

JAN 17 2014

---

# 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]~~ shall be  
6 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) Sexual assault in the first degree;

14 (E) Sexual assault in the second degree;

15 (F) Assault in the first degree; or

16 (G) An attempt or criminal conspiracy to commit one  
17 of these offenses; and ~~[that may contain]~~



1        (2) Contains biological evidence that could be used for  
2        DNA analysis to reasonably do the following:

3        (A) Establish the identity of the person who  
4        committed the offense for which there was the  
5        judgment of conviction; or

6        (B) Exclude a person from the group of persons who  
7        could have committed the offense for which there  
8        was the judgment of conviction.

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

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

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

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.]~~

20       (c) Notwithstanding subsections (a) and (b) to the  
21       contrary, an agency may dispose of evidence retained pursuant to  
22       subsections (a) and (b) if the agency files a notification of



1 proposed disposal of the evidence with the court, and either the  
2 defendant does not file an objection to the notification, or if  
3 the defendant does file an objection, the court allows the  
4 disposal of the evidence. The filed notification shall be  
5 served upon the defendant against whom the judgment of  
6 conviction was filed and the defendant's attorney of record.  
7 The notification shall include a description of the evidence and  
8 a statement that an objection by the defendant shall be filed in  
9 writing within ninety days of the date of service of the  
10 notification upon the defendant. The agency may dispose of the  
11 evidence if an objection to the notification of proposed  
12 disposal is not filed within the ninety-day period.

13 (d) If the defendant files an objection to the  
14 notification of proposed disposal with the court, the court  
15 shall schedule a hearing on the objection. If, after a hearing,  
16 the court determines by a preponderance of the evidence that:

17 (1) The identity of the defendant, as the perpetrator of  
18 the offense that resulted in the judgment of  
19 conviction, was at issue; and

20 (2) The evidence contains biological evidence that could  
21 be used for DNA analysis to reasonably establish the  
22 identity of the person who committed the offense for



1           which the defendant was convicted, or exclude a person  
 2           from the group of persons who could have committed the  
 3           offense for which the defendant was convicted,  
 4   then the court may order the agency to retain the evidence for  
 5   the period specified in subsection (b), or if appropriate, the  
 6   court may order that the agency may dispose of the evidence  
 7   after taking reasonable measures to preserve the biological  
 8   evidence contained on the evidence. If, after the hearing, the  
 9   court is unable to make either of those findings, then the court  
 10   shall allow the agency to dispose of the evidence."

11           SECTION 2. This Act does not affect rights and duties that  
 12   matured, penalties that were incurred, and proceedings that were  
 13   began before its effective date.

14           SECTION 3. Statutory material to be repealed is bracketed  
 15   and stricken. New statutory material is underscored.

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

17

INTRODUCED BY:

*Rosalyn de Bob*

*Will Eyer*  
*Mike Hubbard*  
*Matt R*  
*D*



**Report Title:**

Retention; Biological Evidence

**Description:**

Amends guidelines and limitations for the post-conviction retention of biological evidence by law enforcement agencies and the courts. Provides procedures for agencies to dispose of retained evidence and for defendants to file objections to proposed disposals.

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

