

JAN 25 2012

# A BILL FOR AN ACT

RELATING TO FORENSIC IDENTIFICATION.

## BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Chapter 844D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§844D- Collection from persons arrested for a felony.**

(a) Any person, except for any juvenile, who is arrested for the commission or attempted commission of any felony offense shall provide buccal samples and print impressions of each hand, and, if required by the collecting agency's rules or internal regulations, blood specimens, required for law enforcement identification analysis.

(b) The sample required by subsection (a) shall be taken at the time of the person's arrest."

SECTION 2. Section 831-3.2, Hawaii Revised Statutes, is amended to read as follows:

**"§831-3.2 Expungement orders.** (a) The attorney general, or the attorney general's duly authorized representative within the department of the attorney general, upon written application from a person arrested for, or charged with but not convicted of



1 a crime, shall issue an expungement order annulling, canceling,  
2 and rescinding the record of arrest; provided that an  
3 expungement order shall not be issued:

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

7 (2) For a period of five years after arrest or citation in  
8 the case of a petty misdemeanor or violation where  
9 conviction has not been obtained because of a bail  
10 forfeiture;

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

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

17 (5) For a period of one year upon discharge of the  
18 defendant and dismissal of the charge against the  
19 defendant in the case of a deferred acceptance of  
20 guilty plea or nolo contendere plea, in accordance  
21 with chapter 853.



1 Any person entitled to an expungement order hereunder may,  
2 by written application, also request the return or destruction  
3 of all fingerprints, DNA samples or specimens, or photographs  
4 taken in connection with the person's arrest.

5 (b) The attorney general or the attorney general's duly  
6 authorized representative within the department of the attorney  
7 general, within 120 days after receipt of the written  
8 application, shall [~~when~~]:

9 (1) When so requested, deliver, or cause to be delivered,  
10 all fingerprints or photographs of the person, unless  
11 the person has a record of conviction or is a fugitive  
12 from justice, in which case the photographs or  
13 fingerprints may be retained by the agencies holding  
14 such records [~~and~~]; and

15 (2) Forward the application to the police department of  
16 the city and county of Honolulu for the expungement of  
17 DNA information from the state DNA database and data  
18 bank identification program and destruction of DNA  
19 samples pursuant to sections 844D-71 and 844D-72.

20 [~~(b)~~] (c) Upon the issuance of the expungement  
21 certificate, the person applying for the order shall be treated



1 as not having been arrested in all respects not otherwise  
2 provided for in this section.

3       ~~[(e)]~~ (d) Upon the issuance of the expungement order, all  
4 arrest records pertaining to the arrest which are in the custody  
5 or control of any law enforcement agency of the state or any  
6 county government, and which are capable of being forwarded to  
7 the attorney general without affecting other records not  
8 pertaining to the arrest, shall be so forwarded for placement of  
9 the arrest records in a confidential file.

10       ~~[(d)]~~ (e) Records filed under subsection ~~[(e)]~~ (d) shall  
11 not be divulged except upon inquiry by:

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

14       (2) An agency of the federal or state government which is  
15           considering the subject person for a position  
16           immediately and directly affecting the national or  
17           state security; or

18       (3) A law enforcement agency acting within the scope of  
19           their duties.

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



1        [~~(e)~~] (f) The attorney general or the attorney general's  
2        duly authorized representative within the department of the  
3        attorney general shall issue to the person for whom an  
4        expungement order has been entered, a certificate stating that  
5        the order has been issued and that its effect is to annul the  
6        record of a specific arrest. The certificate shall authorize  
7        the person to state, in response to any question or inquiry,  
8        whether or not under oath, that the person has no record  
9        regarding the specific arrest. Such a statement shall not make  
10       the person subject to any action for perjury, civil suit,  
11       discharge from employment, or any other adverse action.

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

14       (1) "Conviction" means a final determination of guilt  
15       whether by plea of the accused in open court, by  
16       verdict of the jury or by decision of the court.

17       (2) "Arrest record" means any existing [~~photographie~~]  
18       photographs, DNA samples, specimens, or profile, and  
19       fingerprint cards relating to the arrest.

20       (3) "DNA" means deoxyribonucleic acid.

