

## ACT 112

H.B. NO. 1733

A Bill for an Act Relating to Biological Evidence.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
FORENSIC IDENTIFICATION**

**PART I. DEFINITIONS, ADMINISTRATION**

§ -1 **Definitions.** In this chapter, unless a different meaning is plainly required:

“Autoradiograph” means photographic film developed when exposed to radioactivity appearing as darkened areas which represents DNA sequencing resulting from analysis of samples and specimens.

“Buccal swab” means a swab used to collect buccal cells from the mouth cavity by wiping the interior surface of the cheek.

“Conviction” means a judgment on a verdict or a finding of guilty, or a plea of guilty or nolo contendere.

“Department” means the police department of the city and county of Honolulu.

“DNA” means deoxyribonucleic acid.

“DNA or forensic identification markers” has the same meaning as “profile”.

“FBI” means the Federal Bureau of Investigation.

“Print impression” means any fingerprint, thumbprint, palm print, or set of fingerprints or palm prints designated in the department’s rules or internal regulations adopted pursuant to section -3.<sup>1</sup>

“Profile” means data resulting from scientific analysis of samples and specimens.

“Prosecuting attorney” means an attorney from the department of the prosecuting attorney of any county, the department of the attorney general, or any other entity that prosecutes criminal cases.

“Sample” means human biologic material collected in a manner specified in the department’s rules or internal regulations adopted pursuant to section -3,<sup>1</sup> including but not limited to, saliva collected by means of buccal swab.

“Specimen” means human biologic material collected in a manner specified in the department’s rules or internal regulations adopted pursuant to section -3,<sup>1</sup> including but not limited to blood.

§ -2 **Administration.** The department shall be responsible for the management and administration of the state DNA database and data bank identification program and for liaison with the FBI and other relevant agencies regarding the State’s participation in a national DNA database such as the FBI’s Combined DNA Index System, that allows the storage and exchange of DNA records submitted by state and local forensic DNA laboratories nationwide.

## PART II. COLLECTION, ANALYSIS, AND REPOSITORY

§ -21 **Collection of specimens, samples, and print impressions at correctional facility or other detention facility.** (a) When the specimens, samples, or print impressions required by this chapter are collected at a correctional facility or other detention facility, including private correctional facilities, the chief administrative officer of the correctional facility or other detention facility shall be responsible for ensuring that:

- (1) The requisite specimens, samples, or print impressions are collected from qualifying offenders during the intake process at that facility or reasonably promptly thereafter; or
- (2) The requisite specimens, samples, or print impressions are collected as soon as administratively practicable after a qualifying offender reports to the facility for the purpose of providing specimens, samples, and print impressions; and
- (3) The specimens, samples, or print impressions collected pursuant to this chapter are forwarded immediately to the department and in compliance with this chapter.

(b) The specimens, samples, or print impressions required by this section shall be collected by a person using a collection kit approved by the department and in accordance with the requirements and procedures set forth in section -62.

§ -22 **Analysis and examination of specimens for identification purposes.** (a) The department shall authorize DNA analysis and other forensic identification analysis pursuant to this chapter only for identification purposes.

(b) The department shall perform examinations of print impressions pursuant to this chapter only for identification purposes.

**§ -23 Repository of samples and records.** (a) The department may designate itself or other appropriate entities to serve as repositories for blood specimens and buccal swab and other biological samples, and the designated entity shall analyze specimens and samples, and store, compile, correlate, compare, maintain, and use DNA and forensic identification profiles and records related to the following:

- (1) Forensic casework and forensics unknown;
- (2) Known and evidentiary specimens and samples from crime scenes or criminal investigations;
- (3) Missing or unidentified persons;
- (4) Persons required to provide specimens, samples, or print impressions under this chapter;
- (5) Legally obtained samples; and
- (6) Anonymous DNA records used for training, research, statistical analysis of populations, quality assurance, or quality control.

(b) The designated entity shall include files as necessary to implement this chapter.

(c) Nothing in this section shall be construed as requiring the designated entity to provide specimens or samples for quality control or other purposes to those who request specimens or samples.

(d) Samples, specimens, or profiles to be submitted for the state DNA database and data bank identification program shall include information as required by the department for ensuring search capabilities and compliance with National DNA Index System standards.

### **PART III. OFFENDERS SUBJECT TO COLLECTION OF SPECIMENS OR SAMPLES, OR PRINT IMPRESSIONS**

**§ -31 Offenders subject to collection.** (a) Any person, except for any juvenile, who is convicted of, or pleads guilty or no contest to, any felony offense, even if the plea is deferred, or is found not guilty by reason of insanity of any felony offense, shall provide buccal swab samples and print impressions of each hand, and, if required by the collecting agency's rules or internal regulations, blood specimens, required for law enforcement identification analysis.

(b) Testing pursuant to this section shall begin immediately for all persons who have been convicted of murder in any degree or any felony offense defined in chapter 846E, but shall not begin for other persons until thirty days after statewide publication of notice by the attorney general pursuant to section 1-28.5.

(c) The attorney general's notice, pursuant to subsection (b), may be provided in stages, beginning with notice of the beginning of testing of all persons not already mandated to be tested by subsection (b) who have been convicted of a class A felony, then notice of the beginning of testing of all persons not already mandated to be tested by subsection (b) who have been convicted of a class B felony, and finally notice of the beginning of testing of all persons not already mandated to be tested by subsection (b) who have been convicted of a class C felony.

(d) Nothing in this section shall be construed as prohibiting collection and analysis of specimens, samples, or print impressions as a condition of a plea for a non-qualifying offense.

**§ -32 Application to all qualifying persons.** (a) The provisions of this chapter, including the requirement that all specimens, samples, and print impres-

sions shall be provided as soon as administratively practicable shall apply to all qualifying persons regardless of sentence imposed, including any sentence of life without the possibility of parole, or any life or indeterminate term, or any other disposition rendered in the case of an adult.

(b) The provisions of this chapter, including the requirement that all specimens, samples, and print impressions be provided as soon as administratively practicable by qualified persons as described in this section shall apply regardless of placement or confinement in any mental hospital or other public or private treatment facility.

(c) The provisions of this chapter are mandatory and apply whether or not the court advises a person that the person must provide the data bank and database specimens, samples, and print impressions as a condition of probation, parole, or any plea of guilty, no contest, or not guilty by reason of insanity, or any admission to any of the offenses described in subsection (a).

**§ -33 Notification by prosecutor and inquiry by court.** (a) If at any stage of court proceedings the prosecutor determines that the specimens, samples, or print impressions required by this chapter have not already been taken from any person required to give specimens, samples, or print impressions by this chapter, the prosecutor shall notify the court orally on the record, or in writing, and request that the court order collection of the specimens, samples, or print impressions required by law. However, a failure by the prosecutor or any other law enforcement agency to notify the court shall not relieve a person of the obligation to provide specimens, samples, or print impressions pursuant to this chapter.

