

JAN 17 2014

S.B. NO. 2615

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# A BILL FOR AN ACT

RELATING TO DNA COLLECTION FOR VIOLENT CRIMES.

**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 DNA from persons who are arrested for  
3 felonies. While all states require DNA collection for felony  
4 convictions, most states have begun considering bills to require  
5 collection for felony arrests. Twenty-three states have already  
6 enacted such legislation.

7           Forensic DNA testing is a vastly more precise and reliable  
8 means of human identification than other methods, including  
9 fingerprinting. By collecting DNA from arrestees, law  
10 enforcement can identify criminals earlier and create more  
11 efficient investigation practices. Virginia, which implemented  
12 DNA collection for arrestees in 2003, has matched more than six  
13 hundred arrestees to unsolved crimes.

14           The legislature further finds that all of the arguments in  
15 support of the enactment of chapter 844D, Hawaii Revised  
16 Statutes, are the same arguments for the enactment of  
17 legislation calling for the collection of DNA upon arrest for  
18 violent felonies – the ability to solve cold cases, saving



1 lives, and preventing subsequent violent crimes by providing  
2 early identification of serial offenders, absolving the  
3 innocent, minimizing wrongful incarceration, minimizing racial  
4 bias, and reducing law enforcement costs. Accordingly, the  
5 purpose of this Act is to:

- 6 (1) Mandate DNA collection for all persons arrested for  
7 the commission of a violent felony; and
- 8 (2) Provide for the expungement of DNA records, in certain  
9 circumstances, when an individual is not convicted of  
10 a felony.

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

13 **"§831-3.2 Expungement orders.** (a) The attorney general,  
14 or the attorney general's duly authorized representative within  
15 the department of the attorney general, upon written application  
16 from a person arrested for, or charged with but not convicted of  
17 a crime, shall issue an expungement order annulling, canceling,  
18 and rescinding the record of arrest; provided that an  
19 expungement order shall not be issued:

- 20 (1) In the case of an arrest for a felony or misdemeanor  
21 where conviction has not been obtained because of bail  
22 forfeiture;



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

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

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

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

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

20 (b) The attorney general or the attorney general's duly  
21 authorized representative within the department of the attorney



1 general, within 120 days after receipt of the written  
2 application, shall~~[, when]~~:

3 (1) When so requested, deliver, or cause to be delivered,  
4 all fingerprints or photographs of the person, unless  
5 the person has a record of conviction or is a fugitive  
6 from justice, in which case the photographs or  
7 fingerprints may be retained by the agencies holding  
8 such records~~[,]~~; and

9 (2) Forward the application to the police department of  
10 the city and county of Honolulu for the expungement of  
11 DNA information from the state DNA database and data  
12 bank identification program and destruction of DNA  
13 samples in accordance with sections 844D-71 and  
14 844D-72, respectively.

15 ~~[(b)]~~ (c) Upon the issuance of the expungement  
16 certificate, the person applying for the order shall be treated  
17 as not having been arrested in all respects not otherwise  
18 provided for in this section.

19 ~~[(e)]~~ (d) Upon the issuance of the expungement order, all  
20 arrest records pertaining to the arrest which are in the custody  
21 or control of any law enforcement agency of the state or any  
22 county government, and which are capable of being forwarded to



1 the attorney general without affecting other records not  
2 pertaining to the arrest, shall be so forwarded for placement of  
3 the arrest records in a confidential file.

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

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

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

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

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

16 ~~[(e)]~~ (f) The attorney general or the attorney general's  
17 duly authorized representative within the department of the  
18 attorney general shall issue to the person for whom an  
19 expungement order has been entered, a certificate stating that  
20 the order has been issued and that its effect is to annul the  
21 record of a specific arrest. The certificate shall authorize  
22 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)]~~ (g) ~~[The meaning of the following terms as]~~ As used  
6 in this section ~~[shall be as indicated]:~~

7 ~~[(1) "Conviction" means a final determination of guilt  
8 whether by plea of the accused in open court, by  
9 verdict of the jury or by decision of the court.]~~

10 ~~+(2)]~~ "Arrest record" means any existing ~~[photographic and]~~  
11 photographs, DNA samples, specimens, profile, or fingerprint  
12 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 ~~[(g)]~~ (h) The attorney general shall adopt rules pursuant  
18 to chapter 91 necessary for the purpose of this section.

