

JAN 18 2019

A BILL FOR AN ACT

RELATING TO DNA COLLECTION FOR CERTAIN FELONY OFFENSES.

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 deoxyribonucleic acid (DNA) from
3 persons who are arrested for felony offenses. While every state
4 now requires a DNA sample from persons convicted of a felony
5 offense, many states have also enacted legislation to expand the
6 scope of their DNA databases by requiring DNA sample collection
7 from persons arrested for felony offenses. Currently, thirty-
8 one states, the federal government, and the United States
9 Department of Defense are authorized to collect DNA samples from
10 arrestees.

11 The legislature notes that the United States Supreme Court
12 supports the collection of DNA samples from arrestees. In its
13 decision in *Maryland v. King*, 569 U.S. 435 (2013), the Supreme
14 Court held, "Upon these considerations the Court concludes that
15 DNA identification of arrestees is a reasonable search that can
16 be considered part of a routine booking procedure. When
17 officers make an arrest supported by probable cause to hold for



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

6 The legislature further finds that forensic DNA testing is
7 a vastly more precise and reliable means of human identification
8 than other methods, including fingerprinting. By collecting DNA
9 from arrestees, law enforcement can definitively identify the
10 person arrested and, in some instances, identify the perpetrator
11 of an unsolved crime, thus assisting law enforcement
12 investigative efforts. Moreover, all the arguments in support
13 of the enactment of chapter 844D, Hawaii Revised Statutes, which
14 addresses forensic identification, are the same arguments for
15 the enactment of legislation calling for the collection of DNA
16 upon arrest for certain felony offenses: to ensure accurate
17 identification of the arrested person; to help solve cold cases;
18 to provide early and accurate identification of serial offenders
19 and thereby prevent the commission of further violent crimes and
20 protect potential victims; to exonerate the innocent and



1 minimize wrongful incarceration; to minimize racial bias; and to
2 reduce law enforcement investigative costs.

3 Accordingly, the purpose of this Act is to:

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

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

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



1 (b) The person shall provide the buccal swab samples,
2 print impressions, and blood specimens, as required by
3 subsection (a), to the arresting authority at the time of
4 booking or processing for the arrest, or as soon as
5 administratively practicable by the arresting authority.

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

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

15 (e) Buccal swab samples provided pursuant to this section
16 shall not be DNA tested or placed in the state DNA database and
17 data bank identification program prior to issuance of a grand
18 jury indictment, filing of written information, judicial
19 determination of probable cause, or waiver of indictment for a
20 charge for the commission of the applicable felony offense.



1 (f) For purposes of this section, a "felony sexual
2 offense" includes the following:

3 (1) Sexual assault in the first degree (section 707-730);
4 (2) Sexual assault in the second degree (section 707-731);
5 (3) Sexual assault in the third degree (section 707-732);
6 (4) Continuous sexual assault of a minor under the age of
7 fourteen years (section 707-733.6);
8 (5) Promoting child abuse in the first degree (section
9 707-750);
10 (6) Promoting child abuse in the second degree (section
11 707-751);
12 (7) Promoting child abuse in the third degree (section
13 707-752);
14 (8) Sex trafficking (section 712-1202); and
15 (9) Promoting prostitution (section 712-1203).

16 (g) Nothing in this section shall be construed as
17 precluding other arrested persons from being required to provide
18 buccal swab samples, print impressions, or blood specimens
19 required for law enforcement identification analysis."

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



1 **"§831-3.2 Expungement orders.** (a) The attorney general,
2 or the attorney general's duly authorized representative within
3 the department of the attorney general, upon written application
4 from a person arrested for, or charged with but not convicted of
5 a crime, or found eligible for redress under chapter 661B, shall
6 issue an expungement order annulling, canceling, and rescinding
7 the record of arrest; provided that an expungement order shall
8 not be issued:

9 (1) In the case of an arrest for a felony or misdemeanor
10 where conviction has not been obtained because of bail
11 forfeiture;

12 (2) For a period of five years after arrest or citation in
13 the case of a petty misdemeanor or violation where
14 conviction has not been obtained because of a bail
15 forfeiture;

16 (3) In the case of an arrest of any person for any offense
17 where conviction has not been obtained because the
18 person has rendered prosecution impossible by
19 absenting oneself from the jurisdiction;

20 (4) In the case of a person who was involuntarily
21 hospitalized pursuant to section 706-607, or who was



1 acquitted or had charges dismissed pursuant to chapter
2 704 due to a physical or mental disease, disorder, or
3 defect; and

4 (5) For a period of one year upon discharge of the
5 defendant and dismissal of the charge against the
6 defendant in the case of a deferred acceptance of
7 guilty plea or nolo contendere plea, in accordance
8 with chapter 853.

