

JAN 20 2017

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# A BILL FOR AN ACT

RELATING TO FORENSIC IDENTIFICATION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The purpose of this Act is to close a loophole  
2 in the law that requires the collection of DNA samples from  
3 felony offenders. The loophole was recently acknowledged by the  
4 Hawaii Intermediate Court of Appeals in State v. Dunbar, 139  
5 Haw. 9, 383 P.3d 112 (2016). The court examined the DNA  
6 collection law and concluded that, while section 844D-31(a),  
7 Hawaii Revised Statutes, requires the collection of DNA samples  
8 from those convicted of a felony, and section 844D-41, Hawaii  
9 Revised Statutes, provides for the retroactive application of  
10 that requirement, section 844D-41, Hawaii Revised Statutes, also  
11 requires that collection of the DNA samples occur pursuant to  
12 sections 844D-34 to 844D-38, Hawaii Revised Statutes. The court  
13 found that section 844D-35, Hawaii Revised Statutes, which  
14 addresses collection of specimens or samples from a person on  
15 probation, parole, or other release, does not provide for the  
16 collection of DNA samples after the person has been discharged  
17 from probation. The court concluded that, while Dunbar had been



1 convicted of a felony and met the DNA sampling requirements  
2 under section 844D-31(a), Hawaii Revised Statutes, he was not  
3 required to provide a DNA sample because he had completed his  
4 probationary sentence and the law did not address the collection  
5 of DNA from a person whose probation has expired.

6 Hawaii has long recognized the importance of the collection  
7 of DNA samples from felony offenders to help solve other crimes  
8 committed by those offenders, to provide justice to crime  
9 victims, and to deter the commission of future offenses and  
10 thereby protect our community. The collection of DNA samples  
11 from felony offenders is required under part III of chapter  
12 844D, Hawaii Revised Statutes.

13 This Act affirms the State's commitment to the collection  
14 of DNA samples from felony offenders and closes the loophole in  
15 the law that was revealed in State v. Dunbar.

16 SECTION 2. Chapter 844D, Hawaii Revised Statutes, is  
17 amended by adding a new section to part III to be appropriately  
18 designated and to read as follows:

19 "§844D- \_\_\_\_\_ Collection from persons who have completed  
20 their criminal sentences and are no longer confined, in custody,  
21 or under parole or probation supervision, or are otherwise



- 1 discharged from the jurisdiction of the court. (a) A person  
2 who has a record of a qualifying felony offense as described in  
3 section 844D-31(a), except for any juvenile, shall provide  
4 buccal swab samples and print impressions of each hand and, if  
5 required by the collecting agency's rules or internal  
6 regulations, blood specimens or other biological samples, if:
- 7 (1) The person has completed the criminal sentence for  
8 that offense and is no longer confined, in custody, or  
9 under parole or probation supervision, or the person  
10 has otherwise been discharged from the jurisdiction of  
11 the court for that offense;
- 12 (2) The person's blood specimens or buccal swab samples,  
13 and print impressions authorized by this chapter are  
14 not in the possession of the department or have not  
15 been recorded as part of the state DNA database and  
16 data bank identification program; and
- 17 (3) The person is notified of the requirement to provide  
18 buccal swab samples, print impressions, blood samples,  
19 or any other biological samples, by the court, a law  
20 enforcement agency, or other entity authorized by the  
21 department.



1       (b) A person who is subject to subsection (a) shall have  
2 any required specimens, samples, or print impressions collected  
3 within twenty working days of being notified of the requirement  
4 by the court, a law enforcement agency, or other entity  
5 authorized by the department. The person shall report to a  
6 correctional facility, law enforcement agency, or other entity  
7 authorized by the department as directed in the notice to have  
8 the specimens, samples, or print impressions collected pursuant  
9 to this chapter.

10       (c) This section shall apply whether or not the person who  
11 is subject to subsection (a) completed the criminal sentence for  
12 the qualifying felony offense or was otherwise discharged from  
13 the jurisdiction of the court for the qualifying felony offense  
14 before July 1, 2017, or before the enactment of the state DNA  
15 database and data bank identification program, or any amendments  
16 thereto.

17       (d) For purposes of this section, a person may be  
18 "otherwise discharged from the jurisdiction of the court" when  
19 the person is not convicted of a crime but is instead granted a  
20 deferred plea that results in a discharge and dismissal of the  
21 charge against the person, or is found not guilty of the crime



1 by reason of insanity and is subsequently discharged by the  
2 court."

