
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.



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) Defining "contested issue of identity";
- 5 (2) Limiting the post-conviction retention requirements to
6 certain serious felony offenses in which the identity
7 of the perpetrator was in question and the evidence
8 could reasonably be determined to contain biological
9 material that could be used for DNA analysis to
10 identify or exclude the defendant as the perpetrator
11 of the offense;
- 12 (3) Allowing the disposal of evidence before the
13 exhaustion of all appeals or the completion of a
14 sentence if the court determines that the identity of
15 the defendant as the perpetrator of the offense was
16 not a contested issue in the case, or that the
17 evidence does not contain biological evidence that
18 could reasonably be used for DNA analysis to identify
19 or exclude the defendant as the perpetrator;
- 20 (4) Providing defendants with an opportunity to object to
21 the proposed disposal of evidence;



1 (5) Providing that upon the motion of a defendant or
2 prosecutor or on the court's own motion, the court may
3 order retention of biological evidence in any felony
4 case for a certain period under certain circumstances;
5 and

6 (6) Defining "biological evidence".

7 SECTION 2. Section 844D-1, Hawaii Revised Statutes, is
8 amended by adding a new definition to be appropriately inserted
9 and to read as follows:

10 "Contested issue of identity" means, as reflected in the
11 record, the defendant affirmatively disputed being the
12 perpetrator of the charged offense by raising or relying on
13 misidentification, alibi, mistaken identity, third-party
14 perpetrator, or similar theory, or by otherwise placing the
15 perpetrator's identity in issue through motion, argument, cross-
16 examination, evidence, or proffer."

17 SECTION 3. Section 844D-121, Hawaii Revised Statutes, is
18 amended to read as follows:

19 **"§844D-121 Petition for post-conviction DNA testing.**

20 Notwithstanding any other law or rule of court governing post-
21 conviction relief to the contrary, a person who was convicted of



1 and sentenced for a crime, or acquitted of a crime on the ground
2 of physical or mental disease, disorder, or defect excluding
3 responsibility, may file a motion, at any time, for DNA analysis
4 of any evidence that:

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



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

3 "~~[§]~~**844D-126**~~[§]~~ **Retention of biological evidence.** (a)

4 ~~[All]~~ Any evidence in the custody or control of an evidence
5 custodian, including a ~~[police department,]~~ law enforcement
6 agency, prosecuting ~~[attorney,]~~ agency, laboratory, or court
7 ~~[that]~~, shall be retained if:

8 (1) The identity of the defendant, as the perpetrator of
9 the offense that resulted in the judgment of
10 conviction, was a contested issue in the case;

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

14 (A) Murder;

15 (B) Manslaughter;

16 (C) Kidnapping;

17 (D) Sexual assault in the first degree;

18 (E) Sexual assault in the second degree;

19 (F) Assault in the first degree; or

20 (G) An attempt or criminal conspiracy to commit any

21 of the offenses set forth in this paragraph; and



1 (3) The evidence could reasonably be determined to contain
2 biological evidence that could be used for DNA
3 analysis to:

4 (A) Establish the identity of the person who
5 committed the offense that resulted in the
6 judgment of conviction; or

7 (B) Exclude a person from the group of persons who
8 could have committed the offense that resulted in
9 the judgment of conviction.

10 (b) The evidence retained pursuant to subsection (a) shall
11 be retained at least until the later occurring of either:

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

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

17 ~~[(b) The attorney general shall establish procedures and~~
18 ~~protocols, which shall be uniform throughout the State, for the~~
19 ~~collection and preservation of evidence retained pursuant to~~
20 ~~this section.]~~



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:



- 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



1 of service of the notification, the defendant files a
2 written statement of objection with the court and
3 serves the statement of objection on the prosecuting
4 agency and the evidence custodian.

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

14 (g) If, after a hearing on the objection to a notification
15 of proposed disposal of the evidence or a hearing on a motion
16 for disposal of evidence, the court determines by a
17 preponderance of the evidence that:

18 (1) The identity of the defendant, as the perpetrator of
19 the offense that resulted in the judgment of
20 conviction, was not a contested issue in the case; or



- 1 (2) The evidence does not contain biological evidence that
2 could reasonably be used for DNA analysis to:
- 3 (A) Establish the identity of the person who
4 committed the offense for which the defendant was
5 convicted; or
- 6 (B) Exclude a person from the group of persons who
7 could have committed the offense for which the
8 defendant was convicted,
- 9 the court may allow the evidence custodian to dispose of the
10 evidence.
- 11 (h) Notwithstanding any other provision of this chapter,
12 upon the motion of a defendant or prosecutor or on the court's
13 own motion, the court may order retention of biological evidence
14 in any felony case for the period otherwise required under this
15 chapter if the court finds, based on the record, that:
- 16 (1) Biological evidence exists or was collected in the
17 case; and
- 18 (2) Biological evidence could reasonably be material to
19 establishing or disproving the identity of the
20 perpetrator.



1 (i) For the purposes of this section, "biological
2 evidence" means an individual's blood, semen, hair, saliva, skin
3 tissue, fingernail scrapings, teeth, bone, bodily fluids, or
4 other identifiable biological material, including the contents
5 of a sexual assault examination kit."

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

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

11 SECTION 7. This Act shall take effect on March 22, 2075.



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. Provides that upon the motion of a defendant or prosecutor or on the court's own motion, the court may order retention of biological evidence in any felon case for a certain period under certain circumstances. Effective 3/22/2075. (SD1)

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

