TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2017

ON THE FOLLOWING MEASURE:
S.B. NO. 320, RELATING TO FORENSIC IDENTIFICATION.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Tuesday, January 31, 2017 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Lance M. Goto, Deputy Attorney General

Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General supports this bill.

The purpose of this bill is to close a loophole in the law, which requires the collection of DNA samples from felony offenders. The loophole in the law was recently confirmed by the Hawaii Intermediate Court of Appeals. The Court, in its decision of State v. Dunbar, 139 Haw. 9, 383 P.3d 112 (2016), examined the DNA collection law. It concluded that while section 844D-31(a), Hawaii Revised Statutes (HRS), requires the collection of DNA samples from those convicted of a felony, and section 844D-41, HRS, provides for the retroactive application of that requirement, section 844D-41 also requires that collection of the DNA samples occur pursuant to sections 844D-34 to 844D-38, HRS. The Court found that section 844D-35, HRS, which addressed collection from a person on probation, parole, or other release, does not provide for the collection of DNA samples after the person has been discharged from probation. Because Dunbar had completed his probationary sentence, the Court concluded that while he had been convicted of a felony and met the DNA sampling requirements under section 844D-31(a), he was not required to provide a DNA sample because the law did not address the collection of DNA from a person whose probation has expired.

This bill adds a new section to chapter 844D that addresses the collection of DNA samples from persons who have completed their criminal sentences and are no longer confined, in custody, or under parole or probation supervision, or who are

otherwise discharged from the jurisdiction of the court. Those who are "otherwise discharged from the jurisdiction of the court" include persons who are required to provide DNA samples under section 844D-31(a), but who are not convicted and sentenced to incarceration or probation. As specified in section 844D-31(a), this includes any person who "pleads guilty or no contest to, any felony offense, even if the plea is deferred, or is found not guilty by reason of insanity of any felony offense." The new section provides that such a person must provide DNA samples if the person has a record of a qualifying offense, has been discharged from the jurisdiction of the court, has not yet provided a DNA sample, and has been notified of the requirement to provide the DNA sample.

Hawaii has long recognized the importance of the collection of DNA samples from felony offenders to help solve other crimes committed by these offenders, to provide justice to crime victims, and to deter the commission of future offenses and thereby protect our community. The collection of DNA samples from felony offenders is required under part III of chapter 844D, Hawaii Revised Statutes (HRS).

This bill affirms the State's commitment to the collection of DNA samples from felony offenders and closes the loophole in the law that was exposed by the Court.

The Department respectfully requests the passage of this bill.

ALAN M. ARAKAWA
Mayor

JOHN D. KIM
Prosecuting Attorney

ROBERT D. RIVERA
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TESTIMONY
ON
SB 320 - RELATING TO FORENSIC IDENTIFICATION

January 31, 2017

The Honorable Gilbert S.C. Keith-Agaran
Chair
The Honorable Karl Rhoads
Vice Chair
and Members
Senate Committee on Judiciary and Labor

Chair Keith-Agaran, Vice Chair Rhoads and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui strongly supports SB 320. This measure requires collection of 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

When the Legislature first sought to create a database of all felony offenders, it appeared that ALL felony offenders needed to provide a sample. However, the Intermediate Court of Appeals identified a loophole in the collection law - those whose sentences were completed and were discharged, but from whom DNA samples were never collected. This bill closes that loophole.

Accordingly, the Department of the Prosecuting Attorney, County of Maui, requests that this measure be PASSED.

Thank you very much for the opportunity to testify.

**Testimony of the Office of the Public Defender,
State of Hawaii to the Senate Committee on
Judiciary and Labor**

January 31, 2017

S.B. No. 320: RELATING TO FORENSIC IDENTIFICATION

Chair Keith-Agaran and Members of the Committee:

We oppose passage of S.B. No. 320 which seeks to extend the collection of DNA samples to those felons who have completed a prison, parole or probation sentence. In State v. Dunbar, the Intermediate Court of Appeals held that a convicted felon who had served a term of probation and had been discharged could not be convicted of the charge of failure to provide specimen for forensic identification, under H.R.S. §§ 844D-31(a) and 844D-111(a). This holding was based upon H.R.S. § 844D-35 which required a person on probation or parole for a felony offense to provide a DNA buccal swab sample. This statute did not contain a similar requirement for those who had been discharged from probation or parole.

In every case of a felony conviction, the state has an ample period of time while the offender is under active state supervision by way of incarceration, probation or parole to effect collection of a DNA sample. The shortest term of incarceration on a felony charge is five years while the usual term of felony probation is five years. These time periods are more than adequate to provide for the collection of a buccal swab.

S.B No. 320 would excuse the state for neglect in the collection of DNA samples by allowing for the collection after a person has been discharged from state supervision. Once a person has served his/her sentence, he/she, in all other respects, is allowed to resume his/her life free from governmental obligation. The bill requires that the subject provide the samples within 20 days of notification. What if the subject has relocated to another state or country since his/her discharge as it would be his/her right to do? This requirement would work as an extreme injustice in such a situation especially when the government slept on its collection process for five, ten or twenty years.

How will the state assure that adequate notice of the collection process is given to the subject? Once a person has been released from parole or probation, he/she no longer has an obligation to notify the government of his/her residence unless that person is a registered sex offender. Also a person could easily misinterpret a release from probation or parole to mean that he/she no longer must submit to the demands of a government agency that, at this late date, wishes to collect a sample. We believe that State v. Dunbar is a fair ruling interpreting a statute that requires the government to act with due diligence in the collection of DNA samples.

Thank you for the opportunity to provide testimony in this matter.

January 31, 2017

TESTIMONY IN OPPOSITION TO SB320 RELATING TO FORENSIC IDENTIFICATION

TO: Chair Keith-Agaran, Vice Chair Rhoads and
Members of the Senate Committee on Judiciary and Labor

FROM: Barbara Polk

I am writing in strong opposition to SB320.

This bill would require people who have ever been convicted of any felony to have a new requirement placed upon them that was not there at the time they were released from all supervision of the courts. Although the courts have held that the current law can apply retroactively to people still under judicial supervision, it is less clear that a requirement applied wholesale to people who have been released from such supervision would be constitutional.

I understand that this bill is being justified as helping solve crime. However, it would also help solve crime if it ALL adults (residents, visitors, etc.) would be required to go to a jail, prison, or other place run by the corrections system and provide a bucal swab, prints of both hands, and any other biological samples, blood samples, or other requirement that may, *without further legislative scrutiny*, be required. That would clearly be overreach, but so is such a requirement placed on people who have paid their debt to society.

Singling out people who have not reoffended for several years (since the implementation of the current law) smacks of the same attitude that has led President Trump to attempt to start a registry of Muslims. Although this requirement may, on rare occasions, help to solve a crime, it places a burden on people who are not suspected of a current crime and caters to a perception that there is a class of evil people ready to do us harm on whom we may unpredictably impose new requirements at any time.

We need a more humane attitude toward people who have violated laws in the past, allowing them to lead productive lives, rather than making them subject to new requirements years after they have completed their sentence and leaving them insecure about what retroactive laws might come next. I believe that our society is safer when we allow the past to be the past, than when we continue to suspect people on no basis other than that they were once convicted of an offence.

I urge you not to pass SB320.

From: mailinglist@capitol.hawaii.gov
To: JDLTestimony
Cc:
Subject: *Submitted testimony for SB320 on Jan 31, 2017 09:00AM*
Date: Saturday, January 28, 2017 12:05:35 PM

SB320
Submitted on: 1/28/2017
Testimony for JDL on Jan 31, 2017 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Dara Carlin, M.A.	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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