(b) Prior to final disposition or sentencing in a case, the court shall inquire and verify that the specimens, samples, or print impressions required by this chapter have been obtained and that this fact is included in the judgment. The judgment issued by the court shall indicate that the court has ordered the person to comply with the requirements of this chapter and that the person shall be included in the state DNA database and data bank identification program and be subject to this chapter. However, failure by the court to enter these facts in the judgment shall not invalidate a plea, conviction, or disposition, or otherwise relieve a person from the requirements of this chapter.

**§ -34 Collection from persons confined or in custody after conviction or adjudication.** A person, except for any juvenile, shall provide buccal swab samples and print impressions and, if required by the collecting agency's rules or internal regulations, blood specimens, immediately at intake, or during the prison reception center process, or as soon as administratively practicable at the appropriate custodial or receiving institution or program if:

- (1) The person is imprisoned or confined or placed in a state correctional facility, a county correctional facility, the department of public safety, a residential treatment program, or any state, county, private, or other facility after a conviction of any felony offense;
- (2) The person has a record of any past or present conviction of a qualifying offense described in section -31 or has a record of any past or present conviction or adjudication in any other court, including any state, federal, or military court, of any offense, that, if committed or attempted in this state, would have been punishable as an offense described in section -31; and
- (3) The person's blood specimens or buccal swab samples, and print impressions authorized by this chapter are not in the possession of the department or have not been recorded as part of the state DNA database and data bank identification program.

**§ -35 Collection from persons on probation, parole, or other release.**

(a) A person, except for any juvenile, shall provide buccal swab samples and print impressions and, if required pursuant to this chapter, blood specimens if:

- (1) The person is on probation or parole for any felony offense, whether or not that crime or offense is one set forth in section -31(a);
- (2) The person has a record of any past or present conviction of a qualifying offense described in section -31 or has a record of any past or present conviction or adjudication in any other court, including any state, federal, or military court, of any offense that, if committed or attempted in this state, would have been punishable as an offense described in section -31; and
- (3) The person's blood specimens or buccal swab samples, and print impressions authorized by this chapter are not in the possession of the department or have not been recorded as part of the state DNA database and data bank identification program.

(b) The person shall have any required specimens, samples, or print impressions collected within twenty working days of being notified by the court, or a law enforcement agency or other entity authorized by the department. The specimens, samples, or print impressions shall be collected in accordance with section -21 at a correctional facility or a state, county, private, or other facility designated for this collection.

**§ -36 Collection from parole violators and others returned to custody.**

A person, except for any juvenile, shall provide buccal swab samples and print impressions and, if required by the collecting agency's rules or internal regulations, blood specimens or other biological samples, at a state correctional or other receiving institution, if:

- (1) The person has been released on parole, furlough, or other release for any offense or crime, whether or not set forth in section -31, and is returned to a state correctional or other institution for a violation of a condition of the person's parole, furlough, or other release, or for any other reason;
- (2) The person has a record of any past or present conviction of a qualifying offense described in section -31 or has a record of any past or present conviction or adjudication in any other court, including any state, federal, or military court, of any offense that, if committed or attempted in this State, would have been punishable as an offense described in section -31; and
- (3) The person's blood specimens or buccal swab samples, and print impressions authorized by this chapter are not in the possession of the department's DNA laboratory or have not been recorded as part of the state DNA database and data bank identification program.

**§ -37 Collection from persons accepted into Hawaii from other jurisdictions.**

(a) When an offender from another state is accepted into this state under any interstate compact, or under any other reciprocal agreement with any county, state, or federal agency, or any other provision of law, whether or not the offender is confined or released, the acceptance shall be conditional on the offender providing blood specimens, buccal swab samples, or print impressions pursuant to this chapter, if the offender has a record of any past or present conviction or adjudication in Hawaii of a qualifying offense described in section -31 or has a record of any past or present conviction or adjudication or had a disposition rendered in any other court, including any state, federal, or military court, of any offense that, if committed

or attempted in this state, would have been punishable as an offense described in section -31.

(b) If the person is not confined, the specimens, samples, or print impressions required by this chapter shall be provided within twenty working days after the person reports to the supervising agent or within five calendar days of notice to the person, whichever occurs first. The person shall report to a correctional facility in the county where the person resides or temporarily is located to have the specimens, samples, or print impressions collected pursuant to this chapter. The specimens, samples, or print impressions shall be collected in accordance with this chapter.

(c) If the person is confined, the person shall provide the blood specimens, buccal swab samples, or print impressions required by this chapter as soon as practicable after the person's receipt in a state, county, private, or other designated facility.

**§ -38 Collection of replacement specimen found spoiled or unusable.**

Whenever the department notifies the department of public safety or any other law enforcement agency that a biological specimen, sample, or print impression is not usable for any reason, the person who provided the original specimen, sample, or print impression shall submit to collection of additional specimens, samples, or print impressions. The department of public safety or other responsible law enforcement agency shall collect additional specimens, samples, or print impressions from these persons as necessary to fulfill the requirements of this chapter, and transmit these specimens, samples, or print impressions to the department.

**§ -39 Collection of specimen from sex offense registrants.** (a) If a person, except for any juvenile, is convicted of, pleads guilty or no contest to, or is found not guilty by reason of insanity of any of the offenses requiring registration pursuant to chapter 846E, and has given a blood specimen or other biological sample or samples to law enforcement for any purpose, the department is authorized to analyze, or direct a designated entity to analyze, the blood specimen and other biological sample or samples for forensic identification markers, including DNA markers, and to include the DNA and forensic identification profiles from these specimens and samples in the state DNA database and data bank identification program.

(b) This section applies whether or not the blood specimen or other biological sample originally was collected from a sexual offender pursuant to the State's DNA and forensic identification database and data bank program, and whether or not the crime committed predated the enactment of the State's DNA and forensic identification database and data bank program, or any amendments thereto. This section does not relieve a person convicted of a crime described in section -31(a), or otherwise subject to this chapter, from the requirement to give buccal swab samples and print impressions and, if required by the collecting agency's rules or internal regulations, any blood specimens for the state DNA database and data bank identification program as described in this chapter.

**§ -40 Collection of specimens from persons required to register under chapter 846E who have not yet provided samples.** (a) Any person who is required to register under chapter 846E who has not provided the specimens, samples, or print impressions described in this chapter for any reason, including the release of the person prior to the enactment of the state DNA database and data bank identification program, an oversight or error, or because of the transfer of the person from another state, the person shall give specimens, samples, or print impressions as described in this chapter for inclusion in the state DNA database and data bank identification program.

