
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:

10 (A) Murder;

11 (B) Manslaughter;

12 (C) Kidnapping;

13 (D) Robbery in the first degree;

14 (E) Sexual assault in the first degree;

15 (F) Sexual assault in the second degree;

16 (G) Assault in the first degree; or

17 (H) An attempt or criminal conspiracy to commit one

18 of these offenses; and [~~that may contain~~]



- 1 (2) Contains biological evidence that could be used for
2 DNA analysis [~~shall be retained at least until the~~
3 ~~later occurring of either:~~
- 4 ~~(1) The exhaustion of all appeals of the case to which the~~
5 ~~evidence is related; or~~
- 6 ~~(2) The completion of any sentence, including any term of~~
7 ~~probation or parole, imposed on the defendant in the~~
8 ~~case to which the evidence relates.] to reasonably do
9 the following:~~
- 10 (A) Establish the identity of the person who
11 committed the offense for which there was the
12 judgment of conviction; or
- 13 (B) Exclude a person from the group of persons who
14 could have committed the offense for which there
15 was the judgment of conviction.
- 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.] An agency may dispose of evidence related to the
20 investigation or prosecution of a case in which there has been a
21 judgment of conviction for any felony other than those~~



1 enumerated in subsection (a) if all of the following conditions
2 are met:

3 (1) The agency files a notification of the proposed
4 disposal of the evidence with the court;

5 (2) The filed notification is served upon:

6 (A) The defendant against whom the judgment of
7 conviction was filed at the defendant's last
8 known address;

9 (B) The defendant's attorney of record;

10 (C) The public defender;

11 (D) The prosecuting attorney; and

12 (E) The defendant's parole officer or probation
13 officer;

14 (3) The filed notification includes:

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

17 (B) Notice that a defendant may file a statement of
18 objection within one hundred eighty days of the
19 date of receipt of the notification or within
20 ninety days of the date of receipt of the
21 notification if the defendant is serving a
22 mandatory minimum sentence of imprisonment;



1 (4) If the defendant files a statement of objection
2 pursuant to paragraph (3), the court schedules a
3 hearing on the objection; and

4 (5) The court issues an order to allow the agency to
5 dispose of the evidence pursuant to subsection (c).

6 (c) If, after a hearing required pursuant to subsection
7 (b), the court determines by a preponderance of the evidence
8 that:

9 (1) The identity of the defendant, as the perpetrator of
10 the offense that resulted in the judgment of
11 conviction, was at issue; and

12 (2) The evidence contains biological evidence that could
13 be used for DNA analysis to reasonably establish the
14 identity of the person who committed the offense for
15 which the defendant was convicted, or exclude a person
16 from the group of persons who could have committed the
17 offense for which the defendant was convicted,

18 then the court may order the agency to retain the evidence at
19 least until the later of either the exhaustion of all appeals of
20 the case to which the evidence is related, or the completion of
21 any sentence, including any term of probation or parole, imposed
22 on the defendant in the case to which the evidence relates. If



1 appropriate, the court may order that the agency may dispose of
2 the evidence after taking reasonable measures to preserve the
3 biological evidence contained on the evidence. If, after the
4 hearing, the court is unable to make either of those findings,
5 then the court may allow the agency to dispose of the evidence.

6 (d) As used in this section:

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

10 "Biological evidence" means an individual's blood, semen,
11 hair, saliva, skin tissue, fingernail scrapings, fingerprints,
12 teeth, bone, bodily fluids, or other identified biological
13 material including the contents of a sexual assault examination
14 kit."

15 SECTION 2. This Act does not affect rights and duties that
16 matured, penalties that were incurred, and proceedings that were
17 begun before its effective date.

18 SECTION 3. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

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



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. (Proposed SD1)

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