 financial gain, intentionally or knowingly, in violation of this
16 chapter:

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

20 (2) Discloses DNA or other forensic identification
21 information developed pursuant to this chapter to an



1 unauthorized individual or entity, for other than
2 criminal identification or exclusion purposes."

3 SECTION 8. There is appropriated out of the general
4 revenues of the State of Hawaii the sum of \$ or so
5 much thereof as may be necessary for fiscal year 2015-2016 and
6 the same sum or so much thereof as may be necessary for fiscal
7 year 2016-2017 as follows:

- 8 (1) To the city and county of Honolulu: \$;
- 9 (2) To the county of Hawaii: \$;
- 10 (3) To the county of Kauai: \$; and
- 11 (4) To the county of Maui: \$,

12 to cover expenses associated with DNA collection and
13 expungement, including the training of law enforcement
14 personnel, analysis, and the hiring of support personnel.

15 The sums appropriated shall be expended by the counties for
16 the purposes of this Act.

17 SECTION 9. This Act does not affect rights and duties that
18 matured, penalties that were incurred, and proceedings that were
19 begun before its effective date.

20 SECTION 10. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



S.B. NO. 824

1 SECTION 11. This Act shall take effect on January 1, 2016;
2 provided that section 8 shall take effect on July 1, 2015.

3

INTRODUCED BY: Michelle Fedani

Clarence K. Michikawa

Thomas J. ...

[Signature]

Will ...



S.B. NO. 824

Report Title:

Forensic Identification; DNA; Violent Crime; Expungement; Appropriation

Description:

Requires persons arrested for a felony offense involving a violent crime to provide DNA samples. Provides for the expungement and destruction of DNA records under certain circumstances. Provides funds directly to the counties to fund expenses necessary for DNA collection and expungement.

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