(b) At the time the person registers or updates the person's registration, the person shall receive an appointment designating a time and place for the collection of the specimens, samples, or print impressions described in this chapter, if the person has not already complied with this chapter.

(c) As specified in the appointment, the person shall report to a correctional facility in the county where the person resides or is temporarily located, to have specimens, samples, or print impressions collected pursuant to this chapter or other facility approved by the department for this collection. The specimens, samples, or print impressions shall be collected in accordance with this chapter.

(d) If, prior to the time of the required registration update, a person is notified by the department, a probation or parole officer, other law enforcement officer, or officer of the court that the person is subject to this chapter, then the person shall at a correctional facility or other facility approved by the department for this collection, provide the specimens, samples, or print impressions required by this chapter within ten calendar days of the notification.

§ **-41 Retroactive application.** Sections -31, -33, and -34 to -37 shall have retroactive application. Collection shall occur pursuant to sections -34 to -38 regardless of when the crime charged or committed became a qualifying offense pursuant to this chapter, and regardless of when the person was convicted of the qualifying offense described in section -31(a) or a similar crime under the laws of the United States or any other state, or pursuant to the United States Code of Military Justice, for commission of a qualifying offense described in section -31(a) or a similar crime under the laws of the United States or any other state.

#### **PART IV. CRIME SCENE AND RELATED EVIDENCE; COMPARISON AGAINST FORENSIC IDENTIFICATION DATA**

§ **-51 Analysis of crime scene samples.** The following entities are authorized to analyze crime scene samples and other samples of known and unknown origin and to compare and check the forensic identification profiles, including DNA profiles, of these samples against available DNA and forensic identification data banks and databases to establish identity and origin of samples for identification purposes:

- (1) Laboratories that are accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board, accredited by any certifying body approved by the Director of the FBI, or accredited by the successor to the Laboratory Accreditation Board;
- (2) Any law enforcement crime laboratory designated by the department that is accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board, accredited by any certifying body approved by the Director of the FBI, or accredited by the successor to the Laboratory Accreditation Board; and
- (3) Any other entity designated by the department by rule.

§ **-52 Anonymous analysis of specimens and samples.** Laboratories, including law enforcement laboratories, that are accredited by American Society of Crime Laboratory Directors/Laboratory Accreditation Board or any certifying body approved by the Director of the FBI who contract with the department may perform anonymous analysis of specimens and samples for forensic identification as provided in this chapter.

§ **-53 Analysis of forensic identification profiles.** A biological sample obtained from a suspect in a criminal investigation for the commission of any crime may be analyzed for forensic identification profiles, including DNA profiles, by any private or law enforcement crime laboratory accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board or any certifying body approved by the Director of the FBI and then compared by the department, in and between, as many cases and investigations as necessary, and searched against the forensic identification profiles, including DNA profiles, stored in the files of the state DNA database or data bank identification program or any available data banks or databases as part of the state DNA database and data bank identification program. The law enforcement investigating agency submitting a specimen, sample, or print impression to the department or law enforcement crime laboratory pursuant to this section shall inform the department within two years whether the person remains a suspect in a criminal investigation. Upon written notification from a law enforcement agency that a person is no longer a suspect in a criminal investigation, the department shall remove the suspect sample from its data bank files. However, any identification, warrant, arrest, or prosecution based upon a data bank or database match shall not be invalidated or dismissed due to a failure to purge or a delay in purging records.

§ **-54 Laboratories contributing DNA profiles to be accredited.** All laboratories contributing DNA profiles for inclusion in the state DNA data bank and database shall be accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board or any certifying body approved by the Director of the FBI. Additionally, each laboratory shall submit to the department for review the annual report required by the American Society of Crime Laboratory Directors Laboratory Accreditation Board or any certifying body approved by the Director of the FBI that documents the laboratory's adherence to American Society of Crime Laboratory Directors/Laboratory Accreditation Board standards or the standards of any certifying body approved by the Director of the FBI. The requirements of this section do not preclude DNA profiles developed in Hawaii from being searched in a national DNA database or data bank such as the FBI's Combined DNA Index System.

§ **-55 Other law enforcement DNA laboratories.** Nothing in this chapter shall preclude other law enforcement DNA laboratories from maintaining local forensic databases and data banks or performing forensic identification analyses, including DNA profiling, independent from the state DNA database and data bank identification program.

§ **-56 Limitations not cause for dismissal.** The limitation on the types of offenses set forth in section -31(a) that are subject to the collection and testing procedures of this chapter is for the purpose of facilitating the administration of this chapter by the department and shall not be considered cause for dismissing an investigation or prosecution or reversing a verdict or a disposition.

§ **-57 No invalidation based on erroneous placement or retention of specimens, samples, or print impressions.** The detention, arrest, wardship, adjudication, or conviction of a person based upon a data bank match or database information is not invalidated if it is determined that the specimens, samples, or print impressions were obtained or placed or retained in a data bank or database by mistake.

**PART V. SAMPLE AND SPECIMEN COLLECTION  
PARAPHERNALIA AND INSTRUCTIONS; CIVIL OR CRIMINAL  
LIABILITY FOR COLLECTION; AND DATA ENTRY**

**§ -61 Blood specimens, buccal swab samples, and print impressions shall be forwarded promptly to the department.** The director of public safety, the chief of police, or the administrator of the correctional facility, jail, or other facility at which the blood specimens, buccal swab samples, or print impressions were collected shall cause these specimens, samples, and print impressions to be forwarded promptly to the department. The specimens, samples, and print impressions shall be collected by a person using a department-approved collection kit and in accordance with the requirements and procedures set forth in section -62.

**§ -62 Procedures for the collection and forwarding of samples.** (a) The department of the attorney general shall provide all blood specimen collectors, buccal swab collectors, mailing tubes, labels, and instructions for the collection of the blood specimens, buccal swab samples, and print impressions. The specimens, samples, and print impressions shall thereafter be forwarded to the department for analysis of DNA and other forensic identification markers. Additionally, the department of the attorney general shall provide all print impression cards, mailing envelopes, and instructions for the collection of print impressions. The print impressions shall be forwarded to the department for maintenance in a file for identification purposes.

(b) Whenever withdrawal of blood is required by this chapter or by the collecting agency's rules or internal regulations, the withdrawal of blood shall be performed in a medically approved manner. Only health care providers trained and certified to draw blood may withdraw the blood specimens for the purposes of this chapter.

(c) Buccal swab samples may be procured by law enforcement or corrections personnel or other individuals trained to assist in buccal swab collection.