3 SECTION 3. Section 844D-31, Hawaii Revised Statutes, is  
4 amended by amending subsection (a) to read as follows:

5 "(a) Any person, except for any juvenile, who is convicted  
6 of, or pleads guilty or no contest to, any felony offense, even  
7 if the plea is deferred, or the person is found not guilty by  
8 reason of insanity of any felony offense, shall provide buccal  
9 swab samples and print impressions of each hand, and, if  
10 required by the collecting agency's rules or internal  
11 regulations, blood specimens, required for law enforcement  
12 identification analysis. This section shall apply whether or  
13 not the person completed the criminal sentence for the  
14 qualifying felony offense or was otherwise discharged from the  
15 jurisdiction of the court for the qualifying felony offense  
16 before July 1, 2017, or before the enactment of the state DNA  
17 database and data bank identification program, or any amendments  
18 thereto. A person may be "otherwise discharged from the  
19 jurisdiction of the court" when the person is not convicted of a  
20 crime but is instead granted a deferred plea that results in a  
21 discharge and dismissal of the charge against defendant, or is



1 found not guilty of the crime by reason of insanity and is  
2 subsequently discharged by the court."

3 SECTION 4. Section 844D-34, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "[~~f~~]§844D-34[~~+~~] Collection from persons confined or in  
6 custody after conviction or adjudication. A person, except for  
7 any juvenile, shall provide buccal swab samples and print  
8 impressions and, if required by the collecting agency's rules or  
9 internal regulations, blood specimens, immediately at intake, or  
10 during the prison reception center process, or as soon as  
11 administratively practicable at the appropriate custodial or  
12 receiving institution or program if:

13 (1) The person is imprisoned or confined or placed in a  
14 state correctional facility, a county correctional  
15 facility, the department of public safety, a  
16 residential treatment program, or any state, county,  
17 private, or other facility [~~after a conviction of any~~  
18 ~~felony offense~~];

19 (2) The person has a record of any past or present  
20 [~~conviction of a~~] qualifying felony offense as  
21 described in section [~~844-31~~] 844D-31(a) or has a



1 record of any past or present conviction or  
2 adjudication in any other court, including any state,  
3 federal, or military court, of any offense, that, if  
4 committed or attempted in this State, would have been  
5 punishable as an offense described in section 844D-31;  
6 and

7 (3) The person's blood specimens or buccal swab samples,  
8 and print impressions authorized by this chapter are  
9 not in the possession of the department or have not  
10 been recorded as part of the state DNA database and  
11 data bank identification program."

12 SECTION 5. Section 844D-35, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 "[+]§844D-35[+] Collection from persons on probation,  
15 parole, or other release. (a) A person, except for any  
16 juvenile, shall provide buccal swab samples and print  
17 impressions and, if required pursuant to this chapter, blood  
18 specimens if:

19 (1) The person is on probation [~~or~~], parole [~~for any~~  
20 ~~felony offense~~], or other release as defined in



1            subsection (c), whether or not that crime or offense  
2            is one set forth in section 844D-31(a);

3            (2) The person has a record of any past or present  
4            [~~conviction of a~~] qualifying felony offense as  
5            described in section [~~844-31~~] 844D-31(a) or has a  
6            record of any past or present conviction or  
7            adjudication in any other court, including any state,  
8            federal, or military court, of any offense that, if  
9            committed or attempted in this State, would have been  
10           punishable as an offense described in section 844D-31;  
11           and

12           (3) The person's blood specimens or buccal swab samples,  
13           and print impressions authorized by this chapter are  
14           not in the possession of the department or have not  
15           been recorded as part of the state DNA database and  
16           data bank identification program.

17           (b) The person shall have any required specimens, samples,  
18           or print impressions collected within twenty working days of  
19           being notified by the court, or a law enforcement agency or  
20           other entity authorized by the department. The specimens,  
21           samples, or print impressions shall be collected in accordance



1 with [~~section 844D-21 at a correctional facility or a state,~~  
2 ~~county, private, or other facility designated for this~~  
3 ~~collection.~~] this chapter.

4 (c) For purposes of this section, "other release" means  
5 any form of pre-sentence bail release after the person has pled  
6 guilty or no contest to a felony charge, has been granted a  
7 deferred acceptance of a plea upon conditions, or has been  
8 granted conditional release after being found not guilty by  
9 reason of insanity."

