

S.B. NO. 333

JAN 22 2007

A BILL FOR AN ACT

RELATING TO CHAPTER 844D, HAWAII REVISED STATUTES.

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

1 SECTION 1. Section 844D-35, Hawaii Revised Statutes, is
2 amended by amending subsection (b) to read as follows:

3 "(b) The person shall have any required blood specimens [~~7~~
4 ~~samples, or print impressions~~] collected within twenty working
5 days of being notified by the court [~~7~~] or a law enforcement
6 agency or other entity authorized by the department. The buccal
7 swab samples or print impressions shall be collected from the
8 person at any time after the person is notified by the court or
9 a law enforcement agency or other entity authorized by the
10 department. The specimens, samples, or print impressions shall
11 be collected in accordance with section 844D-21 at a
12 correctional facility or a state, county, private, or other
13 facility designated for this collection."

14 SECTION 2. Section 844D-37, Hawaii Revised Statutes, is
15 amended by amending subsection (b) to read as follows:

16 "(b) If the person is not confined, the blood specimens [~~7~~
17 ~~samples, or print impressions~~] required by this chapter shall be
18 provided within twenty working days after the person reports to

1 the supervising agent or within five calendar days of notice to
2 the person, whichever occurs first. The buccal swab samples or
3 print impressions required by this chapter shall be provided
4 after the person reports to the supervising agent or after the
5 person is notified of the samples and impressions required by
6 this chapter, whichever occurs first. The person shall report
7 to a correctional facility in the county where the person
8 resides or temporarily is located to have the specimens,
9 samples, or print impressions collected pursuant to this
10 chapter. The specimens, samples, or print impressions shall be
11 collected in accordance with this chapter."

12 SECTION 3. Section 844D-111, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "§844D-111 Refusal or failure to provide specimen for
15 forensic identification. (a) A person commits the offense of
16 refusal or failure to provide specimen for forensic
17 identification if the person is required by this chapter to
18 provide any blood specimens, buccal swab samples, or print
19 impressions and intentionally or knowingly refuses or fails to
20 provide any of the required blood specimens, buccal swab
21 samples, or print impressions after the person has received
22 written notice from the department, the department of public

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1 safety, any law enforcement personnel, or an officer of the
2 court that the person is required to provide each and every one
3 of the blood specimens, buccal swab samples, and print
4 impressions required by this chapter.

5 (b) Any person who [~~negligently or recklessly~~]
6 intentionally or knowingly fails to comply with this section
7 shall be guilty of a [~~misdemeanor.~~] felony punishable by up to
8 five years in prison.

9 (c) The department of public safety or law enforcement
10 personnel trained to collect blood specimens, buccal swab
11 samples, or print impressions pursuant to this chapter may
12 employ reasonable force to collect blood specimens, buccal swab
13 samples, or print impressions pursuant to this chapter from
14 individuals who, after written or oral request, refuse to
15 provide those blood specimens, buccal swab samples, or print
16 impressions; provided that:

17 (1) The withdrawal of blood shall be performed in a
18 medically approved manner in accordance with section
19 844D-62 (b); and

20 (2) The use of reasonable force as provided in this
21 subsection shall be carried out in a manner consistent

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1 with rules adopted pursuant to subsection (d), if such
2 rules are adopted;

3 (3) The term "use of reasonable force" is defined as the
4 force that an objective, trained, and competent
5 department of public safety or law enforcement
6 employee, faced with similar facts and circumstances,
7 would consider necessary and reasonable to gain
8 compliance with this chapter;

9 (4) The use of reasonable force shall not be carried out
10 without the prior written authorization of the
11 supervising employee on duty; provided that the
12 authorization shall include information that reflects
13 the fact that the offender was asked to provide the
14 requisite blood specimen, buccal swab sample, or print
15 impression and refused; provided further that failure
16 to obtain such authorization shall not affect the
17 validity of any evidence obtained; and

18 (5) The use of reasonable force shall be preceded by
19 efforts to secure voluntary compliance with this
20 section.

21 For purposes of this section, "supervising employee" means
22 the person who is responsible for the supervision and evaluation

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1 of staff on an assigned shift.

2 (d) The department of the attorney general may, but is not
3 required to, adopt rules governing the use of reasonable force
4 as provided in subsection (c)."

5 SECTION 4. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 5. This Act shall take effect upon its approval.

8
9 INTRODUCED BY: _____

10 BY REQUEST

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO CHAPTER 844D, HAWAII REVISED STATUTES.

PURPOSE: To increase the crime of refusing to provide a DNA buccal swab sample from a misdemeanor to a Class C felony, to provide for the use of "reasonable force" in obtaining DNA buccal swab samples from felons who refuse to comply with the law, to eliminate the twenty working day or five calendar day periods allowed for the collection of DNA buccal swab samples from felons subject to collection, to change the state of mind requirement to "intentionally and knowingly" to comport with the changes made to § 844D-111(a) in the 2006 legislative session.

MEANS: Add new section, and amend sections 844D-35(b), 844D-37(b), 844D-111, Hawaii Revised Statutes.

JUSTIFICATION: This bill provides for more efficient collection of DNA samples to fulfill the intent of chapter 844D to establish a comprehensive DNA database and databank identification program. All individuals convicted of a felony offense are required to submit a DNA buccal swab sample for the purpose of establishing a DNA database that can be used to solve crimes, including cold cases, and exonerate the innocent. However, currently, if a felon refuses to comply with the law, the only mechanism to obtain compliance is the threat of a misdemeanor prosecution. For offenders who have already been convicted of felony offenses, an additional misdemeanor charge is not likely to deter their actions. The refusal to provide the DNA buccal swab sample should amount to a felony offense because the DNA database is critical for efficient and fair

law enforcement and will more likely result in compliance by offenders.

Further, if the offender still refuses to comply with the law, the various agencies responsible for collecting these samples should be able to use "reasonable force" to collect the DNA sample. Preferably, the collecting agencies do not want to have to use force and put themselves in possible physical danger so as to collect the sample. Hopefully, the threat of felony prosecution will deter refusal. However, because the establishment of the DNA database is such an important component of effective law enforcement, there must be a mechanism to ensure collection of the DNA sample. As in California, the use of reasonable force must be an option to ensure compliance.

Still further, sections 844D-35(b) and 844D-37(b) require that the felon on probation, parole, or other supervised release and the felon accepted into Hawaii from other jurisdictions provide the required DNA sample within a specified number of days after notification of the DNA requirement. This notice period was likely intended to duplicate the notice period required for the collection of blood samples from sex offenders. This notice period was deemed necessary due to the invasive nature of the blood draw. The DNA buccal swab collection is comparatively non-invasive as it only involves a cotton swabbing of the felon's mouth. The immediate collection of the buccal swab samples, without the notice period, will ensure that those felons under the specified supervision will comply with the DNA collection requirement and will not have the opportunity to avoid providing the buccal swab sample upon notification.

The bill also corrects the state of mind identification in the classification of the crime of refusal to provide the DNA specimen

and makes it consistent with the state of mind of this crime.

Impact on the public: The public will benefit from the more efficient collection of buccal swab samples because such collection will result in a more complete and reliable DNA database which will in turn enable solving crimes, including cold cases, and the exoneration of innocent parties.

Impact on the department and other agencies: This bill will provide clearer guidelines that will eliminate undue delay in DNA testing procedures and reduce legal challenges.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: County police, county prosecutors, Hawaii Paroling Authority, Judiciary, and the Office of the Public Defender.

EFFECTIVE DATE: Upon approval.