(d) Print impressions of each hand shall be taken on forms prescribed by the department of the attorney general. The print impression forms shall be forwarded to and maintained by the department of the attorney general. Print impressions taken at the time of the collection of samples or specimens shall be placed on the samples and specimens container and forms as directed by the department. The samples, specimens, and forms shall be forwarded to and maintained by the department.

(e) The law enforcement or custodial agency collecting specimens, samples, or print impressions is responsible for confirming that the person qualifies for entry into the state DNA database and data bank identification program prior to collecting the specimens, samples, or print impressions pursuant to this chapter.

(f) The department is responsible for establishing procedures for entering data bank and database information.

**§ -63 Limitations on civil and criminal liability.** (a) Persons authorized to draw blood or obtain samples or print impressions under this chapter for the data bank or database shall not be civilly or criminally liable either for withdrawing blood when done in accordance with medically accepted procedures, or for obtaining buccal swab samples by scraping inner cheek cells of the mouth, or print impressions when performed in accordance with standard professional practices.

(b) There shall be no civil or criminal cause of action against any law enforcement agency or the department, or any employee thereof, for a mistake in confirming a person's or sample's qualifying status for inclusion within the database or data bank or in placing an entry in a data bank or a database.

(c) The failure of the department or local law enforcement to comply with this chapter shall not invalidate an arrest, plea, conviction, or disposition.

**§ -64 Processing of offender specimens.** (a) To ensure expeditious and economical processing of offender specimens and samples for inclusion in the FBI's Combined DNA Index System and the state DNA database and data bank identification program, the department is authorized to contract with other laboratories, whether public or private, including law enforcement laboratories, that have the capability of fully analyzing offender specimens or samples within sixty days of receipt, for the anonymous forensic identification testing of specimens and samples as provided in this chapter and in accordance with the quality assurance requirement established by the FBI for its Combined DNA Index System.

(b) Contingent upon the availability of sufficient funds, the department shall immediately contract with other laboratories, whether public or private, including law enforcement laboratories, for the anonymous forensic identification testing of offender reference specimens or samples and any arrestee reference specimens or samples collected pursuant to section -31(a), as provided in subsection (a) of this section and in accordance with the quality assurance requirements established by the FBI for its Combined DNA Index System for any specimens or samples that are not fully analyzed and uploaded into the Combined DNA Index System database within six months of the receipt of the reference specimens or samples by the department.

**PART VI. REQUEST FOR EXPUNGEMENT OF INFORMATION;  
PROCEDURE**

**§ -71 Expungement of DNA information from state DNA database and data bank identification program.** (a) A person whose DNA profile has been included in the state DNA database and data bank identification program pursuant to this chapter shall have the person's DNA specimen and sample destroyed and searchable database profile expunged from the program pursuant to section -72 if:

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

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

- (1) May make a written request to have the person's specimen and sample destroyed and searchable database profile expunged from the state DNA database and data bank identification program if the underlying conviction or disposition serving as the basis for including the DNA profile has been reversed and the case dismissed; and
- (2) Shall send a copy of the person's request to the trial court of the circuit that entered the conviction or rendered disposition in the case, to the department, and to the prosecuting attorney of the county in which the person was convicted or adjudicated, with proof of service on all parties.

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

**§ -72 Destruction of samples and expungement of searchable DNA database profile.** (a) Except as provided below, the department shall destroy the

sample and expunge the searchable DNA database profile pertaining to the person who has no present or past qualifying offense of record upon receipt of a court order that verifies the applicant has made the necessary showing at a noticed hearing, and that includes all of the following:

- (1) The written request for expungement pursuant to section -71;
- (2) A certified copy of the court order reversing and dismissing the conviction or case, or a letter from the prosecuting attorney certifying that the underlying conviction has been reversed and the case dismissed;
- (3) A finding that written notice has been provided to the prosecuting attorney and the department of the request for expungement; and
- (4) A court order verifying that no retrial or appeal of the case is pending, that it has been at least one hundred eighty days since the defendant or minor has notified the prosecuting attorney and the department of the expungement request, and that the court has not received an objection from the department or the prosecuting attorney.

(b) Upon receipt of the order of the court pursuant to subsection (a), the department shall destroy any specimen or sample collected from the person and any searchable DNA database profile pertaining to the person, unless the department determines that the person is subject to the provisions of this chapter because of a past qualifying offense of record or is, or has otherwise become, obligated to submit a blood specimen or buccal swab as a result of a separate conviction, or finding of guilty or not guilty by reason of insanity for an offense described in section -31, or as a condition of a plea.

(c) The department is not required to destroy an autoradiograph or other item obtained from a blood specimen if evidence relating to another person subject to the provisions of this chapter would thereby be destroyed.

(d) Any identification, warrant, probable cause to arrest, or arrest based upon a data bank match shall not be invalidated due to a failure to expunge or a delay in expunging records.

(e) Notwithstanding any other provision of law, the designated entity is not required to expunge DNA profile or forensic identification information or destroy or return specimens, samples, or print impressions taken pursuant to this section based on a termination of a person's duty to register pursuant to chapter 846E.

**§ -73 No authorization to relieve a person of administrative duty to provide specimens, samples, or print impressions.** Notwithstanding any other provision of law, a judge is not authorized to relieve a person of the separate administrative duty to provide specimens, samples, or print impressions required by this chapter if a person was found not guilty by reason of insanity or pleads no contest to a qualifying offense as defined in section -31 or is given a deferred acceptance of plea under chapter 853.

**§ -74 Not a basis for invalidation of identification or suppression of identification evidence.** Nothing in this part shall be construed to invalidate an otherwise valid identification of a person by means of DNA testing or to provide the basis for a suppression of otherwise admissible evidence related to identification of a person based on DNA testing.

## **PART VII. EXEMPTION OF SPECIMEN FROM DISCLOSURE; CONFIDENTIALITY**

**§ -81 Exemption of specimen from disclosure.** (a) All DNA and forensic identification profiles and other identification information retained by the depart-

ment pursuant to this chapter shall be exempt from any law requiring disclosure of information to the public and are confidential except as otherwise provided in this chapter.

(b) All evidence and forensic samples containing biological material retained by the department or other state or local law enforcement agency are exempt from any law requiring disclosure of information to the public or the return of biological specimens, samples, or print impressions.

**§ -82 Confidentiality.** (a) Non-DNA forensic identification information may be filed with the other computerized data bank or database systems maintained by the department.

(b) The DNA and other forensic identification information retained by the department pursuant to this chapter shall not be included in the state summary criminal history information. However, nothing in this chapter precludes law enforcement personnel from entering into a person's criminal history information or offender file maintained by the department, the fact that the specimens, samples, or print impressions required by this chapter have or have not been collected from that person.

