
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 [~~a police department,~~
5 ~~prosecuting attorney, laboratory, or court that is~~] an agency
6 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 for a felony offense; and [~~that may~~]

10 (2) May contain biological evidence that could be used for
11 DNA analysis to reasonably do the following:

12 (A) Establish the identity of the person who
13 committed the offense for which there was the
14 judgment of conviction;

15 (B) Exclude a person from the group of persons who
16 could have committed the offense for which there
17 was the judgment of conviction; or



1 (C) Create a reasonable doubt about the identity of
2 the person who committed the offense for which
3 there was the judgment of conviction.

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

6 (1) The exhaustion of all appeals and any collateral
7 proceedings of the case to which the evidence is
8 related; or

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

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

16 (c) An agency may dispose of evidence retained pursuant to
17 subsections (a) and (b) before the expiration of the time period
18 specified in subsection (b) if:

19 (1) Pursuant to a court order; and

20 (2) All of the following conditions are met:

21 (A) The agency files a notification of the proposed
22 disposal of the evidence with the court;



1 (B) The filed notification is served upon:

2 (i) The defendant against whom the judgment of
3 conviction was filed by actual personal
4 service or at the defendant's last known
5 address; provided that a reasonable
6 documented good faith attempt for personal
7 service was made;

8 (ii) The defendant's attorney of record;

9 (iii) The public defender;

10 (iv) The defendant's parole officer or probation
11 officer;

12 (v) The Hawaii Innocence Project at the
13 University of Hawaii William S. Richardson
14 school of law; and

15 (vi) Any additional interested persons the agency
16 deems necessary;

17 (C) The filed notification includes:

18 (i) A description of the evidence proposed to be
19 disposed;

20 (ii) Notice that a defendant may file a statement
21 of objection within ninety days of the date
22 of receipt of the notification; and



1 (iii) Notice that the agency will dispose of the
2 evidence unless the defendant files a
3 statement of objection with the court and
4 serves the statement of objection on the
5 agency within the ninety-day period; and

6 (D) Either the defendant does not file a statement of
7 objection within the ninety-day period, or the
8 defendant does file a statement of objection
9 within the ninety-day period and the court, after
10 a hearing, issues an order to allow the agency to
11 dispose of the evidence.

12 (d) If a defendant files a statement of objection, the
13 court shall schedule a hearing on the objection and notify the
14 department or agency that prosecuted the case of the hearing on
15 the statement of objection to the notification of the proposed
16 disposal of the evidence.

17 (e) If, after a hearing, the court determines by a
18 preponderance of the evidence that:

19 (1) The identity of the defendant, as the perpetrator of
20 the offense that resulted in the judgment of
21 conviction, was at issue; and



1 (2) The evidence contains biological evidence that could
2 be used for DNA analysis to:

3 (A) Reasonably establish the identity of the person
4 who committed the offense for which the defendant
5 was convicted;

6 (B) Exclude a person from the group of persons who
7 could have committed the offense for which the
8 defendant was convicted; or

9 (C) Create a reasonable doubt about the identity of
10 the person who committed the offense for which
11 the defendant was convicted,

12 then the court may order the agency to retain the evidence for
13 the period specified in subsection (b) or, if appropriate, the
14 court may order that the agency may dispose of the evidence
15 after taking reasonable measures to preserve the biological
16 evidence contained on the evidence. If, after the hearing, the
17 court is unable to make any one of those findings, then the
18 court may allow the agency to dispose of the evidence.

19 (f) As used in this section:

20 "Agency" means any custodial agency that retains evidence,
21 including but not limited to the police department, prosecuting
22 attorney, laboratory, or court.



1 "Biological evidence" means an individual's blood, semen,
2 hair, saliva, skin tissue, fingernail scrapings, fingerprints,
3 teeth, bone, bodily fluids, or other identified biological
4 material including the contents of a sexual assault examination
5 kit."

6 SECTION 2. This Act does not affect rights and duties that
7 matured, penalties that were incurred, and proceedings that were
8 begun before its effective date.

9 SECTION 3. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

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

12



Report Title:

Retention; Biological Evidence

Description:

Amends guidelines and limitations for the post-conviction retention of biological evidence related to felony cases by various agencies and the courts. Provides procedures for agencies to dispose of certain retained evidence and for defendants to file objections to proposed disposals. (SD1)

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