
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 their
20 criminal sentences and are no longer confined, in custody, or
21 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 been otherwise 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 regardless of whether the
11 person who is subject to subsection (a) completed the criminal
12 sentence for the qualifying felony offense or was otherwise
13 discharged from the jurisdiction of the court for the qualifying
14 felony offense before July 1, 2017, and retroactively to July 1,
15 2005.

16 (d) For purposes of this section, a person may be
17 "otherwise discharged from the jurisdiction of the court" when
18 the person is not convicted of a crime but is instead granted a
19 deferred plea that results in a discharge and dismissal of the
20 charge against the person, or is acquitted pursuant to section
21 704-402 and is subsequently discharged by the court."



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

3 "(a) Any person, except for any juvenile, who is convicted
4 of, or pleads guilty or no contest to, any felony offense, even
5 if the plea is deferred, or the person is [found not guilty by
6 reason of insanity] acquitted pursuant to section 704-402 of any
7 felony offense, shall provide buccal swab samples and print
8 impressions of each hand, and, if required by the collecting
9 agency's rules or internal regulations, blood specimens,
10 required for law enforcement identification analysis. This
11 section shall apply regardless of whether the person completed
12 the criminal sentence for the qualifying felony offense or was
13 otherwise discharged from the jurisdiction of the court for the
14 qualifying felony offense before July 1, 2017, and retroactively
15 to July 1, 2005. A person may be "otherwise discharged from the
16 jurisdiction of the court" when the person is not convicted of a
17 crime but is instead granted a deferred plea that results in a
18 discharge and dismissal of the charge against the person, or is
19 acquitted pursuant to section 704-402 and is subsequently
20 discharged by the court."



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

3 " ~~[+]§844D-34[+]~~ Collection from persons confined or in
4 custody after conviction or adjudication. A person, except for
5 any juvenile, shall provide buccal swab samples and print
6 impressions and, if required by the collecting agency's rules or
7 internal regulations, blood specimens, immediately at intake, or
8 during the prison reception center process, or as soon as
9 administratively practicable at the appropriate custodial or
10 receiving institution or program if:

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

17 (2) The person has a record of any past or present
18 ~~[conviction of a]~~ qualifying felony offense as
19 described in section ~~[844-31]~~ 844D-31(a) or has a
20 record of any past or present conviction or
21 adjudication in any other court, including any state,



1 federal, or military court, of any offense, that, if
2 committed or attempted in this State, would have been
3 punishable as ~~[an]~~ a qualifying felony offense

4 described in section ~~[844D-31,]~~ 844D-31(a); and

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

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

12 "[+]§844D-35[+] **Collection from persons on probation,**
13 **parole, or other release.** (a) A person, except for any
14 juvenile, shall provide buccal swab samples and print
15 impressions and, if required pursuant to this chapter, blood
16 specimens if:

- 17 (1) The person is on probation ~~[or]~~, parole ~~[for any~~
18 ~~felony offense]~~, or other release as defined in
19 subsection (c), regardless of whether ~~[or not]~~ that
20 crime or offense is one set forth in section
21 844D-31(a);



- 1 (2) The person has a record of any past or present
2 ~~[conviction of a]~~ qualifying felony offense as
3 described in section ~~[844-31]~~ 844D-31(a) or has a
4 record of any past or present conviction or
5 adjudication in any other court, including any state,
6 federal, or military court, of any offense that, if
7 committed or attempted in this State, would have been
8 punishable as ~~[an]~~ a qualifying felony offense
9 described in section ~~[844D-31,]~~ 844D-31(a); and
- 10 (3) The person's blood specimens or buccal swab samples,
11 and print impressions authorized by this chapter are
12 not in the possession of the department or have not
13 been recorded as part of the state DNA database and
14 data bank identification program.
- 15 (b) The person shall have any required specimens, samples,
16 or print impressions collected within twenty working days of
17 being notified by the court, or a law enforcement agency or
18 other entity authorized by the department. The specimens,
19 samples, or print impressions shall be collected in accordance
20 with ~~[section 844D-21 at a correctional facility or a state,~~



1 ~~county, private, or other facility designated for this~~
2 ~~collection.]~~ this chapter.

3 (c) For purposes of this section, "other release" means
4 any form of pre-sentence bail release after the person has pled
5 guilty or no contest to a felony charge, has been granted a
6 deferred acceptance of a plea upon conditions, or has been
7 granted conditional release after being acquitted pursuant to
8 section 704-402."

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

11 "~~[+]§844D-36[+]~~ **Collection from parole violators and**
12 **others returned to custody.** A person, except for any juvenile,
13 shall provide buccal swab samples and print impressions and, if
14 required by the collecting agency's rules or internal
15 regulations, blood specimens or other biological samples, at a
16 state correctional or other receiving institution, if:

- 17 (1) The person has been released on parole, furlough, or
18 other release for any offense or crime, regardless of
19 whether ~~[or not]~~ the offense or crime is one set forth
20 in section ~~[844D-31,]~~ 844D-31(a), 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~~] a qualifying felony offense
11 described in section [~~844D-31~~] 844D-31(a); 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 regardless of whether 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 and retroactively to July 1,
16 2005."

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

19 "§844D-111 Refusal or failure to provide specimen for
20 forensic identification. (a) [A] Except as provided in
21 subsection (b), a person commits the offense of refusal or



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

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



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

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

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

14 SECTION 9. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 10. This Act shall take effect on January 7, 2059.



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, and retroactively to July 1, 2005. Takes effect on 1/7/2059. (SD2)

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