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Honolulu, Hawaii

MAR 06 2015

RE: S.B. No. 211

S.D. 1

Honorable Donna Mercado Kim
President of the Senate
Twenty-Eighth State Legislature
Regular Session of 2015
State of Hawaii

Madam:

Your Committee on Judiciary and Labor, to which was referred
S.B. No. 211 entitled:

"A BILL FOR AN ACT RELATING TO FORENSIC IDENTIFICATION,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Specify the requirements of DNA sample collection from criminal offenders that are released on parole, probation, or other release; and
- (2) Establish a class C felony for intentionally or knowingly refusing or failing to provide DNA samples for forensic identification and clarify that it is a misdemeanor for the negligent or reckless failure to comply.

Your Committee received testimony in support of this measure from the Department of the Attorney General; Department of the Prosecuting Attorney, City and County of Honolulu; Department of the Prosecuting Attorney, County of Maui; Office of the Prosecuting Attorney, County of Kauai; Office of the Prosecuting Attorney, County of Hawaii; Police Department, City and County of Honolulu; and Police Department, County of Maui. Your Committee received testimony in opposition to this measure from the Office of the Public Defender and two individuals. Your Committee received comments on this measure from the Department of Public Safety.



Your Committee finds that 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 and exonerate the innocent. Under existing law, 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, which is not likely to deter actions or induce compliance with the law. This measure creates a felony level offense for refusal or failure to provide DNA samples to increase compliance with the law.

Your Committee has amended this measure by:

- (1) Deleting section 1 because the clarification under section 844D-35, Hawaii Revised Statutes (HRS), is not necessary;
- (2) Adopting the language suggested by the Department of the Attorney General that separates the misdemeanor and felony penalties under section 844D-111(b), HRS, for further clarity and less chances of confusion when charging and tracking the offenses through the criminal justice and criminal history systems;
- (3) Clarifying that "intentionally", "knowingly", "recklessly", and "negligently" have the same meanings as in section 702-206, HRS;
- (4) Inserting an effective date of January 7, 2059, to encourage further discussion; and
- (5) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 211, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 211, S.D. 1, and be placed on the calendar for Third Reading.



Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,



GILBERT S.C. KEITH-AGARAN, Chair



The Senate
 Twenty-Eighth Legislature
 State of Hawai'i

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:* SB 211	Committee Referral: JDL	Date: 2/25/15		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
KEITH-AGARAN, Gilbert S.C. (C)	✓			
SHIMABUKURO, Maile S.L. (VC)	✓			
ESPERO, Will	✓			
GABBARD, Mike				✓
IHARA, Jr., Les	✓			
THIELEN, Laura H.	✓			
SLOM, Sam				✓
TOTAL	5			2
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes