
A BILL FOR AN ACT

RELATING TO DNA COLLECTION FOR SERIOUS 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 toward collecting deoxyribonucleic acid (DNA) from persons
3 who are arrested for felony offenses. While every state now
4 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), decided June
14 3, 2013, the Court held that "Upon these considerations the
15 Court concludes that DNA identification of arrestees is a
16 reasonable search that can be considered part of a routine
17 booking procedure. When officers make an arrest supported by



1 probable cause to hold for a serious offense and they bring the
2 suspect to the station to be detained in custody, taking and
3 analyzing a cheek swab of the arrestee's DNA is, like
4 fingerprinting and photographing, a legitimate police booking
5 procedure that is reasonable under the 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 various 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 serious felony 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 funds 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 part III to be appropriately
13 designated 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 serious felony offense
17 as defined in this section, shall provide buccal swab samples
18 and print impressions of each hand; provided that if required by
19 the collecting agency's rules or internal regulations, the
20 person shall also provide blood specimens required for law
21 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) Compliance with subsection (a) may not be required if
10 the arresting authority determines that the required samples,
11 impressions, and specimens have previously been taken and
12 provide an adequate record, and the arrestee's DNA profile has
13 already been included in the state DNA database and data bank
14 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) Nothing in this section shall be construed as
2 precluding any requirement by law that other arrested persons
3 provide buccal swab samples, print impressions, or blood
4 specimens for law enforcement identification analysis.

5 (g) For purposes of this section, a "serious felony
6 offense" includes the following:

7 (1) Carrying or use of a firearm in the commission of a
8 separate felony (section 134-21);

9 (2) Murder in the first degree (section 707-701);

10 (3) Murder in the second degree (section 707-701.5);

11 (4) Manslaughter (section 707-702);

12 (5) Negligent homicide in the first degree (section
13 707-702.5);

14 (6) Negligent homicide in the second degree (section
15 707-703);

16 (7) Negligent injury in the first degree (section
17 707-705);

18 (8) Assault in the first degree (section 707-710);

19 (9) Assault in the second degree (section 707-711);

20 (10) Assault against a law enforcement officer in the first
21 degree (section 707-712.5);



- 1 (11) Assault against an emergency worker (section
- 2 707-712.7);
- 3 (12) Kidnapping (section 707-720);
- 4 (13) Unlawful imprisonment in the first degree (section
- 5 707-721);
- 6 (14) Sexual assault in the first degree (section 707-730);
- 7 (15) Sexual assault in the second degree (section 707-731);
- 8 (16) Sexual assault in the third degree (section 707-732);
- 9 (17) Continuous sexual assault of a minor under the age of
- 10 fourteen years (section 707-733.6);
- 11 (18) Promoting child abuse in the first degree (section
- 12 707-750);
- 13 (19) Promoting child abuse in the second degree (section
- 14 707-751);
- 15 (20) Promoting child abuse in the third degree (section
- 16 707-752);
- 17 (21) Electronic enticement of a child in the first degree
- 18 (section 707-756);
- 19 (22) Electronic enticement of a child in the second degree
- 20 (section 707-757);



- 1 (23) Labor trafficking in the first degree (section
- 2 707-781);
- 3 (24) Labor trafficking in the second degree (section
- 4 707-782);
- 5 (25) Burglary in the first degree (section 708-810);
- 6 (26) Burglary in the second degree (section 708-811);
- 7 (27) Unauthorized entry in a dwelling in the first degree
- 8 (section 708-812.55);
- 9 (28) Unauthorized entry in a dwelling in the second degree
- 10 (section 708-812.6);
- 11 (29) Criminal property damage in the first degree (section
- 12 708-820);
- 13 (30) Criminal property damage in the second degree (section
- 14 708-821);
- 15 (31) Robbery in the first degree (section 708-840);
- 16 (32) Robbery in the second degree (section 708-841);
- 17 (33) Arson in the first degree (section 708-8251);
- 18 (34) Arson in the second degree (section 708-8252);
- 19 (35) Arson in the third degree (section 708-8253);
- 20 (36) Abuse of family or household members (section 709-
- 21 906);



- 1 (37) Sex trafficking (section 712-1202);
- 2 (38) Promoting prostitution (section 712-1203);
- 3 (39) Promoting pornography for minors (section 712-1215);
- 4 and
- 5 (40) Promoting a controlled substance through a minor
- 6 (section 712-1249.7)."

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

9 "§831-3.2 Expungement orders. (a) The attorney general,
10 or the attorney general's duly authorized representative within
11 the department of the attorney general, upon written application
12 from a person arrested for, or charged with but not convicted of
13 a crime, or found eligible for redress under chapter 661B, shall
14 issue an expungement order annulling, canceling, and rescinding
15 the record of arrest; provided that an expungement order shall
16 not be issued:

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

20 (2) For a period of five years after arrest or citation in
21 the case of a petty misdemeanor or violation where



1 conviction has not been obtained because of a bail
2 forfeiture;

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

7 (4) In the case of a person acquitted by reason of a
8 mental or physical defect under chapter 704; and

9 (5) For a period of one year upon discharge of the
10 defendant and dismissal of the charge against the
11 defendant in the case of a deferred acceptance of
12 guilty plea or nolo contendere plea, in accordance
13 with chapter 853.

14 Any person entitled to an expungement order under this
15 section may by written application also request return of all
16 fingerprints or photographs taken in connection with the
17 person's arrest. The attorney general or the attorney general's
18 duly authorized representative within the department of the
19 attorney general, within one hundred twenty days after receipt
20 of the written application, shall, when requested, deliver, or
21 cause to be delivered, all fingerprints or photographs of the



1 person, unless the person has a record of conviction or is a
2 fugitive from justice, in which case the photographs or
3 fingerprints may be retained by the agencies holding the
4 records.

5 (b) Upon the issuance of the expungement certificate, the
6 person applying for the order shall be treated as not having
7 been arrested in all respects not otherwise provided for in this
8 section.

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



1 pertaining to the arrest, shall be so forwarded for placement of
2 the arrest records in a confidential file. The police
3 department of the city and county of Honolulu shall:

4 (1) Destroy the DNA samples and specimens pertaining to
5 the arrest which were obtained pursuant to section
6 844D- ;

7 (2) Expunge the DNA information from the state DNA
8 database and databank identification program;

9 (3) Ensure that the DNA information is also expunged from
10 any other database to which the information was
11 uploaded; and

12 (4) Send written confirmation of compliance with these
13 expungement requirements to the department of the
14 attorney general.

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

20 (e) Any identification, warrant, probable cause to arrest,
21 or arrest based upon a data bank match shall not be invalidated



1 due to a failure to expunge or a delay in expunging records
2 pursuant to this section.

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

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

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

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

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

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



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

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

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

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

17 "Conviction" means a final determination of guilt whether
18 by plea of the accused in open court, by verdict of the jury, or
19 by decision of the court.

20 "DNA" means deoxyribonucleic acid.



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

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

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

8 "~~[\\$]~~844D-71~~[\\$]~~ Expungement of DNA information from state
9 DNA database and data bank identification program. (a) A
10 person whose DNA profile has been included in the state DNA
11 database and data bank identification program pursuant to ~~[this~~
12 ~~chapter]~~ section 844D-31 shall have the person's DNA specimen
13 and sample destroyed and searchable database profile expunged
14 from the program pursuant to section 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



H.B. NO. 1776

Report Title:

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

Description:

Requires persons arrested for certain felony offenses to provide a DNA sample. 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, processing, storage, and expungement responsibilities.

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