(c) The fact that the specimens, samples, or print impressions required by this chapter have been received by the department shall be included in the state summary criminal history information as soon as administratively practicable.

(d) The print impressions of each hand shall be filed and maintained by the department of the attorney general, and may be included in the state summary criminal history information.

(e) DNA samples, DNA profiles, and other forensic identification information shall be released only to law enforcement agencies, including but not limited to the department of the attorney general, parole officers of the department of public safety, hearing officers of the parole authority, probation officers, the department, and prosecuting attorneys' offices, unless otherwise specifically authorized this chapter.<sup>1</sup>

(f) Dissemination of DNA specimens, samples, and DNA profiles, and other forensic identification information to law enforcement agencies and prosecutors outside this State shall be performed in conformity with the provisions of this chapter.

(g) A defendant's DNA and other forensic identification information developed pursuant to this chapter shall be available to the person's defense counsel upon court order.

(h) Except as provided in subsection (g) and to protect the confidentiality and privacy of state DNA database and data bank identification program information, the department and DNA laboratories shall not otherwise be compelled in a criminal or civil proceeding to provide any DNA profile or database or data bank information, or information on its computer database program software or structures to any person or party seeking such records or information whether by subpoena or discovery, or other procedural device or inquiry.

**§ -83 Knowing use or disclosure by department employee of forensic identification information for other than criminal identification or exclusion purposes.** (a) If any employee of the department knowingly uses an offender specimen, sample, or DNA profile collected pursuant to this chapter for other than criminal identification or exclusion purposes, or knowingly discloses DNA or other forensic identification information developed pursuant to this section to an unauthorized individual or agency for other than criminal identification or exclusion purposes or for other than the identification of missing persons, in violation of this chapter, the department shall be liable in civil damages to the donor of the DNA

identification information in the amount of \$5,000 for each violation, plus attorney's fees and costs. In the event of multiple violations, total damages shall not exceed \$50,000 plus attorney's fees and costs.

(b) Notwithstanding any other law to the contrary, this section shall provide the sole and exclusive remedy against the department and its employees available to the donor of the DNA. The department's employee disclosing DNA identification information in violation of this chapter shall be absolutely immune from civil liability under any other law.

**§ -84 When disclosure is not a violation.** (a) It is not a violation of this chapter for a law enforcement agency, in its discretion, to publicly disclose the fact of a DNA profile match, or the name of the person identified by the DNA match when this match is the basis of law enforcement's investigation, arrest, or prosecution of a particular person, or the identification of a missing or abducted person.

(b) It is not a violation of this chapter to furnish DNA or other forensic identification information of the defendant to the person's defense counsel for criminal defense purposes in compliance with discovery.

(c) It is not a violation of this chapter for law enforcement to release DNA and other forensic identification information developed pursuant to this chapter to a jury or grand jury, or in a document filed with a court or administrative agency, or as part of a judicial or administrative proceeding, or for this information to become part of the public transcript or record of proceedings when, in the discretion of law enforcement, disclosure is necessary because the DNA information pertains to the basis for law enforcement's identification, arrest, investigation, prosecution, or exclusion of a particular person related to the case.

(d) It is not a violation of this chapter to include information obtained from a file in a transcript or record of a judicial proceeding, or in any other public record when the inclusion of the information in the public record is authorized by a court, statute, or decisional law.

(e) It is not a violation of this chapter for the department, or an organization retained as an agent of the department, or a local public laboratory to use anonymous records or criminal history information obtained pursuant to this chapter for training, research, statistical analysis of populations, or quality assurance or quality control.

**§ -85 Confidentiality of computer software and database structures.** To maintain the computer system security of the state DNA database and data bank identification program, the computer software and database structures used by the DNA laboratory of the department to implement this chapter are confidential.

## **PART VIII. DATA SHARING; POPULATION DATABASE OR DATA BANK INFORMATION; PROTOCOL, QUALITY CONTROL OR METHODOLOGY; SAMPLE SHARING; LOCAL DNA LABORATORIES; DISPOSAL**

**§ -91 Department permitted to share data, information, and samples.** (a) Nothing in this chapter shall prohibit the department from sharing or disseminating state DNA database and data bank identification program information or any analytical data and results generated for program purposes, or protocol and forensic DNA analysis methods and quality assurance or quality control procedures with any of the following:

- (1) Federal, state, or local law enforcement agencies;
- (2) Crime laboratories, whether public or private, that serve federal, state, and local law enforcement agencies that have been approved by the department;

- (3) The attorney general's office of any state;
- (4) Any state or federally authorized auditing agent or board that inspects or reviews the work of the department:
  - (A) To ensure that the department meets American Society of Crime Laboratory Directors Laboratory Accreditation Board LAB and FBI standards for accreditation and quality assurance standards necessary under this chapter; and
  - (B) To allow the State to participate in the FBI's Combined DNA Index System and other national or international crime-solving networks; or
- (5) Any third party that the department deems necessary to assist the department's crime laboratory with statistical analyses of the population database or to assist in the recovery or identification of human remains for humanitarian purposes, including identification of missing persons.

(b) The population databases and data banks of the department may be made available to and searched by the FBI and any other agency participating in the FBI's Combined DNA Index System or any other national or international law enforcement database or data bank system.

(c) The department may provide portions of biological samples, including blood specimens, saliva samples, and buccal swab samples collected pursuant to this chapter to local public law enforcement DNA laboratories for identification purposes; provided that the privacy provisions of this chapter are followed by the local public law enforcement laboratory and if each of the following conditions is met:

- (1) The procedures used by the local public DNA laboratory for the handling of specimens and samples and the disclosure of results are the same as those established by the department pursuant to this chapter;
- (2) The methodologies and procedures used by the local public DNA laboratory for DNA or forensic identification analysis are compatible with those used by the department, or otherwise are determined by the department to be valid and appropriate for identification purposes;
- (3) Only tests of value to law enforcement for identification purposes are performed and a copy of the results of the analysis are sent to the department;
- (4) All provisions of this chapter concerning privacy and security are followed; and
- (5) The local public law enforcement DNA laboratory assumes all costs of securing the specimens and samples and provides appropriate tubes, labels, and materials necessary to secure the specimens and samples.

§ -92 **Local DNA laboratories.** Any local DNA laboratory that produces DNA profiles of known reference samples for inclusion within the permanent files of the state DNA database and data bank identification program shall follow the instructions of the department for production of DNA profiles.

§ -93 **Disposal of unused and expired specimens.** The department is authorized to dispose of unused specimens and samples, unused portions of specimens and samples, and expired specimens and samples in the normal course of business and in compliance with part XI of this chapter and in a reasonable manner as long as the disposal method is designed to protect the identity and origin of specimens and samples from disclosure to third persons who are not a part of law enforcement.

