



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-EIGHTH LEGISLATURE, 2015**

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**ON THE FOLLOWING MEASURE:**

**S.B. NO. 211, RELATING TO FORENSIC IDENTIFICATION.**

**BEFORE THE:**

**SENATE COMMITTEE ON JUDICIARY AND LABOR**

**DATE:** Monday, February 2, 2015 **TIME:** 9:30 a.m.

**LOCATION:** State Capitol, Room 016

**TESTIFIER(S):** Russell Suzuki, Attorney General, or  
Lance M. Goto, Deputy Attorney General.

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**Chair Keith-Agaran and Members of the Committee:**

The Department of the Attorney General strongly supports this bill with amendments.

The purpose of this bill is to clarify the requirements for DNA sample collection from subject criminal offenders that are released on parole, probation, or other release; and to amend section 844D-111, Hawaii Revised Statutes (HRS), to clarify the grading of the offense of refusing to provide a required blood specimen, buccal swab sample, or print impression for forensic identification by making an intentional or knowing violation a class C felony offense, and a negligent or reckless violation a misdemeanor.

Section 844D-111(a), HRS, provides that a person commits the offense of refusal to provide specimen for forensic identification if the person is required to provide any blood specimens, buccal swab samples, or print impressions, and intentionally or knowingly refuses or fails to do so after receiving written notice of the requirement. The problem, however, is that section 844D-111, when establishing the grade and penalty for the offense under subsection (b), only provides that a negligent or reckless violation shall be a misdemeanor offense. There is no penalty provision for an intentional or knowing violation, as set out in the statute.

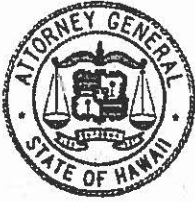
All individuals convicted of a felony offense are required to submit DNA buccal swab samples for the purpose of establishing a DNA database that can be used to solve crimes, including cold cases, and exonerate the innocent. Under current law, however, if a felon refuses to comply with the law, the only mechanism to obtain compliance is the threat of a misdemeanor prosecution for a negligent or reckless violation. For offenders who have already been convicted of felony offenses, an additional misdemeanor charge is not likely to deter their actions, or

induce compliance with the requirements of the law. An intentional or knowing refusal to provide a DNA buccal swab sample should amount to a felony offense because a felony level offense will be more likely to induce compliance by offenders.

This bill makes an intelligent or knowing refusal to comply with the forensic identification requirements a class C felony. It makes a negligent or reckless violation a separate misdemeanor offense.

While the Department supports the intent of this bill, it recommends that Section 2 of this bill be amended to separate the misdemeanor and felony offenses into completely different sections of the law. The offenses will be clearer, and there will be less chance of confusion when charging and tracking the offenses through the criminal justice and criminal history systems. This was done in the attached Senate Bill No. 2253, S.D. 1, of the 2014 Legislative Session.

The Department respectfully requests the passage of this bill with the proposed amendments.



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-SEVENTH LEGISLATURE, 2014**

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**ON THE FOLLOWING MEASURE:**

**S.B. NO. 2253, S.D. 1, RELATING TO FORENSIC IDENTIFICATION.**

**BEFORE THE:**

**HOUSE COMMITTEE ON PUBLIC SAFETY**

**DATE:** Thursday, March 13, 2014                      **TIME:** 10:00 a.m.

**LOCATION:** State Capitol, Room 309

**TESTIFIER(S):** David M. Louie, Attorney General, or  
Lance M. Goto, Deputy Attorney General.

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Chair Aquino and Members of the Committee:

The Department of the Attorney General strongly supports this bill.

The purpose of this bill is to amend section 844D-111, Hawaii Revised Statutes (HRS), and add a new section to chapter 844D to clarify the grading of the offense of refusing to provide a required blood specimen, buccal swab sample, or print impression for forensic identification by creating first and second degree offenses that make an intentional or knowing violation a class C felony offense, and a negligent or reckless violation a misdemeanor.