10 SECTION 6. Section 844D-36, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 "~~[+]§844D-36[+]~~ **Collection from parole violators and**  
13 **others returned to custody.** A person, except for any juvenile,  
14 shall provide buccal swab samples and print impressions and, if  
15 required by the collecting agency's rules or internal  
16 regulations, blood specimens or other biological samples, at a  
17 state correctional or other receiving institution, if:

18 (1) The person has been released on parole, furlough, or  
19 other release for any offense or crime, whether or not  
20 set forth in section 844D-31, and is returned to a  
21 state correctional or other institution for a



1 violation of a condition of the person's parole,  
 2 furlough, or other release, or for any other reason;  
 3 (2) The person has a record of any past or present  
 4 [~~conviction of a~~] qualifying felony offense as  
 5 described in section [~~844D-31~~] 844D-31(a) or has a  
 6 record of any past or present conviction or  
 7 adjudication in any other court, including any state,  
 8 federal, or military court, of any offense that, if  
 9 committed or attempted in this State, would have been  
 10 punishable as an offense described in section 844D-31;  
 11 and

12 (3) The person's blood specimens or buccal swab samples,  
 13 and print impressions authorized by this chapter are  
 14 not in the possession of the department's DNA  
 15 laboratory or have not been recorded as part of the  
 16 state DNA database and data bank identification  
 17 program."

18 SECTION 7. Section 844D-41, Hawaii Revised Statutes, is  
 19 amended to read as follows:

20 "[+]§844D-41[+] Retroactive application. (a) Sections  
 21 844D-31, 844D-33, 844D-\_\_\_\_\_, and 844D-34 to 844D-37 shall have



1 retroactive application. Collection shall occur pursuant to  
2 sections 844D- and 844D-34 to 844D-38 regardless of when the  
3 crime was charged or committed [~~became a qualifying offense~~  
4 ~~pursuant to this chapter~~], and regardless of when the [person  
5 ~~was convicted of the qualifying~~] charged offense became a  
6 qualifying offense as described in section 844D-31(a) or a  
7 similar [crime] offense under the laws of the United States or  
8 any other state, or pursuant to the United States Code of  
9 Military Justice[, ~~for commission of a qualifying offense~~  
10 ~~described in section 844D-31(a) or a similar crime under the~~  
11 ~~laws of the United States or any other state~~].

12 (b) This section applies whether or not the person  
13 completed the criminal sentence for the qualifying felony  
14 offense or was otherwise discharged from the jurisdiction of the  
15 court for the qualifying offense before the enactment of the  
16 state DNA database and data bank identification program, or any  
17 amendments thereto."

18 SECTION 8. Section 844D-111, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 "§844D-111 Refusal or failure to provide specimen for  
21 forensic identification. (a) [A] Except as provided in



1 subsection (b), a person commits the offense of refusal or  
2 failure to provide specimen for forensic identification if the  
3 person is required by this chapter to provide any blood  
4 specimens, buccal swab samples, or print impressions and  
5 intentionally, knowingly, or recklessly, refuses or fails to  
6 provide any of the required blood specimens, buccal swab  
7 samples, or print impressions after the person has received  
8 written notice from the department, the department of public  
9 safety, any law enforcement personnel, or officer of the court  
10 that the person is required to provide each and every one of the  
11 blood specimens, buccal swab samples, and print impressions  
12 required by this chapter.

13 (b) A person who, prior to July 1, 2017, has completed a  
14 criminal sentence for a qualifying felony offense as described  
15 in section 844D-31(a) and is no longer confined, in custody, or  
16 under parole or probation supervision, or has been otherwise  
17 discharged from the jurisdiction of the court for that offense,  
18 commits the offense of refusal or failure to provide specimen  
19 for forensic identification if the person is required by this  
20 chapter to provide any blood specimen, buccal swab sample, or  
21 print impression and intentionally, knowingly, or recklessly



1 refuses or fails to provide the required specimen, sample, or  
2 print impression after the person has received written notice on  
3 or after July 1, 2017, from the department, the department of  
4 public safety, any law enforcement personnel, or officer of the  
5 court that the person is required to provide each and every  
6 blood specimen, buccal swab sample, or print impression required  
7 by this chapter.

8       ~~[(b)]~~ (c) A person who intentionally or knowingly fails to  
9 comply with this section shall be guilty of a misdemeanor. A  
10 person who recklessly fails to comply with this section shall be  
11 guilty of a petty misdemeanor.

12       ~~[(e)]~~ (d) For purposes of this section, "intentionally",  
13 "knowingly", and "recklessly" shall have the same meanings as in  
14 section 702-206."

15       SECTION 9. Sections 2, 3, 4, 5, 6, and 7 of this Act shall  
16 apply to any acts committed prior to, on, or after the effective  
17 date of this Act.

18       SECTION 10. Statutory material to be repealed is bracketed  
19 and stricken. New statutory material is underscored.



# S.B. NO. 320

1 SECTION 11. This Act shall take effect on July 1, 2017.

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INTRODUCED BY:

~~SEN. SCOTT JOHNSON~~

Kal Thon

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# S.B. NO. 320

**Report Title:**

Forensic Identification; DNA; Samples

**Description:**

Requires DNA samples from a felony offender regardless of whether the offender completed a criminal sentence, or was otherwise discharged from the jurisdiction of the court, for the qualifying felony offense prior to July 1, 2017.

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