## PART IX. POWERS NOT AFFECTED

### § -101 Law enforcement officer powers under other laws not affected.

Nothing in this chapter shall limit or abrogate any existing authority of law enforcement officers to take, maintain, store, and use DNA or forensic identification markers, blood specimens, buccal swab samples, saliva samples, or print impressions for identification purposes.

§ -102 Authority under other laws not affected. (a) Nothing in this chapter shall be construed to restrict the authority of local law enforcement to maintain its own DNA-related databases or data banks, or to restrict the department with respect to data banks and databases created by other statutory authority, including but not limited to databases related to fingerprints, firearms and other weapons, child abuse, domestic violence deaths, child deaths, driving offenses, missing persons, sex offender registration, and criminal justice statistics.

(b) Nothing in this chapter shall be construed to limit the authority of the medical examiner of the city and county of Honolulu or county coroners or their agents, in the course of their scientific investigation, to use genetic and DNA technology to inquire into and determine the circumstances, manner, and cause of death, or to employ or use outside laboratories, hospitals, or research institutions that use genetic and DNA technology.

## PART X. CRIMES

§ -111 Refusal or failure to provide specimen for forensic identification. (a) A person commits the offense of refusal or failure to provide specimen for forensic identification if the person is required by this chapter to provide any blood specimens, buccal swab samples, or print impressions and refuses or fails to provide any of the required blood specimens, buccal swab samples, or print impressions after the person has received written notice from the department, the department of public safety, any law enforcement personnel, or officer of the court that the person is required to provide each and every one of the blood specimens, buccal swab samples, and print impressions required by this chapter.

(b) Any person who negligently or recklessly fails to comply with this section shall be guilty of a misdemeanor.

§ -112 Fraudulent use or manipulation of biometric sample or information. (a) A person commits the offense of fraudulent use or manipulation of biometric sample or information if the person is required to submit a specimen sample or print impression pursuant to this chapter and intentionally or knowingly:

- (1) Facilitates the collection of a wrongfully attributed blood specimen, buccal swab sample, or print impression, with the intent that a government agent or employee be deceived as to the origin of a DNA profile or as to any identification information associated with a specimen, sample, or print impression required for submission pursuant to this chapter; or
- (2) Tampers with any specimen, sample, print, or the collection container for any specimen or sample, with the intent that any government agent or employee be deceived as to the identity of the person to whom the specimen, sample, or print relates.

(b) Fraudulent use or manipulation of biometric sample or information is a class C felony.

§ -113 **Unauthorized disclosure of DNA sample or profile.** (a) A person commits the offense of unauthorized disclosure of DNA sample or profile if the person intentionally or knowingly, in violation of this chapter:

- (1) Uses an offender sample or DNA profile for other than criminal identification or exclusion purposes; or
- (2) Discloses DNA or other forensic identification information developed pursuant to this section to an unauthorized individual or agency, for other than criminal identification or exclusion.

(b) Unauthorized disclosure of DNA sample or profile purposes is a misdemeanor.

§ -114 **Use of DNA sample or profile for financial gain.** (a) A person commits the offense of use of DNA sample or profile for financial gain if the person, for the purpose of financial gain, intentionally or knowingly, in violation of this chapter:

- (1) Uses an offender sample or DNA profile for other than criminal identification or exclusion purposes; or
- (2) Discloses DNA or other forensic identification information developed pursuant to this chapter to an unauthorized individual or entity, for other than criminal identification or exclusion purposes.

(b) Use of DNA sample or profile for financial gain is a misdemeanor for which, in addition to any other penalty provided by the penal code for a misdemeanor, a fine shall be imposed in an amount three times that of any financial gain received, or \$10,000, whichever is greater.

## PART XI. POST-CONVICTION DNA TESTING

§ -121 **Petition for post-conviction DNA testing.** Notwithstanding any other law or rule of court governing post-conviction relief to the contrary, a person who was convicted of and sentenced for a crime may file a motion, at any time, for DNA analysis of any evidence that:

- (1) Is in the custody or control of a police department, prosecuting attorney, laboratory, or court;
- (2) Is related to the investigation or prosecution that resulted in the judgment of conviction; and
- (3) May contain biological evidence.

§ -122 **Proceedings.** The court shall order the prosecuting attorney to answer a motion filed pursuant to section -121 not later than thirty days after filing of the motion. The court may thereafter deny the motion without hearing if the motion is patently frivolous because it is without a trace of support either in the record or in any materials submitted with the motion. The court shall conduct a hearing on the motion within ninety days of its filing if the allegations in the motion, taken as true, establish grounds for relief under section -123. If the court sets the motion for hearing, the court shall order that all evidence in the custody or control of a police department, prosecuting attorney, laboratory, or court that could be subjected to DNA analysis be preserved during the pendency of the proceeding. The intentional destruction of evidence after entry of the order shall constitute grounds for appropriate sanctions, including contempt of court under section 710-1077.

§ -123 **Order for post-conviction DNA testing.** (a) The court shall order testing after a hearing if it finds that:

- (1) A reasonable probability exists that the defendant would not have been prosecuted or convicted if exculpatory results had been obtained

through DNA analysis, even if the defendant later pled guilty or no contest;

- (2) Identity was or should have been an issue in the proceeding that led to the verdict or sentence;
  - (3) The evidence sought to be analyzed has been identified with particularity and still exists in a condition that permits DNA analysis; provided that questions as to the chain of custody of the evidence shall not constitute grounds to deny the motion if the testing itself can establish the integrity of the evidence;
  - (4) The evidence was not previously subjected to DNA analysis or was not subjected to analysis that can now resolve an issue not resolved by previous analysis; and
  - (5) The application for testing is made for the purpose of demonstrating innocence and not to unreasonably delay the execution of sentence or administration of justice.
- (b) The court may order testing after a hearing if it finds that:
- (1) A reasonable probability exists that DNA analysis of the evidence will produce results that would have led to a more favorable verdict or sentence for the defendant had the results been available at the proceeding leading to the verdict or sentence, even if the defendant pled guilty or no contest;
  - (2) The evidence sought to be analyzed has been identified with particularity and still exists in a condition that permits DNA analysis; provided that questions as to the chain of custody of the evidence shall not constitute grounds to deny the motion if the testing itself can establish the integrity of the evidence;
  - (3) The evidence was not previously subjected to DNA testing or was not subject to testing that can now resolve an issue not resolved by previous testing; and
  - (4) The application for testing is made for the purpose of demonstrating that the defendant was guilty of a lesser offense or eligible for a more lenient sentence and not to unreasonably delay the execution of sentence or administration of justice.