Section 844D-111(a), HRS, provides that a person commits the offense of refusal to provide specimen for forensic identification if the person is required to provide any blood specimens, buccal swab samples, or print impressions, and intentionally or knowingly refuses or fails to do so after receiving written notice of the requirement. The problem, however, is that section 844D-111, when establishing the grade and penalty for the offense under subsection (b), only provides that a negligent or reckless violation shall be a misdemeanor offense. There is no penalty provision for an intentional or knowing violation, as set out in the statute.

All individuals convicted of a felony offense are required to submit DNA buccal swab samples for the purpose of establishing a DNA database that can be used to solve crimes, including cold cases, and exonerate the innocent. Under current law, however, if a felon refuses to comply with the law, the only mechanism to obtain compliance is the threat of a misdemeanor prosecution for a negligent or reckless violation. For offenders who have already been convicted of felony offenses, an additional misdemeanor charge is not likely to deter their actions, or induce compliance with the requirements of the law. An intentional or knowing refusal to

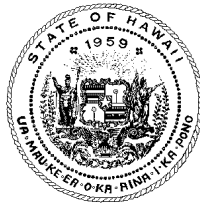
provide a DNA buccal swab sample should amount to a felony offense because a felony level offense will be more likely to induce compliance by offenders.

This bill makes an intelligent or knowing refusal to comply with the forensic identification requirements a class C felony. It makes a negligent or reckless violation a separate misdemeanor offense.

This bill will allow for more effective enforcement of DNA sample collection requirements. The public will also benefit from the more efficient collection of buccal swab samples because such collection will result in a more complete and reliable DNA database that will be of greater assistance in solving crimes, including cold cases, and will also help to exonerate innocent parties.

The Department respectfully requests the passage of this bill.

DAVID Y. IGE  
GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF PUBLIC SAFETY**  
919 Ala Moana Boulevard, 4th Floor  
Honolulu, Hawaii 96814

NOLAN P. ESPINDA  
DIRECTOR

Cathy Ross  
Deputy Director  
Administration

Shelley Nobriga  
Deputy Director  
Corrections

Shawn H. Tsuha  
Deputy Director  
Law Enforcement

No. \_\_\_\_\_

February 2, 2015

COMMENTS ON SENATE BILL 211  
A BILL RELATING TO FORENSIC IDENTIFICATION  
Nolan P. Espinda, Director  
Department of Public Safety

Senate Committee on Judiciary and Labor  
Senator Gilbert S.C. Keith-Agaran, Chair  
Senator Maile S.L. Shimabukuro, Vice Chair

Monday, February 2, 2015, 9:30 AM  
State Capitol, Conference Room 016

Chair Keith-Agaran, Vice Chair Shimabukuro, and Members of the Committee:

Department of Public Safety (PSD) would like to provide **comments** to Senate Bill 211 relating to forensic identification. This bill will increase the types of offenders that would require DNA sample collection, reduce the collection time frame, and increase the penalty for offenders that refuse to comply with the law.

Under current law, PSD has been collecting DNA samples from incarcerated offenders that have been convicted of a felony offense. The amendments as written in this bill would require testing of offenders that have been sentenced for misdemeanor and petty misdemeanor crimes, as well as probation violators that are serving a jail sanction. It is estimated that 450 offenders that are currently incarcerated would meet this requirement for sample collection.

PSD has concerns regarding specimen collection from offenders that meet the proposed requirements that are not in custody. PSD does not have the resources to locate these offenders for testing purposes.

Thank you for this opportunity to testify and would be available for any questions you may have.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

ALII PLACE  
1060 RICHARDS STREET • HONOLULU, HAWAII 96813  
PHONE: (808) 547-7400 • FAX: (808) 547-7515

KEITH M. KANESHIRO  
PROSECUTING ATTORNEY



ARMINA A. CHING  
FIRST DEPUTY PROSECUTING ATTORNEY

**THE HONORABLE GILBERT KEITH-AGARAN, CHAIR**  
**SENATE COMMITTEE ON JUDICIARY AND LABOR**  
**Twenty-eighth State Legislature**  
**Regular Session of 2015**  
**State of Hawai`i**

February 2, 2015

**RE: S.B. 211; RELATING TO FORENSIC IDENTIFICATION.**

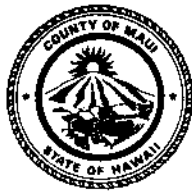
Chair Keith-Agaran, Vice-Chair Shimabukuro and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in support of Senate Bill 211.

