

JAN 19 2018

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# A BILL FOR AN ACT

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RELATING TO DNA COLLECTION FOR SERIOUS 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 toward collecting deoxyribonucleic acid (DNA) from persons  
3 who are arrested for felony offenses. While every state now  
4 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), decided June  
14 3, 2013, the Court held that "Upon these considerations the  
15 Court concludes that DNA identification of arrestees is a  
16 reasonable search that can be considered part of a routine  
17 booking procedure. When officers make an arrest supported by



1 probable cause to hold for a serious offense and they bring the  
2 suspect to the station to be detained in custody, taking and  
3 analyzing a cheek swab of the arrestee's DNA is, like  
4 fingerprinting and photographing, a legitimate police booking  
5 procedure that is reasonable under the 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 various 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 serious felony 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 funds 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 part III to be appropriately  
13 designated 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 serious felony offense  
17 as defined in this section, shall provide buccal swab samples  
18 and print impressions of each hand; provided that if required by  
19 the collecting agency's rules or internal regulations, the  
20 person shall also provide blood specimens required for law  
21 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) Compliance with subsection (a) may not be required if  
10 the arresting authority determines that the required samples,  
11 impressions, and specimens have previously been taken and  
12 provide an adequate record, and the arrestee's DNA profile has  
13 already been included in the state DNA database and data bank  
14 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) Nothing in this section shall be construed as  
2        precluding any requirement by law that other arrested persons  
3        provide buccal swab samples, print impressions, or blood  
4        specimens for law enforcement identification analysis.

5        (g) For purposes of this section, a "serious felony  
6        offense" includes the following:

7        (1) Carrying or use of a firearm in the commission of a  
8        separate felony (section 134-21);

9        (2) Murder in the first degree (section 707-701);

10       (3) Murder in the second degree (section 707-701.5);

11       (4) Manslaughter (section 707-702);

12       (5) Negligent homicide in the first degree (section  
13       707-702.5);

14       (6) Negligent homicide in the second degree (section  
15       707-703);

16       (7) Negligent injury in the first degree (section  
17       707-705);

18       (8) Assault in the first degree (section 707-710);

19       (9) Assault in the second degree (section 707-711);

20       (10) Assault against a law enforcement officer in the first  
21       degree (section 707-712.5);



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- 1        (11) Assault against an emergency worker (section  
2                    707-712.7);
- 3        (12) Kidnapping (section 707-720);
- 4        (13) Unlawful imprisonment in the first degree (section  
5                    707-721);
- 6        (14) Sexual assault in the first degree (section 707-730);
- 7        (15) Sexual assault in the second degree (section 707-731);
- 8        (16) Sexual assault in the third degree (section 707-732);
- 9        (17) Continuous sexual assault of a minor under the age of  
10                   fourteen years (section 707-733.6);
- 11       (18) Promoting child abuse in the first degree (section  
12                   707-750);
- 13       (19) Promoting child abuse in the second degree (section  
14                   707-751);
- 15       (20) Promoting child abuse in the third degree (section  
16                   707-752);
- 17       (21) Electronic enticement of a child in the first degree  
18                   (section 707-756);
- 19       (22) Electronic enticement of a child in the second degree  
20                   (section 707-757);



- 1        (23) Labor trafficking in the first degree (section  
2        707-781);
- 3        (24) Labor trafficking in the second degree (section  
4        707-782);
- 5        (25) Burglary in the first degree (section 708-810);
- 6        (26) Burglary in the second degree (section 708-811);
- 7        (27) Unauthorized entry in a dwelling in the first degree  
8        (section 708-812.55);
- 9        (28) Unauthorized entry in a dwelling in the second degree  
10       (section 708-812.6);
- 11       (29) Criminal property damage in the first degree (section  
12       708-820);
- 13       (30) Criminal property damage in the second degree (section  
14       708-821);
- 15       (31) Robbery in the first degree (section 708-840);
- 16       (32) Robbery in the second degree (section 708-841);
- 17       (33) Arson in the first degree (section 708-8251);
- 18       (34) Arson in the second degree (section 708-8252);
- 19       (35) Arson in the third degree (section 708-8253);
- 20       (36) Abuse of family or household members (section 709-  
21       906);



1        (37) Sex trafficking (section 712-1202);

2        (38) Promoting prostitution (section 712-1203);

3        (39) Promoting pornography for minors (section 712-1215);

4                and

5        (40) Promoting a controlled substance through a minor

6                (section 712-1249.7)."

7        SECTION 3. Section 831-3.2, Hawaii Revised Statutes, is  
8 amended to read as follows:

9        "§831-3.2 Expungement orders. (a) The attorney general,  
10 or the attorney general's duly authorized representative within  
11 the department of the attorney general, upon written application  
12 from a person arrested for, or charged with but not convicted of  
13 a crime, or found eligible for redress under chapter 661B, shall  
14 issue an expungement order annulling, canceling, and rescinding  
15 the record of arrest; provided that an expungement order shall  
16 not be issued:

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

20        (2) For a period of five years after arrest or citation in  
21                the case of a petty misdemeanor or violation where





conviction has not been obtained because of a bail forfeiture;

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

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

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

Any person entitled to an expungement order under this section may by written application also request return of all fingerprints or photographs taken in connection with the person's arrest. The attorney general or the attorney general's duly authorized representative within the department of the attorney general, within one hundred twenty days after receipt of the written application, shall, when requested, deliver, or cause to be delivered, all fingerprints or photographs of the



1 person, unless the person has a record of conviction or is a  
2 fugitive from justice, in which case the photographs or  
3 fingerprints may be retained by the agencies holding the  
4 records.

5 (b) Upon the issuance of the expungement certificate, the  
6 person applying for the order shall be treated as not having  
7 been arrested in all respects not otherwise provided for in this  
8 section.

9 (c) Upon the issuance of the expungement order, ~~[all]~~ the  
10 attorney general, or the attorney general's duly authorized  
11 representative within the department of the attorney general,  
12 shall deliver a copy of the order to the law enforcement  
13 authority retaining the arrest records sought to be expunged  
14 and, if the arrest records include DNA samples, specimens, and  
15 profiles obtained pursuant to section 844D- , shall also  
16 deliver a copy of the order to the police department of the city  
17 and county of Honolulu. All arrest records pertaining to the  
18 arrest, other than DNA samples and specimens, that are in the  
19 custody or control of any law enforcement agency of the state or  
20 any county government, and that are capable of being forwarded  
21 to the attorney general without affecting other records not



1 pertaining to the arrest, shall be so forwarded for placement of  
2 the arrest records in a confidential file. The police  
3 department of the city and county of Honolulu shall:

4 (1) Destroy the DNA samples and specimens pertaining to  
5 the arrest which were obtained pursuant to section  
6 844D- ;

7 (2) Expunge the DNA information from the state DNA  
8 database and databank identification program;

9 (3) Ensure that the DNA information is also expunged from  
10 any other database to which the information was  
11 uploaded; and

12 (4) Send written confirmation of compliance with these  
13 expungement requirements to the department of the  
14 attorney general.

15 (d) The police department shall not be required to destroy  
16 the DNA samples and specimens, nor expunge the DNA profiles from  
17 the databases, if the person has a record of conviction or is a  
18 fugitive from justice, or has a pending court case that could  
19 result in a felony conviction.

20 (e) Any identification, warrant, probable cause to arrest,  
21 or arrest based upon a data bank match shall not be invalidated



1 due to a failure to expunge or a delay in expunging records  
2 pursuant to this section.

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

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

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

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

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

15       ~~[(e)]~~ (g) The attorney general or the attorney general's  
16 duly authorized representative within the department of the  
17 attorney general shall issue to the person for whom an  
18 expungement order has been entered, a certificate stating that  
19 the order has been issued and that its effect is to annul the  
20 record of a specific arrest. The certificate shall authorize  
21 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)]~~ (h) Any person for whom an expungement order has  
6 been entered may request in writing that the court seal or  
7 otherwise remove all judiciary files and other information  
8 pertaining to the applicable arrest or case from the judiciary's  
9 publicly accessible electronic databases. The court shall make  
10 good faith diligent efforts to seal or otherwise remove the  
11 applicable files and information within a reasonable time.

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

14       "Arrest record" means any existing ~~[photographic]~~  
15 photographs, DNA specimens or samples, DNA profiles, and  
16 fingerprint cards relating to the arrest.

17       "Conviction" means a final determination of guilt whether  
18 by plea of the accused in open court, by verdict of the jury, or  
19 by decision of the court.

20       "DNA" means deoxyribonucleic acid.



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

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

6       SECTION 4. Section 844D-71, Hawaii Revised Statutes, is  
7 amended to read as follows:

8       " ~~[\S844D-71]~~ Expungement of DNA information from state  
9 DNA database and data bank identification program. (a) A  
10 person whose DNA profile has been included in the state DNA  
11 database and data bank identification program pursuant to ~~[this~~  
12 ~~chapter]~~ section 844D-31 shall have the person's DNA specimen  
13 and sample destroyed and searchable database profile expunged  
14 from the program pursuant to section 844D-72 if:

- 15       (1) The person has no past or present offense which  
16           qualifies that person for inclusion within the state  
17           DNA database and data bank identification program; and  
18       (2) There otherwise is no legal basis for retaining the  
19           specimen or sample or searchable profile.

