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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. Section 844D-111, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "**§844D-111 Refusal or failure to provide specimen for**  
4 **forensic identification.** (a) A person commits the offense of  
5 refusal or failure to provide specimen for forensic  
6 identification if the person is required by this chapter to  
7 provide any blood specimens, buccal swab samples, or print  
8 impressions and [~~intentionally or~~] knowingly or negligently  
9 refuses or fails to provide any of the required blood specimens,  
10 buccal swab samples, or print impressions after the person has  
11 received written notice from the department, the department of  
12 public safety, any law enforcement personnel, or an officer of  
13 the court that the person is required to provide each and every  
14 one of the blood specimens, buccal swab samples, and print  
15 impressions required by this chapter.

16           (b) Any person who knowingly violates subsection (a) shall  
17 be guilty of a class C felony.

H.B. NO. 1023

1        [~~(b)~~] (c) Any person who negligently [~~or recklessly fails~~  
2 ~~to comply with this section~~] violates subsection (a) shall be  
3 guilty of a misdemeanor."

4        SECTION 2. This Act does not affect rights and duties that  
5 matured, penalties that were incurred, and proceedings that were  
6 begun, before the effective date of this Act.

7        SECTION 3. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

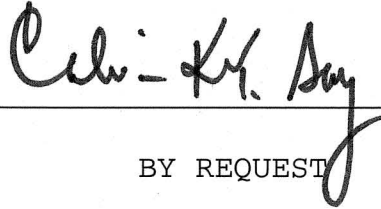
9        SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:

  
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BY REQUEST

JAN 26 2009

**Report Title:**

Forensic Identification

**Description:**

Clarifies the state of mind requirements and grading for offenses of refusing to provide a DNA buccal swab sample by making a knowing violation a C felony and a negligent violation a misdemeanor.

H731023

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO FORENSIC IDENTIFICATION.

PURPOSE: To clarify the state of mind requirements and grading for the offenses of refusing to provide a DNA buccal swab sample by making a knowing violation a class C felony and a negligent violation a misdemeanor.

MEANS: Amend section 844D-111, Hawaii Revised Statutes.

JUSTIFICATION: 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 a felony level offense will more likely result in compliance by offenders.

This bill corrects the state of mind provisions 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. A knowing violation is a class C felony and a negligent violation is a misdemeanor.

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 that will enable solving crimes, including cold cases, and the exoneration of innocent parties.

Impact on the department and other agencies:

This bill will allow for more effective enforcement of DNA sample collection requirements.

GENERAL FUND:

None.

OTHER FUNDS:

None.

PPBS PROGRAM  
DESIGNATION:

None.

OTHER AFFECTED  
AGENCIES:

Judiciary, county police, county prosecutors, and the Office of the Public Defender.

EFFECTIVE DATE:

Upon approval.