The purpose of this bill is to clarify that adult offenders previously released on probation, parole, or other forms of supervised release, are also subject to existing requirements to provide buccal swab samples, print impressions and/or blood samples for identification purposes. While the law generally states that these requirements are effective retroactively, further clarification is needed to specifically address this category of individuals.

In addition, this bill would also clarify the penalty for intentional or knowing refusal to provide the required samples for forensic identification. These amendments are needed, as our laws currently prohibit intentional or knowing refusal, but only provide penalties for reckless or negligent refusal.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu supports the passage of Senate Bill 211. Thank you for the opportunity to testify on this matter.

ALAN M. ARAKAWA  
Mayor



JOHN D. KIM  
Acting Prosecuting Attorney  
ROBERT D. RIVERA  
Acting First Deputy Prosecuting Attorney

DEPARTMENT OF THE PROSECUTING ATTORNEY  
COUNTY OF MAUI  
150 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
PHONE (808) 270-7777 • FAX (808) 270-7625

CONTACT: RICHARD. K. MINATOYA  
Deputy Prosecuting Attorney  
Supervisor, Appellate, Asset Forfeiture and Administrative Services Division

TESTIMONY  
ON  
SB 211 - RELATING TO FORENSIC IDENTIFICATION

February 2, 2015

The Honorable Gilbert S. C. Keith-Agaran  
Chair  
The Honorable Maile S. L. Shimabukuro  
Vice Chair  
and Members  
Senate Committee on Judiciary and Labor

Chair Keith-Agaran, Vice Chair Shimabukuro and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui, **STRONGLY SUPPORTS** SB 211 - Relating to Forensic Identification. The bill specifies the requirements for DNA sample collection from subject criminal offenders that are release on parole, probation, or other release. It also specifies that an intentional or knowing failure to provide DNA samples is a class C felony, and a reckless or negligent failure to provide DNA samples is a misdemeanor.

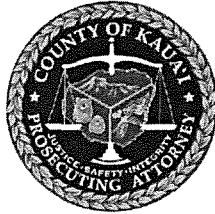
The current forensic identification law has a loophole. Although the law provides retroactive application, it does not specify the procedure to collect DNA samples from covered offenders released from probation, parole, or on other release. In addition, the current law contemplates intentional or knowing failures to provide DNA samples, but only provides that reckless or negligent failures are misdemeanors. The law makes no reference to the level of the offense for an intentional or knowing failure to provide DNA samples. This bill is needed to correct these deficiencies.

Accordingly, the Department of the Prosecuting Attorney, County of Maui, **STRONGLY SUPPORTS** the passage of this bill. We ask that the committee **PASS** SB 211.

Thank you very much for the opportunity to provide testimony on this bill.

**Justin F. Kollar**  
Prosecuting Attorney

**Kevin K. Takata**  
First Deputy



**Rebecca A. Vogt**  
Second Deputy

**Diana Gausepohl-White**  
Victim/Witness Program Director

**OFFICE OF THE PROSECUTING ATTORNEY**

**County of Kaua'i, State of Hawai'i**

3990 Ka'ana Street, Suite 210, Lihu'e, Hawai'i 96766

808-241-1888 ~ FAX 808-241-1758

Victim/Witness Program 808-241-1898 or 800-668-5734

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TESTIMONY IN SUPPORT OF  
SB 211 – RELATING TO FORENSIC IDENTIFICATION

Justin F. Kollar, Prosecuting Attorney  
County of Kaua'i

Senate Committee on Judiciary & Labor  
February 2, 2015, 9:30 a.m., Conference Room 016

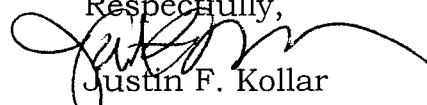
Chair Keith-Agaran, Vice Chair Shimabukuro, and Members of the Committee:

The County of Kaua'i, Office of the Prosecuting Attorney, **STRONGLY SUPPORTS** SB211 – Relating to Forensic Identification. The Bill specifies the requirements for DNA collection from certain criminal offenders on parole, probation, or other forms of supervised release. It also specifies that intentional or knowing failure to provide DNA samples is a class C felony, and a reckless or negligent failure to do so is a misdemeanor.