(c) If evidence had previously been subjected to DNA analysis, by either the prosecution or defense, the court may order the prosecution or defense to provide each party and the court with access to the laboratory reports prepared in connection with the DNA analysis, as well as the underlying data and laboratory notes. If DNA or other analysis of evidence was previously conducted by either the prosecution or defense without knowledge of the other party, all information relating to the testing shall be disclosed by the motion for analysis or response. If the court orders DNA analysis under this section, the court shall order the production to each party and the court of any laboratory reports prepared in connection with the DNA analysis and, in its discretion, may order production of the underlying data and laboratory notes.

**§ -124 Counsel.** (a) The court may, at any time during proceedings under this part, appoint counsel for a defendant determined to be indigent pursuant to section 802-4.

(b) If the defendant has filed pro se, upon a showing that DNA testing may be material to the defendant's claim of wrongful conviction, the court shall appoint counsel for the defendant.

(c) The court, in its discretion, may refer pro se requests for DNA testing to qualified parties for further review, including but not limited to indigent defense organizations or clinical legal education programs, without appointing the parties as counsel at that time.

(d) If the defendant has retained private pro bono counsel, including but not limited to counsel from a nonprofit organization that represents indigent persons, the court may, in its discretion, award reasonable attorney's fees and costs at the conclusion of the litigation.

§ -125 **Discovery.** (a) At any time after a petition has been filed under this part:

- (1) The court may order the State to locate and provide the defendant with any documents, notes, logs, or reports relating to items of physical evidence collected in connection with the case, or otherwise assist the defendant in locating items of biological evidence that the State contends have been lost or destroyed;
- (2) The court may order the State to take reasonable measures to locate biological evidence that may be in its custody, or to assist the defendant in locating evidence that may be in the custody of a public or private hospital, public or private laboratory, or other facility; or
- (3) If evidence had previously been subjected to DNA testing, the court may order production of laboratory reports prepared in connection with the DNA testing, as well as the underlying data, and the laboratory notes.

(b) If any DNA or other biological evidence testing was previously conducted by either the prosecution or defense without knowledge of the other party, such testing shall be revealed in the motion for testing or response, if any.

(c) If the court orders DNA testing in connection with a proceeding brought under this part, the court shall order the production of any laboratory reports prepared in connection with the DNA testing, and may in its discretion order production of the underlying data, bench notes, or other laboratory notes.

(d) The results of any post-conviction DNA testing conducted under this part shall be disclosed to the prosecution, the defendant, and the court.

§ -126 **Retention of biological evidence.** (a) All evidence in the custody or control of a police department, prosecuting attorney, laboratory, or court that is related to the investigation or prosecution of a case in which there has been a judgment of conviction and that may contain biological evidence that could be used for DNA analysis shall be retained at least until the later occurring of either:

- (1) The exhaustion of all appeals of the case to which the evidence is related; or
- (2) The completion of any sentence, including any term of probation or parole, imposed on the defendant in the case to which the evidence relates.

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

§ -127 **Choice of laboratory.** When the court grants a motion under section -123, the evidence shall be analyzed at an independent laboratory meeting standards adopted pursuant to the DNA Identification Act of 1994 (42 U.S.C. 14131). If the defendant and the prosecuting attorney cannot agree on a laboratory to perform the analysis, the court shall select the laboratory.

§ -128 **Payment.** Analysis ordered pursuant to section -123(a) shall be paid for using funds from the DNA registry special fund established pursuant to section 706-603(9).<sup>1</sup> The court may require payment for analysis ordered pursuant to

section -123(b) to be made by the defendant, the DNA registry special fund, or a combination thereof.

§ -129 **Appeal.** In accordance with applicable rules of court, the defendant may appeal to the supreme court and intermediate court of appeals from an order denying a motion made pursuant to this part.

§ -130 **Successive motions.** (a) If the defendant has filed a prior motion for DNA testing under this part or any other provision of law, the defendant may file, and the court shall adjudicate, a successive motion or motions under this part; provided that the defendant asserts new or different grounds for relief, including but not limited to factual, scientific, or legal arguments not previously presented, or the availability of more advanced DNA technology.

(b) The court may also, in its discretion, adjudicate any successive motions if the interests of justice so require.

§ -131 **Additional orders.** (a) The court may in its discretion make such other orders as may be appropriate. This includes but is not limited to designating:

- (1) The type of DNA analysis to be used;
- (2) The testing procedures to be followed;
- (3) The preservation of some portion of the sample for replicating the testing;
- (4) Additional DNA testing, if the results of the initial testing are inconclusive or otherwise merit additional scientific analysis; and
- (5) The collection and DNA testing of elimination samples from third parties.

(b) DNA profile information from biological samples taken from any person pursuant to a motion for post-conviction DNA testing shall be exempt from any law requiring disclosure of information to the public.

§ -132 **Procedure after testing results are obtained.** (a) If the results of the post-conviction DNA testing are favorable to the defendant, the court shall conduct a hearing pursuant to applicable law or court rule governing post-conviction proceedings, notwithstanding any law or court rule that would otherwise bar such a hearing as untimely or procedurally defective, and thereafter make such orders as are necessary for disposition of those proceedings. If the results of the DNA analysis are not favorable to the defendant, the court shall give notice of the results to probation or parole authorities, as appropriate.

(b) Records reflecting the results of DNA analysis performed pursuant to this section, including the underlying data and laboratory notes, shall not be subject to disclosure pursuant to chapter 92F except to the extent of a conclusion that a particular person was, or was not, the source of the biological evidence analyzed.

(c) In any case as to which a motion is filed under this section, the prosecuting attorney shall give notice to the victim or surviving immediate family members of a homicide victim of the filing of the motion, any hearing that is held as a result, and its disposition. For purposes of this subsection, "victim" and "surviving immediate family members" have the same meaning as in section 801D-2.

(d) The court shall make appropriate findings of fact and conclusions of law in support of its disposition of a motion made pursuant to this section, regardless of whether a hearing was held.

§ -133 **Consent.** Nothing in this part shall be interpreted to prohibit a convicted person and the State from consenting to and conducting post-conviction DNA testing by agreement of the parties and without filing a motion for post-

conviction DNA testing under this part. Notwithstanding any other provision of law governing post-conviction relief, if DNA test results are obtained under testing conducted upon consent of the parties which are favorable to the defendant, the defendant may file, and the court shall adjudicate, a motion for post-conviction relief under the provisions of this part, based on the DNA test results.”

