

Honolulu, Hawaii

FEB 16 2017RE: S.B. No. 320
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Ninth State Legislature
Regular Session of 2017
State of Hawaii

Sir:

Your Committee on Judiciary and Labor, to which was referred
S.B. No. 320 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 require the collection of buccal swab samples and print impressions of each hand, and other types of DNA samples, if provided by law or rule, from persons who have completed their criminal sentences and are no longer confined, in custody, or under parole or probation supervision, or are otherwise discharged from the jurisdiction of the court.

Your Committee received testimony in support of this measure from the Department of the Attorney General; Department of the Prosecuting Attorney, County of Maui; and one individual. Your Committee received testimony in opposition to this measure from the Office of the Public Defender, American Civil Liberties Union of Hawai'i, and one individual.

Your Committee finds that the Hawaii Intermediate Court of Appeals in State v. Dunbar, 139 Haw. 9, 383 P.3d 112 (2016), examined the State's DNA sample collection law. The court concluded that even though the defendant in this case was convicted of a felony that met the DNA sampling requirements under law, the defendant 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. Your Committee recognizes the



importance of collecting DNA samples from felony offenders to help solve other crimes committed by these offenders, provide justice to crime victims, and deter the commission of future offenses. This measure promotes the importance of the State's DNA sample collection laws by requiring the collection of DNA samples from certain felony offenders who have completed their sentences and are no longer under the jurisdiction of the court.

Your Committee notes the constitutional concerns raised in written testimony submitted by the American Civil Liberties Union of Hawai'i regarding the retroactive application of DNA sampling from convicted felony offenders who have completed their sentences and that the retroactive application of these individuals may impose an excessive government intrusion into personal genetic information. Under this measure, the proposed amendments to the DNA collection laws would apply retroactively to a period prior to the effective date of Act 112, Session Laws of Hawaii 2005 (Act 112) that established the state DNA database and data bank identification program. Although the Department of the Attorney General testified that the retroactive application of the State's DNA collection laws under section 844D-41, Hawaii Revised Statutes, was enacted through Act 112, your Committee is concerned that the retroactive application may not afford enough constitutional protection to those who have already paid their debt to society.

Your Committee has amended this measure by:

- (1) Clarifying that the collection of DNA samples from persons subject to part III of chapter 844D, Hawaii Revised Statutes, applies retroactively to July 1, 2005, the effective date of the state DNA database and data bank identification program pursuant to Act 112;
- (2) Replacing references to the verdict of not guilty by reason of insanity with acquittal pursuant to section 704-402, Hawaii Revised Statutes, to reflect proper terminology;
- (3) Inserting an effective date of January 7, 2009, to encourage further discussion; and
- (4) 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. 320, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 320, S.D. 1, and be referred to your Committee on Ways and Means.

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




GILBERT S.C. KEITH-AGARAN, Chair



The Senate
Twenty-Ninth Legislature
State of Hawai'i

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:* SB320	Committee Referral: JDL, WAM	Date: 1/31/17		
<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)	✓			
RHOADS, Karl (VC)	✓			
GABBARD, Mike	✓			
KIM, Donna Mercado	✓			
THIELEN, Laura H.	✓			
TOTAL	5	0	0	0
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