This Bill addresses existing loopholes in the current forensic identification law. While the law provides for retroactive application, it does not specify the procedure for collection of DNA samples from covered offenders released on probation or parole. The current law does not specify a level of offense for intentional or knowing failure to provide DNA samples. This Bill will close those loopholes.

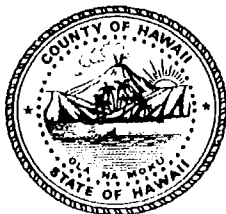
Accordingly, we are in **STRONG SUPPORT** of SB211. We request that your Committee **PASS** the Bill.

Respectfully,

  
Justin F. Kollar  
Prosecuting Attorney

MITCHELL D. ROTH  
PROSECUTING ATTORNEY

DALE A. ROSS  
FIRST DEPUTY  
PROSECUTING ATTORNEY



655 KĪLAUEA AVENUE  
HILO, HAWAII 96720  
PH: (808) 961-0466  
FAX: (808) 961-8908  
(808) 934-3403  
(808) 934-3503

WEST HAWAII UNIT  
81-980 HALEKI'I ST, SUITE 150  
KEALAKEKUA, HAWAII 96750  
PH: (808) 322-2552  
FAX: (808) 322-6584

**OFFICE OF THE PROSECUTING ATTORNEY**

TESTIMONY IN SUPPORT OF SENATE BILL 211

A BILL FOR AN ACT RELATING TO FORENSIC  
IDENTIFICATION

COMMITTEE ON JUDICIARY AND LABOR

Sen. Gilbert S.C. Keith-Agaran, Chair  
Sen. Maile S.L. Shimabukuro, Vice Chair

Monday, February 2, 2015, 9:30 AM  
State Capitol, Conference Room 016

Honorable Chair Keith-Agaran, Vice-Chair Shimabukuro, and Members of the Committee on Judiciary and Labor, the Office of the Prosecuting Attorney, County of Hawai'i submits the following testimony in support of Senate Bill No. 211.

This measure specifies the requirements of DNA sample collection from subject criminal offenders that are released on parole, probation, or other release. Makes it a class C felony to intentionally or knowingly fail to provide DNA samples, and a misdemeanor for negligent or reckless failure to comply.

By inserting specific language for intentional refusal or failure to provide a DNA sample, and by setting procedures for collection of DNA samples from covered criminal offenders released on probation or parole, this Bill will close the gaps in current law and ensure specimens are collected.

The Office of the Prosecuting Attorney, County of Hawai'i supports the passage of Senate Bill No. 211. Thank you for the opportunity to testify on this matter.

Respectfully,

Mitchell D. Roth  
Prosecuting Attorney  
County of Hawai'i



## **Office of the Public Defender State of Hawaii**



**Timothy Ho, Chief Deputy Public Defender  
Testimony of the Office of the Public Defender,  
State of Hawaii to the Senate Committee on Judiciary and Labor**

February 2, 2015, 9:30 a.m.

RE: S.B. 211: Relating To Forensic Identification

Chair Keith-Agaran and Members of the Committee:

This measure would require the collection of buccal swab samples and print impressions from all defendants placed on probation for any crime. Currently, buccal swab samples are collected from persons who have been convicted of felony offenses. We believe this measure to be overbroad, and overly burdensome on the judiciary, and as such, oppose S.B. 211.

The district courts of the State of Hawaii handles thousands of criminal misdemeanor and petty misdemeanor cases each year. A buccal swab requirement of all petty misdemeanor and misdemeanor probationers will prove costly to administer. Another problem with this overbroad measure is the potential to run out of storage space.

We believe the current law to be sufficient and ask that this committee defer S.B. 211.

Thank you for the opportunity to comment on this bill.

