
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. The Legislature finds that section 844D-126,
2 Hawaii Revised Statutes, appears to require all evidence
3 custodians in all post-conviction cases to retain all evidence
4 that "may" contain biological evidence. As a result, evidence
5 must be retained in all felony, misdemeanor, petty misdemeanor,
6 and violation cases resulting in conviction, even when the
7 actual presence of biological evidence is extremely unlikely;
8 even when that evidence would have been irrelevant to the
9 identification of the perpetrator; and even when the identity of
10 the perpetrator was not at issue.

11 The legislature further finds that this broad evidence
12 retention requirement has caused storage problems statewide.
13 Reasonable guidelines and limitations for the post-conviction
14 retention of biological evidence by law enforcement agencies and
15 the courts are needed, as well as a clear procedure that allows
16 defendants to object to the proposed disposal of biological
17 evidence.

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1 The purpose of this Act is to establish a more practical
2 and balanced framework for post-conviction evidence retention
3 by:

4 (1) Limiting the post-conviction retention requirements to
5 certain serious felony offenses in which the identity
6 of the perpetrator was in question and the evidence
7 could reasonably be determined to contain biological
8 material that could be used for DNA analysis to
9 identify or exclude the defendant as the perpetrator
10 of the offense;

11 (2) Allowing the disposal of evidence before the
12 exhaustion of all appeals or the completion of a
13 sentence if the court determines that the identity of
14 the defendant as the perpetrator of the offense was
15 not a contested issue in the case, or that the
16 evidence does not contain biological evidence that
17 could reasonably be used for DNA analysis to identify
18 or exclude the defendant as the perpetrator;

19 (3) Providing defendants with an opportunity to object to
20 the proposed disposal of evidence; and

21 (4) Defining "biological evidence."

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1 SECTION 2. Section 844D-121, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§844D-121 Petition for post-conviction DNA testing.**
4 Notwithstanding any other law or rule of court governing post-
5 conviction relief to the contrary, a person who was convicted of
6 and sentenced for a crime, or acquitted of a crime on the ground
7 of physical or mental disease, disorder, or defect excluding
8 responsibility, may file a motion, at any time, for DNA analysis
9 of any evidence that:

10 (1) Is in the custody or control of a police department,
11 prosecuting attorney, laboratory, or court [≠],
12 consistent with section 844D-126;
13 (2) Is related to the investigation or prosecution that
14 resulted in the judgment of conviction or of acquittal
15 of a crime on the ground of physical or mental
16 disease, disorder, or defect excluding responsibility;
17 and
18 (3) ~~May contain~~ Contains biological evidence [≠] that
19 could reasonably be used for DNA analysis to:
20 (A) Establish the identity of the person who
21 committed the offense that resulted in the
22 judgment of conviction; or

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1 (B) Exclude a person from the group of persons who
2 could have committed the offense that resulted in
3 the judgment of conviction."

4 SECTION 3. Section 844D-126, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "~~§844D-126~~ **Retention of biological evidence.** (a)
7 ~~[All]~~ Any evidence in the custody or control of an evidence
8 custodian, including a ~~police department,~~ law enforcement
9 agency, prosecuting ~~[attorney,~~ agency, laboratory, or court
10 [that], shall be retained if:

11 (1) The identity of the defendant, as the perpetrator of
12 the offense that resulted in the judgment of
13 conviction, was a contested issue in the case;

14 (2) The evidence is related to the investigation or
15 prosecution of a case in which there has been a
16 judgment of conviction ~~[and that may]~~ for:

17 (A) Murder;

18 (B) Manslaughter;

19 (C) Kidnapping;

20 (D) Sexual assault in the first degree;

21 (E) Sexual assault in the second degree;

22 (F) Assault in the first degree; or

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1 (G) An attempt or criminal conspiracy to commit any
2 of the offenses set forth in this paragraph; and
3 (3) The evidence could reasonably be determined to contain
4 biological evidence that could be used for DNA
5 analysis to:
6 (A) Establish the identity of the person who
7 committed the offense that resulted in the
8 judgment of conviction; or
9 (B) Exclude a person from the group of persons who
10 could have committed the offense that resulted in
11 the judgment of conviction.
12 (b) The evidence retained pursuant to subsection (a) shall
13 be retained at least until the 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
21 collection and preservation of evidence retained pursuant to
22 this section.]

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1 (c) The evidence custodian may dispose of evidence
2 retained pursuant to subsection (a) before the expiration of the
3 time period specified in subsection (b) if:

4 (1) The court, pursuant to subsection (g), grants a motion
5 for disposal of evidence filed by the prosecuting
6 agency before sentencing and scheduled to be heard by
7 the court immediately after sentencing or as soon
8 thereafter as practicable; provided that the motion
9 for disposal shall include a description of the
10 evidence proposed for disposal; or

11 (2) The prosecuting agency or evidence custodian files
12 with the court a notification of proposed disposal of
13 evidence consistent with this section, and either:

14 (A) The defendant does not file a statement of
15 objection pursuant to subsection (f); or
16 (B) If the defendant files a statement of objection
17 pursuant to subsection (f), the court, after a
18 hearing on the objection, allows disposal of the
19 evidence pursuant to subsection (g).

20 (d) If a notification of proposed disposal of the evidence
21 is filed, a copy shall be served upon:

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- 1 (1) The defendant against whom the judgment of conviction
2 was entered, by personal service or, after a
3 reasonable and documented good faith attempt for
4 personal service was made, by first class mail to the
5 defendant's last known address;
- 6 (2) The defendant's parole officer or probation officer,
7 if service cannot be made upon the defendant by
8 personal service and the defendant remains under
9 parole or probation supervision;
- 10 (3) The defendant's attorney of record, if applicable;
11 (4) The prosecuting agency, if that agency did not file
12 the notification; and
- 13 (5) The evidence custodian, if the evidence custodian did
14 not file the notification.
- 15 (e) The notification of proposed disposal of the evidence
16 shall include:
 - 17 (1) A description of the evidence proposed for disposal;
18 and
 - 19 (2) Notice that the evidence custodian may dispose of the
20 evidence before the expiration of the time period
21 specified in subsection (b) unless, within ninety days
22 of service of the notification, the defendant files a

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1 written statement of objection with the court and
2 serves the statement of objection on the prosecuting
3 agency and the evidence custodian.

4 (f) If within ninety days of service of the notification
5 of proposed disposal of the evidence on the defendant,
6 defendant's parole or probation officer, or defendant's attorney
7 of record, whichever service is last completed, the defendant
8 files a written statement of objection with the court and serves
9 the statement of objection on the prosecuting agency and the
10 evidence custodian, the court shall schedule a hearing on the
11 objection and provide notice of the hearing to the prosecuting
12 agency and the evidence custodian.

13 (g) If, after a hearing on the objection to a notification
14 of proposed disposal of the evidence or a hearing on a motion
15 for disposal of evidence, the court determines by a
16 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 not a contested issue in the case; or
20 (2) The evidence does not contain biological evidence that
21 could reasonably be used for DNA analysis to:

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1 (A) Establish the identity of the person who
2 committed the offense for which the defendant was
3 convicted; or
4 (B) Exclude a person from the group of persons who
5 could have committed the offense for which the
6 defendant was convicted,
7 the court may allow the evidence custodian to dispose of the
8 evidence.

9 (h) As used in this section, "biological evidence" means
10 an individual's blood, semen, hair, saliva, skin tissue,
11 fingernail scrapings, teeth, bone, bodily fluids, or other
12 identifiable biological material, including the contents of a
13 sexual assault examination kit."

14 SECTION 3. This Act does not affect rights and duties that
15 matured, penalties that were incurred, and proceedings that were
16 begun before its effective date.

17 SECTION 4. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 5. This Act shall take effect upon its approval.

20
21 INTRODUCED BY: Nadie K. Rutherford
22 BY REQUEST
 JAN 26 2026

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Report Title:

Forensic Identification; Biological Evidence; Retention

Description:

Specifies the types of cases in which evidence must be retained post-conviction and the process by which evidence may be disposed of earlier than the standard period of retention, which includes a procedure for defendants to oppose the disposal of biological evidence by filing an objection with the court.

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

JUSTIFICATION SHEET

DEPARTMENT:

Attorney General

TITLE:

A BILL FOR AN ACT RELATING TO THE RETENTION OF BIOLOGICAL EVIDENCE.

PURPOSE:

To establish reasonable guidelines and limitations for the post-conviction retention of biological evidence by law enforcement agencies and the courts and establish a process for the disposal of biological evidence earlier than the prescribed period of retention, which includes a procedure for defendants to oppose the disposal of biological evidence by filing an objection with the court.

MEANS:

Amend sections 844D-121 and 844D-126, Hawaii Revised Statutes (HRS).

JUSTIFICATION:

Section 844D-126, HRS, currently requires all evidence custodians in all post-conviction cases to retain all evidence that "may contain" biological evidence. This requirement applies to all felony, misdemeanor, petty misdemeanor, and violation level cases that have resulted in conviction. Thus, all evidence that may contain any biological evidence must be retained, even if the actual presence of biological evidence is extremely unlikely, even if that evidence would have been irrelevant to the case, and even if the identity of the perpetrator was never at issue.

This broad evidence retention requirement has caused storage problems statewide. Agencies cannot store all of the evidence.

This bill is needed to free limited space and resources that are currently used to preserve and store post-conviction evidence that is no longer needed. By establishing reasonable guidelines and limitations for the post-conviction retention of biological

evidence and establishing a process for the disposal of biological evidence earlier than the standardized period of retention, including a procedure for defendants to oppose the disposal of biological evidence if the identity of the perpetrator was at issue, the bill will allow a more effective and efficient use of resources.

Impact on the public: This bill serves the public interest by specifying the types of cases for which biological evidence must be retained post-conviction and by specifying when and under what circumstances that evidence may be destroyed. This ensures that evidence from the most serious cases will be retained for a suitable period when the identity of the perpetrator may be at issue.

Impact on the department and other agencies: This bill benefits all agencies involved in the criminal justice system, especially those that preserve and store evidence, by ensuring that limited space and resources are used to preserve post-conviction evidence that could reasonably be used for future DNA analysis to assist in accurately identifying perpetrators of serious crimes.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: Judiciary, Department of Law Enforcement, county police departments, and county prosecutors.

EFFECTIVE DATE: Upon approval.