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## 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]~~ an evidence  
5 custodian, including a police department, prosecuting attorney,  
6 laboratory, or court ~~[that is]~~, shall be retained if the  
7 evidence:

8           (1) Is related to the investigation or prosecution of a  
9           case in which there has been a judgment of conviction  
10           ~~[and that may]~~ for:

11           (A) Murder;

12           (B) Manslaughter;

13           (C) Kidnapping;

14           (D) Sexual assault in the first degree;

15           (E) Sexual assault in the second degree;

16           (F) Assault in the first degree; or



1           (G) An attempt or criminal conspiracy to commit one  
2           of the offenses listed above; and

3           (2) Has been determined to contain biological evidence  
4           that could reasonably be used for DNA analysis [~~shall~~  
5           ~~be retained~~] to do the following:

6           (A) Establish the identity of the person who  
7           committed the offense for which a defendant was  
8           convicted; or

9           (B) Exclude a person from the group of persons who  
10           could have committed the offense for which a  
11           defendant was convicted.

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

14           (1) The exhaustion of all appeals of the case to which the  
15 evidence is related; or

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

19           ~~[(b) The attorney general shall establish procedures and~~  
20 ~~protocols, which shall be uniform throughout the State, for the~~



1 ~~collection and preservation of evidence retained pursuant to~~  
2 ~~this section.]~~

3 (c) An evidence custodian may dispose of evidence retained  
4 pursuant to the requirements of subsections (a) and (b) before  
5 the expiration of the time period specified in subsection (b)  
6 if:

7 (1) The court grants a motion for disposal of evidence,  
8 filed by the prosecuting attorney before sentencing  
9 and scheduled to be heard by the court immediately  
10 after sentencing or any time thereafter; or

11 (2) The prosecuting attorney or evidence custodian files a  
12 notification of proposed disposal of the evidence with  
13 the court, and either the defendant does not file a  
14 statement of objection to the notification or the  
15 court, after a hearing pursuant to subsection (f),  
16 allows the disposal of the evidence.

17 (d) The filed notification of proposed disposal of the  
18 evidence shall be served upon:

19 (1) The defendant against whom the judgment of conviction  
20 was filed, by actual personal service or at the  
21 defendant's last known address after a reasonable



1           documented good faith attempt for personal service was  
2           unsuccessful;

3           (2) The defendant's parole officer or probation officer,  
4           if the defendant continues to be under parole or  
5           probation supervision and service could not be made  
6           upon the defendant by actual personal service; and

7           (3) The defendant's attorney of record or the public  
8           defender if the defendant's attorney of record is  
9           unavailable.

10          (e) The filed notification of proposed disposal of the  
11 evidence shall include:

12          (1) A description of the evidence proposed to be disposed;

13          (2) Notice that the defendant may file a written statement  
14          of objection with the court within ninety days of the  
15          date of receipt of the notification; and

16          (3) Notice that the evidence custodian will dispose of the  
17          evidence unless the defendant files a statement of  
18          objection with the court and serves the statement of  
19          objection on the evidence custodian and prosecuting  
20          attorney within the ninety-day period.



1        (f) If a defendant files an objection to the notification  
2 of proposed disposal with the court, the court shall schedule a  
3 hearing on the objection and notify the evidence custodian and  
4 the agency that prosecuted the case of the hearing.

5        (g) If, after a hearing on a notification of proposed  
6 disposal of the evidence or a hearing on a motion for disposal  
7 of evidence, the court determines by a preponderance of the  
8 evidence that either:

9        (1) The identity of the defendant, as the perpetrator of  
10 the offense that resulted in the judgment of  
11 conviction, was not a contested issue in the case; or

12        (2) The evidence could not reasonably be used for DNA  
13 analysis to:

14        (A) Establish the identity of the person who  
15 committed the offense for which the defendant was  
16 convicted; or

17        (B) Exclude a person from the group of persons who  
18 could have committed the offense for which the  
19 defendant was convicted,

20 then the court may allow the evidence custodian to dispose of  
21 the evidence.



1        (h) As used in this section, "biological evidence" means  
 2 an individual's blood, semen, hair, saliva, skin tissue,  
 3 finger nail scrapings, teeth, bone, bodily fluids, or other  
 4 identifiable biological material including contents of a sexual  
 5 assault examination 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.

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INTRODUCED BY:

*[Handwritten Signature]*  
 \_\_\_\_\_  
*By Reguar*

JAN 22 2015



# H.B. NO. 138

**Report Title:**

Retention of Biological Evidence

**Description:**

Amends the guidelines and limitations for the post-conviction retention of biological evidence by evidence custodians. Establishes a process for judicial supervision of early disposal of biological evidence.

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