POLICE DEPARTMENT  
**CITY AND COUNTY OF HONOLULU**

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813  
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu.org



KIRK W. CALDWELL  
MAYOR

LOUIS M. KEALOHA  
CHIEF

DAVE M. KAJIHIRO  
MARIE A. McCAULEY  
DEPUTY CHIEFS

OUR REFERENCE **WK-CS**

February 2, 2015

The Honorable Gilbert S. C. Keith-Agaran, Chair  
and Members  
Committee on Judiciary and Labor  
State Senate  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran and Members:

**SUBJECT: Senate Bill No. 211, Relating to Forensic Identification**

I am Wayne Kimoto, Forensic Laboratory Director of the Scientific Investigation Section of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports Senate Bill No. 211, Relating to Forensic Identification. Passage of this bill clarifies the qualifying requirements for collection of deoxyribonucleic acid (DNA) samples for those persons on probation, parole, or other release. The modifications to Section 844D-35, Hawaii Revised Statutes, will standardize the DNA sample collection requirements and promote efficient processing of samples.


The HPD recognizes that DNA information is recognized as a valuable tool for investigating criminal cases and has many successes with previous legislation enacted for the collection of DNA samples from convicted offenders. Passage of this bill will help to ensure continued success of the DNA registry.

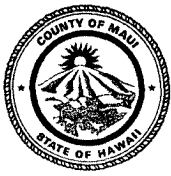
Thank you for the opportunity to testify.

APPROVED:

  
\_\_\_\_\_  
LOUIS M. KEALOHA  
Chief of Police

Sincerely,

  
WAYNE KIMOTO  
Forensic Laboratory Director  
Scientific Investigation Section



**ALAN M. ARAKAWA**  
MAYOR

OUR REFERENCE

YOUR REFERENCE

# **POLICE DEPARTMENT**

## **COUNTY OF MAUI**

**55 MAHALANI STREET**  
**WAILUKU, HAWAII 96793**  
**(808) 244-6400**  
**FAX (808) 244-6411**



**TIVOLI S. FAAUMU**  
CHIEF OF POLICE

**DEAN M. RICKARD**  
DEPUTY CHIEF OF POLICE

January 30, 2015

The Honorable Gilbert S.C. Keith-Agaran, Chair  
and the Committee on Judiciary and Labor  
The Senate  
State Capitol  
Honolulu, HI 96813

Re: Senate Bill No. 211, RELATING TO FORENSIC IDENTIFICATION.

Dear Chair Keith-Agaran and Members of the Committee:

The Maui Police Departments supports the passage of S.B. No. 211.

This proposed bill specifies the requirements of DNA sample collection from subject criminal offenders that are released on parole, probation, or other release., and makes it a class C felony to intentionally or knowingly fail to provide DNA samples, and a misdemeanor for negligent or reckless failure to comply.

We concur with the Maui County Department of the Prosecuting Attorney's Office in their support of this bill as it will close the loophole in the current forensic identification law.

The Maui Police Department asks your committee to support S.B. No. 211.

Thank you for the opportunity to testify.

Sincerely,

*Tivoli S. Faaumu*  
TIVOLI S. FAAUMU  
Chief of Police

E. Yadao POB 861 Lihue, Hi 96766 Email: leeydao@gmail.com

February 1, 2015

COMMITTEE ON JUDICIARY AND LABOR

Senator Gilbert S.C. Keith-Agaran, Chair

Senator Maile S.L. Shimabukuro, Vice Chair

Monday, February 02, 2015, 9:30 am

Conference Room 016

State Capitol

415 South Beretania Street

**Testimony in Opposition to: SB211**

RELATING TO FORENSIC IDENTIFICATION.

Specifies the requirements of DNA sample collection from subject criminal offenders that are released on parole, probation, or other release. Makes it a class C felony to intentionally or knowingly fail to provide DNA samples, and a misdemeanor for negligent or reckless failure to comply.

Aloha Senators Keith-Agaran and Shimabukuro,

Thank you for allowing me this opportunity to provide testimony on SB211. I have concerns.

“Once [a convicted felon] completes his period of supervised release, he becomes an ordinary citizen just like everyone else. Having paid his debt to society, he recovers his full Fourth Amendment rights, and police have no greater authority to invade his private sphere than anyone else's.” U.S. v. Kincade, 379 F.3d 813, 871-72 (9th Cir. 2004) (Kozinski, dissenting) (observing that this legal principle is not disputed by the majority).

With all due respect to what we are led to believe is the impetus behind this bill, the amendments, its companions and mostly the apparent urgency generated by its introducers, cooler heads need to prevail at this time; the deficiencies in the language and ‘targets’ are glaring.

The DNA collection argument is often framed as solving cold cases or linking crime to an offender but, is that what truly drives the overzealousness to circumvent 4th Amendment and Article I, HSC rights to include collection subjects that are on unconditional release and have paid their debt to society? Or is it just as simple as the desire for increased funding through artful lobbying by private sector parties? Haste makes waste and the rush to make law enforcement *shortcuts* without intense scrutiny, will predictably cost this state severely as well as the individuals whose lives are at stake and in your care.

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1. SECTION 1. Section 844D-35, Hawaii Revised Statutes, is amended to read as follows:

"[§844D-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, or other release, **including final unconditional release** [emphasis added] upon satisfaction of the person's criminal sentence, for any [felony] criminal offense, whether or not [that crime or] the offense is one set forth in section 844D-31(a);

As the word unconditional is an immutable part of the law and can in no way be altered for the purposes of this legislation, how do you propose to skip over that very explicit terminology which entitles an individual to full restoration of rights once all debts to society are satisfied (the 4th Amendment and Article I of the Hawaii State Constitution)? Inserting a person on unconditional releasee as an Offender Subject to Collection would undoubtedly render this an unconstitutional statute. Or, it would also imply that after passage *all* individuals will be subject to collection, not just prior offenders and to be fair and non discriminatory, the measure’s language would be amended to reflect the new all-inclusive scope.

Therefore, if you do not want a complete data base with all persons included you would need to remove the wording, “... including final unconditional release...”. Since it is not just prior offenders that commit crime, to narrow the scope to suggest this, would be short sighted and disingenuous. But it can’t be both ways. It must be one or the other: Remove ‘unconditional release’ or include everyone.

2. Granted, for now, the law allows collection from persons on probation and parole but to attempt to forcibly extract collection of DNA from an individual whose rights have been restored, without consent, is equivalent to rape. Rape is defined as unlawful sexual intercourse or

any other sexual penetration of the vagina, anus, or mouth of another person, with or without force, by a sex organ, other body part, or foreign object, without the consent of the victim.

According to the United Nations Committee on Human Rights Concerning the International Covenant on Civil and Political Rights which the United States of America is a signatory, the constitutional rights afforded to free persons protects one against these civil rights abuses.

All three females of the U.S. Supreme Court deemed the taking of DNA from an arrestee to be an unreasonable intrusion/search in violation of the Constitution of the United States of America. And since the arrestee has not been determined to be guilty or innocent, that would include the unconditionally released individual retaining their full rights.

3. It is not explicitly stated, but should be specified and included, that those subject to collection on probation or parole will also include past or present police officers and government officials.

4. §844D-21 - Collection of Specimens, Samples, and Print Impressions at Correctional Facility or other Detention Facility - does not address collection of samples from handlers such as lab technicians, on site collectors, prison guards, police officers that would be required to swab those subject to collection. The very sensitive procedure of DNA collection and preservation should be assured of no contamination; this omission is remarkable. Since the methods described in §844D-21 (Collection of specimens, samples, and print impressions at correctional facility or other detention facility) do nothing to ensure mistakes will not be made and lives will not be irreparably harmed due to the failure to collect DNA samples from handlers, isn't this cause enough for alarm?

5. The necessity to have swabs collected within '5' days needs more clarification. If it is for database purposes, from prior criminal records that can date back as far as 30 years, what is the urgency to collect in 5 days?

Judging from numerous documented incidences of unethical behavior in Hawaii's law enforcement background, including the Attorneys General's Office, this is a red-flag. Could it be for surreptitious reasons such as planting evidence? A crime comes along and someone looks good for it, certain officers knowing the person's whereabouts within the last 5 days and that there would be no alibi to clog up the planting of evidence. Whereas, to set someone up might be more problematic with no assurances that person might have an airtight alibi should this hypothetical scenario date back over decades. Hopefully you are not appalled at this suggestion, it is a reality.

"It is always tempting to grant the government more authority to fight crime. We all desire more effective law enforcement, less recidivism, and "closure" for victims of heinous crimes. But that desire does not justify eviscerating the structural edifices of the Fourth Amendment-those barriers often constitute the only protections against governmental intrusions into the most intimate details of our lives. DNA evidence contains such details. Men born to freedom are

naturally alert to repel invasion of their liberty by evil-minded rulers. The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding. *Olmstead v. United States*, 277 U.S. 438, 479, 48 S.Ct. 564, 72 L.Ed. 944 (1928) (Brandeis, J., dissenting).

6. “Makes it a class C felony to intentionally or knowingly fail to provide DNA samples, and a misdemeanor for negligent or reckless failure to comply.”

How do you intend to differentiate between these intents/actions? If an individual is demanding his constitutional rights will he be selectively charged more severely as opposed to one that doesn't know his rights, doesn't care about them and just doesn't bother to present himself for collection? A little over-reaching and dim, couldn't we agree?

If you have a family member or friend or know of anyone that has turned his life around, only to have his rights violated by the very people seated to ensure the protection of constitutional rights, where do you see ourselves in the future should these departures from the constitution be tolerated? And what does that say about our judiciousness? And how will you contribute to preserving the sanctity of our constitution?

**I ask that you kill this bill.**

With kind regards,

E. Yadao

JOHN P. DUNBAR  
192 Kaokoia Way, Haiku, Maui, Hawai'i 96708

Monday, February 02, 2015

## COMMITTEE ON JUDICIARY AND LABOR

Senator Gilbert S.C. Keith-Agaran, Chair

Senator Maile S.L. Shimabukuro, Vice Chair

Monday, February 02, 2015, 9:30 am

Conference Room 016

State Capitol

415 South Beretania Street

### **Testimony in Opposition to: SB211**

#### RELATING TO FORENSIC IDENTIFICATION.

Specifies the requirements of DNA sample collection from subject criminal offenders that are released on parole, probation, or other release. Makes it a class C felony to intentionally or knowingly fail to provide DNA samples, and a misdemeanor for negligent or reckless failure to comply.

To: Senators Keith-Agaran and Shimabukuro

Passage of this Bill will have a severely negative impact on the citizens of Hawaii — and not only for those who fall into the existing categories for collection — as the Bill's wording is on the verge of the government eventually having power to take DNA from arrestees who have not yet been convicted of any crime and are innocent until proven guilty [a process which a court in

our sister state, California, recently found unconstitutional]. The constitutional implications of this Bill are evident on its face while its wording further conflicts with legal rights previously established for those subject to its grasp, and the revision does not comport with the express language in §844D-41 [“Collection shall occur pursuant to sections 844D-34 to 844D-38]: “Once [a convicted felon] completes his period of supervised release, he becomes an ordinary citizen just like everyone else. Having paid his debt to society, he recovers his full Fourth Amendment rights, and police have no greater authority to invade his private sphere than anyone else's.” U.S. v. Kincade, 379 F.3d 813, 871-72 (9th Cir. 2004) (Kozinski, dissenting) (observing that this legal principle is not disputed by the majority).

Clearly, the impetus for this Bill is the abhorred and embarrassing failures by the Attorney General and the Maui Prosecutor in their overzealous efforts to maliciously prosecute me for my refusal to provide a buccal swab sample of DNA; they are now attempting to underhandedly manipulate a Hawaiian judicial decision through the legislature. On December 10, 2014, the Honorable Judge Richard T. Bissen, Judge of the Maui Second Circuit Court, ruled that the statute from which this Bill arose *is* constitutional and that it would be make no sense for the government to pursue collection of DNA samples from those who have served their sentences and are no longer under any supervisory status. Passage of this Bill would create an unconstitutional statute contrary to this recent Hawaii court order along with an endless stream of valid legal challenges.

For the above reasons and in the interest of preserving significant constitutional provisions afforded the people of Hawaii under the State of Hawaii Constitution and those broader

protections which are etched into our United States Constitution, I ask that this Bill not be allowed to pass Senate vote.

Respectfully,

John P. Dunbar

(808) 573-5722

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