19 ~~[(h)]~~ (i) 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 3. Section 844D-31, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3 "(a) Any person, except for any juvenile, who [~~is~~]:  
4 (1) Is convicted of[,~~or pleads~~] any felony offense;  
5 (2) Pleads guilty or no contest to[~~]~~ any felony offense,  
6 even if the plea is deferred[~~,~~or is~~];~~  
7 (3) Is found not guilty by reason of insanity of any  
8 felony offense[~~]~~; or  
9 (4) Is arrested for any felony offense involving a violent  
10 crime as defined in section 351-32;

11 shall provide buccal swab samples and print impressions of each  
12 hand, and, if required by the collecting agency's rules or  
13 internal regulations, blood specimens, required for law  
14 enforcement identification analysis."

15 SECTION 4. Section 844D-34, Hawaii Revised Statutes, is  
16 amended to read as follows:

17 "~~[~~]~~§844D-34[~~]~~ **Collection from persons confined or in**  
18 **custody after arrest, conviction, or adjudication.** A person,  
19 except for any juvenile, shall provide buccal swab samples and  
20 print impressions and, if required by the collecting agency's  
21 rules or internal regulations, blood specimens, immediately at  
22 intake, or during the prison reception center process, or as~~



1 soon as administratively practicable at the appropriate  
2 custodial or receiving institution or program if:

3 (1) The person is imprisoned or confined or placed in a  
4 state correctional facility, a county correctional  
5 facility, the department of public safety, a  
6 residential treatment program, or any state, county,  
7 private, or other facility after [a]:

8 (A) A conviction of any felony offense; or

9 (B) An arrest for any felony offense involving a  
10 violent crime as defined in section 351-32;

11 (2) The person has a record of any past or present  
12 conviction of a qualifying offense described in  
13 section 844D-31 or has a record of any past or present  
14 conviction or adjudication in any other court,  
15 including any state, federal, or military court, of  
16 any offense, that, if committed or attempted in this  
17 State, would have been punishable as an offense  
18 described in section 844D-31; and

19 (3) The person's blood specimens or buccal swab samples,  
20 and print impressions authorized by this chapter are  
21 not in the possession of the department or have not





1           been recorded as part of the state DNA database and  
2           data bank identification program."

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

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

7           (1) May make a written request to have the person's  
8 specimen and sample destroyed and searchable database  
9 profile expunged from the state DNA database and data  
10 bank identification program if the underlying  
11 conviction or disposition serving as the basis for  
12 including the DNA profile has been reversed and the  
13 case dismissed; and

14           (2) Shall send a copy of the person's request to the trial  
15 court of the circuit that entered the conviction or  
16 rendered disposition in the case, to the department,  
17 and to the prosecuting attorney of the county in which  
18 the person was convicted or adjudicated, with proof of  
19 service on all parties[-]; provided that in cases  
20 where the specimen and sample were taken for an arrest  
21 for the commission or attempted commission of any  
22 felony offense involving a violent crime as defined in



1           section 351-32, the person may request an expungement  
2           pursuant to section 831-3.2.

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

8           SECTION 6. Section 844D-72, Hawaii Revised Statutes, is  
9 amended to read as follows:

10           **"[+]§844D-72[+] Destruction of samples and expungement of**  
11 **searchable DNA database profile.** (a) Except as provided  
12 [~~below,~~] in this section, for requests for expungement pursuant  
13 to section 844D-71, the department shall destroy the sample and  
14 expunge the searchable DNA database profile pertaining to the  
15 person who has no present or past qualifying offense of record  
16 upon receipt of a court order that verifies the applicant has  
17 made the necessary showing at a noticed hearing, and that  
18 includes all of the following:

- 19           (1) The written request for expungement pursuant to  
20           section 844D-71;
- 21           (2) A certified copy of the court order reversing and  
22           dismissing the conviction or case, or a letter from



1 the prosecuting attorney certifying that the  
2 underlying conviction has been reversed and the case  
3 dismissed;

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

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

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



1 guilty or not guilty by reason of insanity for an offense  
2 described in section 844D-31, or as a condition of a plea.

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

7 (1) From the court or prosecuting attorney that the charge  
8 for which the specimen or sample was taken is  
9 dismissed or the person was acquitted at trial; and

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

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

18 [~~d~~] (e) Any identification, warrant, probable cause to  
19 arrest, or arrest based upon a data bank match shall not be  
20 invalidated due to a failure to expunge or a delay in expunging  
21 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 7. 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 8. Statutory material to be repealed is bracketed  
 11 and stricken. New statutory material is underscored.

12           SECTION 9. This Act shall take effect upon its approval.

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INTRODUCED BY: Michelle Sudani

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# S.B. NO. 2615

**Report Title:**

Forensic Identification; DNA; Crime

**Description:**

Requires persons arrested for a felony offense involving a violent crime to provide DNA samples. Provides for the expungement and destruction of DNA records 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.*

