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## 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,



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  
JAN 18 2019





# H.B. NO. 508

**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.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