SECTION 2. Section 701-108, Hawaii Revised Statutes, is amended by amending subsection (3) to read as follows:

“(3) If the period prescribed in subsection (2) has expired, a prosecution may nevertheless be commenced for:

- (a) Any offense an element of which is either fraud or a breach of fiduciary obligation within three years after discovery of the offense by an aggrieved party or by a person who has a legal duty to represent an aggrieved party and who is oneself not a party to the offense, but in no case shall this provision extend the period of limitation by more than six years from the expiration of the period of limitation prescribed in subsection (2); [and]
- (b) Any offense based on misconduct in office by a public officer or employee at any time when the defendant is in public office or employment or within two years thereafter, but in no case shall this provision extend the period of limitation by more than three years from the expiration of the period of limitation prescribed in subsection (2)[-];  
and
- (c) Any felony offense involving evidence containing deoxyribonucleic acid from the offender, if a test confirming the presence of deoxyribonucleic acid is performed prior to expiration of the period of limitation prescribed in subsection (2), but in no case shall this provision extend the period of limitation by more than ten years from the expiration of the period of limitation prescribed in subsection (2).”

SECTION 3. Section 701-118, Hawaii Revised Statutes, is amended by amending subsection<sup>2</sup> (7) to read as follows:

“(7) “Person,” “he,” “him,” “actor,” and “defendant” include any natural person, including any natural person whose identity can be established by means of scientific analysis, including but not limited to scientific analysis of deoxyribonucleic acid and fingerprints, whether or not the natural person’s name is known, and, where relevant, a corporation or an unincorporated association;”

SECTION 4. Section 706-603, Hawaii Revised Statutes, is amended to read as follows:

~~“§706-603 [Mental and medical examination; deoxyribonucleic acid collection. (1) As used in this section, unless the context otherwise requires:~~

~~“Conviction” means that a verdict has been rendered by a judge or jury, or a plea of guilty or nolo contendere has been accepted by the court.~~

~~“DNA” means deoxyribonucleic acid.~~

~~“Licensed psychologist” means psychologists licensed under chapter 465 but also includes psychologists exempt from licensure under section 465-3(a)(3).~~

~~“Sexual offense” means an offense as defined in chapter 846E as a sexually violent offense or a criminal offense against a victim who is a minor.~~

~~“Violent offense” means murder, or attempted murder, in any degree.~~

~~(2) Before imposing sentence, the court may order a defendant who has been convicted of a felony or misdemeanor to submit to mental or other medical observation and examination for a period not exceeding sixty days or a longer period, not to~~

exceed the length of permissible imprisonment, as the court determines to be necessary for the purpose. In addition thereto or in the alternative, the court may appoint one or more qualified psychiatrists, physicians, or licensed psychologists to make the examination. The examiner or examiners shall be appointed from a list of certified examiners as determined by the state department of health. The report of the examination shall be submitted to the court.

(3) After entry of a plea of guilty or no contest or return of a verdict of guilty, a defendant who has been convicted of a sexual or violent offense shall provide two samples of blood for DNA analysis.

(4) A defendant who has been convicted of a sexual or violent offense and who is in custody at a jail, prison, hospital, school, or other institution shall provide two samples of blood for DNA analysis. The person in charge of such an institution, or that person's designee, shall arrange for the sample to be collected and analyzed.

(5) A defendant who has been convicted of a sexual or violent offense and who is not in custody shall report in person to any police station in the county in which the defendant resides or is present to schedule an appointment to provide two samples of blood for DNA analysis. A defendant required to report to a police station under this subsection shall do so within:

- (a) Thirty days of July 20, 1998;
- (b) Thirty days of conviction; or
- (c) Thirty days after arrival in this State, if the defendant expects to be present in this State for a period exceeding thirty days.

(6) A defendant who has been charged with a sexual or violent offense and who has been found unfit to proceed or acquitted pursuant to chapter 704, or any state, federal, or military law similar to chapter 704 shall provide two samples of blood for DNA analysis. The person in charge of the jail, prison, hospital, school, or other institution where the defendant is in custody, or that person's designee, shall arrange for the sample to be collected and analyzed. A defendant who is not in custody and who is required to provide blood under this subsection shall report in person to any police station in the county in which the defendant resides or is present to schedule an appointment to provide two samples of blood. A defendant required to report to a police station under this subsection shall do so within:

- (a) Thirty days of July 20, 1998;
- (b) Thirty days of the release following an acquittal or finding of unfitness to proceed under chapter 704; or any state, federal, or military law similar to chapter 704; or
- (c) Thirty days after arrival in the State,

if the defendant resides or expects to be present in the State for a period exceeding thirty days.

(7) Blood withdrawn pursuant to this section shall be withdrawn only by a person authorized to withdraw blood under section 291E-12. The results shall be recorded, preserved, and disseminated in a manner consistent with the requirements of chapter 846. A defendant who has already provided the necessary samples of blood pursuant to this section shall be relieved of any further requirement to provide blood for DNA analysis, unless the court orders otherwise.

**(8) DNA analysis monetary assessment; DNA registry special fund. (1)**

In addition to any disposition authorized by chapter 706 or 853, [a] every defendant convicted of [a sexual or violent] a felony offense [after July 20, 1998 may] shall be ordered to pay a monetary assessment of \$500 or the actual cost of the DNA analysis, whichever is less. The court [shall not order the defendant to pay] may reduce the monetary assessment [unless] if the court finds, based on evidence presented by the defendant and not rebutted by the State, that the defendant is [or] not and will not be able to pay the full monetary assessment[.] and, based on the

finding, shall instead order the defendant to pay an assessment that the defendant will be able to pay within five years.

(2) Notwithstanding any other law to the contrary, the assessment and penalty provided by this section shall be in addition to, and not in lieu of, and shall not be used to offset or reduce, any fine or restitution authorized or required by law. All assessments and penalties shall be paid into the DNA registry special fund established in subsection [(9)-] (3).

~~[(9)]~~ (3) There is established a special fund to be known as the DNA registry special fund which shall be administered by the attorney general. The fund shall consist of:

- (a) All assessments and penalties ordered pursuant to ~~[subsection-(8);]~~ subsection (1);
- (b) All other moneys received by the fund from any other source; and
- (c) Interest earned on any moneys in the fund.

Moneys in the DNA registry special fund shall be used for DNA collection, DNA testing, and related costs of recording, preserving, and disseminating DNA information pursuant to ~~[this section-]~~ chapter .

~~[(10)]~~ (4) Restitution to the victim of a sexual or violent crime shall be made before payment of the monetary assessment.

~~[(11) Any person required to provide blood samples under this section who negligently or recklessly fails to comply shall be guilty of a misdemeanor; and any person who intentionally or knowingly fails to provide blood samples under this section shall be guilty of a class C felony.]”~~

SECTION 5. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

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

SECTION 7. This Act shall take effect on July 1, 2005.

(Approved June 8, 2005.)

**Notes**

- 1. So in original.
- 2. Should be “paragraph”.