

# H.B. NO. 784

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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 refuses or fails to  
9 provide any of the required blood specimens, buccal swab  
10 samples, or print impressions after the person has received  
11 written notice from the department, the department of public  
12 safety, any law enforcement personnel, or any officer of the  
13 court that the person is required to provide each and every one  
14 of the blood specimens, buccal swab samples, and print  
15 impressions required by this chapter.

16           (b)   ~~[Any person who negligently or recklessly fails to  
17 comply with this section shall be guilty of a misdemeanor.]~~

18           Refusal or failure to provide any required blood specimen,

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1 buccal swab sample, or print impression for forensic  
2 identification is a class C felony."

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

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 Statutory material to be repealed is bracketed  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

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

9  
10 INTRODUCED BY: \_\_\_\_\_

11 BY REQUEST

12 JAN 22 2013

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**Report Title:**

Forensic Identification

**Description:**

Clarifies the grading of the offense of refusal or failure to provide a required blood specimen, buccal swab sample, or print impression for forensic identification by making it a class C felony.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

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

PURPOSE: To clarify the grading of the offense of refusing to provide a required blood specimen, buccal swab sample, or print impression for forensic identification by making it a class C felony offense.

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

JUSTIFICATION: Section 844D-111(a), HRS, provides that a person commits the offense of refusal to provide specimen for forensic identification if the person is required to provide any blood specimens, buccal swab samples, or print impressions, and intentionally or knowingly refuses or fails to do so after receiving written notice of the requirement. The problem, however, is that section 844D-111, when establishing the grade and penalty for the offense under subsection (b), only provides that a negligent or reckless violation shall be a misdemeanor offense. There is no penalty provision for an intentional or knowing violation, as set out in the statute.

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. Under current law, however, 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. For offenders who have already been convicted of

felony offenses, an additional misdemeanor charge is not likely to deter their actions, or induce compliance with the requirements of the law. The refusal to provide a DNA buccal swab sample should amount to a felony offense because a felony level offense will be more likely to induce compliance by offenders.

This bill makes an intelligent or knowing refusal to comply with the forensic identification requirements a class C felony. It does away with the misdemeanor violation based on negligent or reckless conduct because when a violator understands the requirements and refuses to comply, that refusal must be based on intelligent or knowing conduct, not negligent or reckless conduct. A person who is refusing to comply with the requirements will not be acting negligently or recklessly.

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.

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EFFECTIVE DATE: Upon approval.