9 Any person entitled to an expungement order under this
10 section may by written application also request return of all
11 fingerprints or photographs taken in connection with the
12 person's arrest. The attorney general or the attorney general's
13 duly authorized representative within the department of the
14 attorney general, within one hundred twenty days after receipt
15 of the written application, shall, when requested, deliver, or
16 cause to be delivered, all fingerprints or photographs of the
17 person, unless the person has a record of conviction or is a
18 fugitive from justice, in which case the photographs or
19 fingerprints may be retained by the agencies holding the
20 records.



1 (b) Upon the issuance of the expungement certificate, the
2 person applying for the order shall be treated as not having
3 been arrested in all respects not otherwise provided for in this
4 section.

5 (c) Upon the issuance of the expungement order, ~~[all]~~ the
6 attorney general, or the attorney general's duly authorized
7 representative within the department of the attorney general,
8 shall deliver a copy of the order to the law enforcement
9 authority retaining the arrest records sought to be expunged
10 and, if the arrest records include DNA samples, specimens, and
11 profiles obtained pursuant to section 844D- , shall also
12 deliver a copy of the order to the police department of the city
13 and county of Honolulu. All arrest records pertaining to the
14 arrest, other than DNA samples and specimens, that are in the
15 custody or control of any law enforcement agency of the state or
16 any county government, and that are capable of being forwarded
17 to the attorney general without affecting other records not
18 pertaining to the arrest, shall be so forwarded for placement of
19 the arrest records in a confidential file. The police
20 department of the city and county of Honolulu shall:



1 (1) Destroy the DNA samples and specimens pertaining to
2 the arrest that were obtained pursuant to section
3 844D- ;

4 (2) Expunge the DNA information from the state DNA
5 database and data bank identification program;

6 (3) Ensure that the DNA information is also expunged from
7 any other database to which the information was
8 uploaded; and

9 (4) Send written confirmation to the department of the
10 attorney general that these expungement requirements
11 have been complied with.

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

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

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



- 1 (1) A court of law or an agency thereof which is preparing
- 2 a presentence investigation for the court;
- 3 (2) An agency of the federal or state government which is
- 4 considering the subject person for a position
- 5 immediately and directly affecting the national or
- 6 state security; or
- 7 (3) A law enforcement agency acting within the scope of
- 8 their duties.

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

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



1 [~~f~~] (h) Any person for whom an expungement order has
2 been entered may request in writing that the court seal or
3 otherwise remove all judiciary files and other information
4 pertaining to the applicable arrest or case from the judiciary's
5 publicly accessible electronic databases. The court shall make
6 good faith diligent efforts to seal or otherwise remove the
7 applicable files and information within a reasonable time.

8 [~~g~~] (i) The meaning of the following terms as used in
9 this section shall be as indicated:

10 "Arrest record" means any existing [~~photographic~~]
11 photographs, DNA specimens or samples, DNA profiles, and
12 fingerprint cards relating to the arrest.

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

16 "DNA" means deoxyribonucleic acid.

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

19 [~~i~~] (k) Nothing in this section shall affect the
20 compilation of crime statistics or information stored or
21 disseminated as provided in chapter 846."



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

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

10 (1) The person has no past or present offense which
11 qualifies that person for inclusion within the state
12 DNA database and data bank identification program; and

13 (2) There otherwise is no legal basis for retaining the
14 specimen or sample or searchable profile.

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

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



1 including the DNA profile has been reversed and the
2 case dismissed; and

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

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

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

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



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

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

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

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



1 (2) Discloses DNA or other forensic identification
 2 information developed pursuant to this section to an
 3 unauthorized individual or agency, for other than
 4 criminal identification or exclusion."

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

7 "(a) A person commits the offense of use of DNA sample or
 8 profile for financial gain if the person, for the purpose of
 9 financial gain, intentionally or knowingly, in violation of this
 10 chapter:

11 (1) Uses an arrestee or offender sample or DNA profile for
 12 other than criminal identification or exclusion
 13 purposes; or

14 (2) Discloses DNA or other forensic identification
 15 information developed pursuant to this chapter to an
 16 unauthorized individual or entity, for other than
 17 criminal identification or exclusion purposes."

18 SECTION 8. There is appropriated out of the general
 19 revenues of the State of Hawaii the sum of \$ or so much
 20 thereof as may be necessary for fiscal year 2019-2020 to cover
 21 expenses associated with DNA collection and expungement,



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1 including the training of law enforcement personnel, analysis,
2 and the hiring of support personnel.

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

5 SECTION 9. This Act does not affect rights and duties that
6 matured, penalties that were incurred, and proceedings that were
7 begun before its effective date.

8 SECTION 10. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 11. This Act shall take effect on January 1, 2020;
11 provided that section 8 shall take effect on July 1, 2019.

12

INTRODUCED BY:


By Request



S.B. NO. 180

Report Title:

Honolulu Prosecuting Attorney Package; Forensic Identification; DNA; Expungement; Appropriation

Description:

Requires persons arrested for felony sexual offenses to provide a DNA sample. Defines felony sexual offenses. 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 and expungement.

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