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



1 retention of biological evidence in felony cases for a
2 certain period under specified circumstances.

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

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

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

15 **"§844D-121 Petition for post-conviction DNA testing.**
16 Notwithstanding any other law or rule of court governing post-
17 conviction relief to the contrary, a person who was convicted of
18 and sentenced for a crime, or acquitted of a crime on the ground
19 of physical or mental disease, disorder, or defect excluding
20 responsibility, may file a motion, at any time, for DNA analysis
21 of any evidence that:



1 (1) Is in the custody or control of a [~~police department,~~
2 law enforcement agency, prosecuting [attorney,
3 agency, laboratory, or court[+], consistent with
4 section 844D-126;

5 (2) Is related to the investigation or prosecution that
6 resulted in the judgment of conviction or of acquittal
7 of a crime on the ground of physical or mental
8 disease, disorder, or defect excluding responsibility;
9 and

10 (3) [~~May contain~~] Contains biological evidence[-] that
11 could reasonably be used for DNA analysis to:

12 (A) Establish the identity of the person who
13 committed the offense that resulted in the
14 judgment of conviction; or

15 (B) Exclude a person from the group of persons who
16 could have committed the offense that resulted in
17 the judgment of conviction."

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

20 "[+]§844D-126[+] **Retention of biological evidence.** (a)
21 [~~All~~] Any evidence in the custody or control of an evidence



1 custodian, including a [~~police department,~~] law enforcement
2 agency, prosecuting [~~attorney,~~] agency, laboratory, or court
3 [~~that~~], shall be retained if:

4 (1) The identity of the defendant, as the perpetrator of
5 the offense that resulted in the judgment of
6 conviction, was a contested issue in the case;

7 (2) The evidence is related to the investigation or
8 prosecution of a case in which there has been a
9 judgment of conviction [~~and that may~~] 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 any
17 of the offenses set forth in this paragraph; and

18 (3) The evidence could reasonably be determined to contain
19 biological evidence that could be used for DNA
20 analysis to:



1 (A) Establish the identity of the person who
2 committed the offense that resulted in the
3 judgment of conviction; or

4 (B) Exclude a person from the group of persons who
5 could have committed the offense that resulted in
6 the judgment of conviction.

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

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

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

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

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



1 (1) The court, pursuant to subsection (g), grants a motion
2 for disposal of evidence filed by the prosecuting
3 agency before sentencing and scheduled to be heard by
4 the court immediately after sentencing or as soon
5 thereafter as practicable; provided that the motion
6 for disposal shall include a description of the
7 evidence proposed for disposal; or
8 (2) The prosecuting agency or evidence custodian files
9 with the court a notification of proposed disposal of
10 evidence consistent with this section, and either:
11 (A) The defendant does not file a statement of
12 objection pursuant to subsection (f); or
13 (B) If the defendant files a statement of objection
14 pursuant to subsection (f), the court, after a
15 hearing on the objection, allows disposal of the
16 evidence pursuant to subsection (g).
17 (d) If a notification of proposed disposal of the evidence
18 is filed, a copy shall be served upon:
19 (1) The defendant against whom the judgment of conviction
20 was entered, by personal service or, after a
21 reasonable and documented good faith attempt for



1 personal service was made, by first-class mail to the
2 defendant's last known address;

3 (2) The defendant's parole or probation officer, if
4 service cannot be made upon the defendant by personal
5 service and the defendant remains under parole or
6 probation supervision;

7 (3) The defendant's attorney of record, if applicable;

8 (4) The prosecuting agency, if that agency did not file
9 the notification; and

10 (5) The evidence custodian, if the evidence custodian did
11 not file the notification.

12 (e) The notification of proposed disposal of the evidence
13 shall include:

14 (1) A description of the evidence proposed for disposal;
15 and

16 (2) Notice that the evidence custodian may dispose of the
17 evidence before the expiration of the time period
18 specified in subsection (b) unless, within ninety days
19 of service of the notification, the defendant files a
20 written statement of objection with the court and



1 serves the statement of objection on the prosecuting
2 agency and the evidence custodian.

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

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

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

19 (2) The evidence does not contain biological evidence that
20 could reasonably be used for DNA analysis to:



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) Notwithstanding any other provision of this chapter,
10 upon the motion of a defendant or prosecutor or on the court's
11 own motion, the court may order the retention of any evidence
12 related to the investigation or prosecution of a felony case,
13 for the period stated in subsection (b), if:

14 (1) The identity of the defendant, as the perpetrator of
15 the offense that resulted in the judgment of
16 conviction, was a contested issue in the case; and

17 (2) The evidence could reasonably be used for DNA analysis
18 to:

19 (A) Establish the identity of the person who
20 committed the offense that resulted in the
21 judgment of conviction; or



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

9 SECTION 5. This Act does not affect rights and duties that
10 matured, penalties that were incurred, and proceedings that were
11 begun before its effective date.

12 SECTION 6. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 7. This Act shall take effect on July 1, 3000.



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. Authorizes the court, upon motion of a defendant or prosecutor or on the court's own motion, to order the retention of biological evidence in any felony case for a certain period under certain circumstances. Effective 7/1/3000. (HD1)

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