20       (b) A person requesting expungement of their DNA specimen,  
21 sample, and profile:



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

8           (2) Shall send a copy of the person's request to the trial  
9           court of the circuit that entered the conviction or  
10          rendered disposition in the case, to the department,  
11          and to the prosecuting attorney of the county in which  
12          the person was convicted or adjudicated, with proof of  
13          service on all parties.

14          (c) A court considering a request for expungement made  
15 pursuant to this section, shall grant the request by order  
16 pursuant to section 844D-72(a) if the criteria for expungement  
17 under subsection (a) are met.

18          (d) This section shall not apply to the expungement of DNA  
19 samples, specimens, and profiles provided by arrestees pursuant  
20 to section 844D- . A person whose DNA profile has been  
21 included in the state DNA database and data bank identification



1 program pursuant to section 844D- may request an expungement  
2 of the person's DNA sample, specimen, and profile pursuant to  
3 section 831-3.2."

4 SECTION 5. Section 844D-83, Hawaii Revised Statutes, is  
5 amended by amending subsection (a) to read as follows:

6 "(a) If any employee of the department knowingly uses an  
7 arrestee or offender specimen, sample, or DNA profile collected  
8 pursuant to this chapter for other than criminal identification  
9 or exclusion purposes, or knowingly discloses DNA or other  
10 forensic identification information developed pursuant to this  
11 section to an unauthorized individual or agency for other than  
12 criminal identification or exclusion purposes or for other than  
13 the identification of missing persons, in violation of this  
14 chapter, the department shall be liable in civil damages to the  
15 donor of the DNA identification information in the amount of  
16 \$5,000 for each violation, plus attorney's fees and costs. In  
17 the event of multiple violations, total damages shall not exceed  
18 \$50,000 plus attorney's fees and costs."

19 SECTION 6. Section 844D-113, Hawaii Revised Statutes, is  
20 amended by amending subsection (a) to read as follows:





1       "(a) A person commits the offense of unauthorized  
2 disclosure of DNA sample or profile if the person intentionally  
3 or knowingly, in violation of this chapter:

4       (1) Uses an arrestee or offender sample or DNA profile for  
5 other than criminal identification or exclusion  
6 purposes; or

7       (2) Discloses DNA or other forensic identification  
8 information developed pursuant to this section to an  
9 unauthorized individual or agency, for other than  
10 criminal identification or exclusion."

11       SECTION 7. Section 844D-114, Hawaii Revised Statutes, is  
12 amended by amending subsection (a) to read as follows:

13       "(a) A person commits the offense of use of DNA sample or  
14 profile for financial gain if the person, for the purpose of  
15 financial gain, intentionally or knowingly, in violation of this  
16 chapter:

17       (1) Uses an arrestee or offender sample or DNA profile for  
18 other than criminal identification or exclusion  
19 purposes; or

20       (2) Discloses DNA or other forensic identification  
21 information developed pursuant to this chapter to an



1           unauthorized individual or entity, for other than  
2           criminal identification or exclusion purposes."

3           SECTION 8. There is appropriated out of the general  
4 revenues of the State of Hawaii the sum of \$                   or so  
5 much thereof as may be necessary for fiscal year 2018-2019 for  
6 the costs of DNA collection, processing, storage, and  
7 expungement responsibilities.

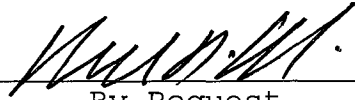
8           The sum appropriated shall be expended by the department of  
9 the attorney general for the purposes of this Act.

10          SECTION 9. This Act does not affect rights and duties that  
11 matured, penalties that were incurred, and proceedings that were  
12 begun before its effective date.

13          SECTION 10. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

15          SECTION 11. This Act, upon its approval, shall take effect  
16 on January 1, 2019; provided that section 8 shall take effect on  
17 July 1, 2018.

18  
INTRODUCED BY: \_\_\_\_\_

  
By Request



# S.B. NO. 2179

**Report Title:**

Honolulu Prosecuting Attorney Package; Felonies; Forensic Identification; DNA; Expungement; Appropriation

**Description:**

Requires persons arrested for certain felony offenses to provide a DNA sample. 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, processing, storage, and expungement responsibilities.

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