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



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

4        SECTION 3. Section 844D-71, Hawaii Revised Statutes, is  
5        amended by amending subsections (b) and (c) to read as follows:

6        "(b) A person requesting expungement of their DNA  
7        specimen, sample, and profile:

- 8        (1) May make a written request to have the person's  
9        specimen and sample destroyed and searchable database  
10       profile expunged from the state DNA database and data  
11       bank identification program if the underlying  
12       conviction or disposition serving as the basis for  
13       including the DNA profile has been reversed and the  
14       case dismissed; and
- 15       (2) Shall send a copy of the person's request to the trial  
16       court of the circuit that entered the conviction or  
17       rendered disposition in the case, to the department,  
18       and to the prosecuting attorney of the county in which  
19       the person was convicted or adjudicated, with proof of  
20       service on all parties~~[-]~~;



1 provided that in cases where the specimen and sample where taken  
2 pursuant to section 844D- , the person may request an  
3 expungement pursuant to section 831-3.2.

4 (c) A court considering a request for expungement made  
5 pursuant to this section, shall grant the request by order  
6 pursuant to section 844D-72(a) if the criteria for expungement  
7 under subsection (a) are met. This subsection shall not apply  
8 to requests for expungement pursuant to section 831-3.2."

9 SECTION 4. Section 844D-72, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "[~~§~~§844D-72[~~§~~] **Destruction of samples and expungement of**  
12 **searchable DNA database profile.** (a) Except as provided  
13 [~~below,~~] in this section, for requests for expungement pursuant  
14 to section 844D-71, the department shall destroy the sample and  
15 expunge the searchable DNA database profile pertaining to the  
16 person who has no present or past qualifying offense of record  
17 upon receipt of a court order that verifies the applicant has  
18 made the necessary showing at a noticed hearing, and that  
19 includes all of the following:

20 (1) The written request for expungement pursuant to  
21 section 844D-71;



1           (2) A certified copy of the court order reversing and  
2            dismissing the conviction or case, or a letter from  
3            the prosecuting attorney certifying that the  
4            underlying conviction has been reversed and the case  
5            dismissed;

6           (3) A finding that written notice has been provided to the  
7            prosecuting attorney and the department of the request  
8            for expungement; and

9           (4) A court order verifying that no retrial or appeal of  
10           the case is pending, that it has been at least one  
11           hundred eighty days since the defendant or minor has  
12           notified the prosecuting attorney and the department  
13           of the expungement request, and that the court has not  
14           received an objection from the department or the  
15           prosecuting attorney.

16           (b) Upon receipt of the order of the court pursuant to  
17           subsection (a), the department shall destroy any specimen or  
18           sample collected from the person and any searchable DNA database  
19           profile pertaining to the person, unless the department  
20           determines that the person is subject to the provisions of this  
21           chapter because of a past qualifying offense of record or is, or  
22           has otherwise become, obligated to submit a blood specimen or





1 buccal swab as a result of a separate conviction, or finding of  
2 guilty or not guilty by reason of insanity for an offense  
3 described in section 844D-31, or as a condition of a plea.

4 (c) Upon receipt by the department of a request for  
5 expungement pursuant to section 831-3.2, the department shall  
6 destroy the specimen or sample and expunge the searchable DNA  
7 database profile upon verification:

8 (1) From the court or prosecuting attorney that the charge  
9 for which the specimen or sample was taken is

10 dismissed or the person was acquitted at trial; and

11 (2) That there is no other pending qualifying warrant for  
12 a felony arrest or felony conviction that would  
13 otherwise require that the sample remain in the state  
14 DNA database and databank identification program.

15 [~~(e)~~] (d) The department is not required to destroy an  
16 autoradiograph or other item obtained from a blood specimen if  
17 evidence relating to another person subject to the provisions of  
18 this chapter would thereby be destroyed.

19 [~~(d)~~] (e) Any identification, warrant, probable cause to  
20 arrest, or arrest based upon a data bank match shall not be  
21 invalidated due to a failure to expunge or a delay in expunging  
22 records.



1        [~~(e)~~] (f) Notwithstanding any other provision of law, the  
 2 designated entity is not required to expunge DNA profile or  
 3 forensic identification information or destroy or return  
 4 specimens, samples, or print impressions taken pursuant to this  
 5 section based on a termination of a person's duty to register  
 6 pursuant to chapter 846E."

7        SECTION 5. This Act does not affect rights and duties that  
 8 matured, penalties that were incurred, and proceedings that were  
 9 begun before its effective date.

10       SECTION 6. Statutory material to be repealed is bracketed  
 11 and stricken. New statutory material is underscored.

12       SECTION 7. This Act shall take effect upon its approval.  
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**Report Title:**

Forensic Identification; DNA

**Description:**

Requires persons arrested for a felony offense to provide buccal samples and print impressions of each hand and under certain circumstances blood specimens. Provides for the expungement and destruction of samples under certain circumstances.

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

