



**SB1166 SD1**  
**RELATING TO THE PENAL CODE**  
Senate Committee on Judiciary and Labor

March 5, 2015

9:30 a.m.

Room 016

The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB1166 SD1, which expressly decriminalizes traditional Native Hawaiian methods of preparing and burying human remains, thereby supporting the perpetuation of Native Hawaiian traditional and customary practices.

Currently, there is apparent public confusion regarding whether Native Hawaiian traditional methods of preparing and burying human remains would violate Hawai‘i laws intended to prevent the “abuse” of corpses. This bill clarifies that Native Hawaiians should be able to lawfully perpetuate our ancestors’ sacred burial traditions, notwithstanding their differences from more commonly recognized Western religious rituals.

Therefore, OHA urges the Committee to **PASS** SB1166 SD1. Mahalo for the opportunity to testify on this important measure.

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Unity, Equality, Aloha for all



To: SENATE COMMITTEE ON JUDICIARY AND LABOR  
For hearing Thursday, March 5, 2015

Re: SB 1166, SD1 RELATING TO THE PENAL CODE.

Provides that the treatment of a corpse in a manner consistent with traditional Hawaiian cultural customs and practices and the burial or cremation of a corpse prepared consistent with traditional Hawaiian custom and practice shall not constitute the abuse of a corpse within the penal code.

TESTIMONY SUPPORTING THE INTENT OF THIS BILL BUT NOTING THAT  
IT NEEDS AMENDMENTS TO BROADEN IT IN ONE RESPECT AND TO  
NARROW IT IN ANOTHER RESPECT

I support the intent of this bill, which I believe is to respect the right of Native Hawaiians to preserve their ancient culture by engaging in ancient ways of treating a corpse without being punished for violating

modern law regarding abuse of a corpse. But shouldn't this bill grant that same right to people who are not Native Hawaiian? Also, would we want this bill to authorize a Native Hawaiian to use ancient cultural practices to abuse a corpse when the dead person would have strongly objected, or perhaps was not even Native Hawaiian?

As this bill notes, current law says a person commits the offense of abuse of a corpse if he treats a human corpse "in a way that the person knows would outrage ordinary family sensibilities."

There were many different ways corpses were treated in ancient Hawaiian culture. One of the most gruesome ways, judging by modern mainstream culture, was to put the corpse into an imu (earthen oven) and bake it until the flesh fell off the bones; and then gather the long bones (arms and legs) and wrap them in kapa cloth, enclose them in a coconut-fiber casket shaped like a miniature human, and bury the "ka'ai" secretly in a cave. Clearly that way of treating a corpse "would outrage ordinary family sensibilities" and be subject to prosecution for abuse of a corpse under the existing statute. Is there any Native Hawaiian now living who would like his own corpse to be handled in that way? If so, his surviving family members should be able to do so without fear of prosecution.

However, the bill is too narrow, because it does not grant a similar right to people of other races, religions, and cultures. Shouldn't Christians, Jews, Buddhists, Muslims, and people who have no religious affiliation have the same right to respectfully treat the corpses of their family members or fellow religionists in accordance with religious or cultural customs without fearing prosecution for "abuse of a corpse"? Perhaps a man who was never circumcised would have liked to have that ritual performed upon his corpse before he goes to meet his maker -- a decision his family members should be able to make on his behalf even if he never wrote it in his will. Perhaps a scholar of

Egyptology would like his next of kin to eviscerate his corpse and mummify it. Perhaps someone would like his body to be immediately frozen and put in a cryogenic capsule to be preserved until two centuries later when the disease that killed him can be cured after he is revived.

The bill is also too broad, because it would give license to any Native Hawaiian to treat a corpse according to ancient Hawaiian practices even if the dead person would strongly disapprove of his corpse being treated that way -- perhaps the dead person was not Native Hawaiian at all; or perhaps he was a Native Hawaiian who was nevertheless a Christian, Jew, Buddhist, Muslim or person with no religious affiliation, who did not practice or believe in the ancient Hawaiian culture or religion and would have considered the ancient Hawaiian customs repulsive. The way the bill is written would give license to a zealous practitioner of ancient Hawaiian burial methods to inflict those methods on the corpse even if the person who died would have strenuously objected.

I am not a lawyer, but there are many lawyers available to the legislature. Please improve the language in this bill by taking account of the two areas of improvement I have described; or else defer the bill indefinitely.



*Ko`olau Foundation*

P. O. Box 4749  
Kane`ohe, HI 96744

March 4, 2015

TESTIMONY IN SUPPORT – S.B.1166, SD1 – Relating to the Penal Code

To: Sen. Gilbert Keith-Agaran, Chair  
Sen. Maile Shimabukuro, Vice Chair  
Members, Committee on Judiciary & Labor

From: Mahealani Cypher  
Ko`olau Foundation

Aloha Chair Keith-Agaran, Vice Chair Shimabukuro & Committee Members:

On behalf of the Ko`olau Foundation, we strongly support passage of S.B. 1166, S.D. 1, which would decriminalize the practice of preparing human remains for burial according to customary and traditional Hawaiian practices.

In our view, this legislation does much more than the few words amending the Penal Code; in fact, it raises awareness of the need for alternative ways of handling the remains of our kupuna and other loved ones who have passed on.

Using a process similar to that of a crematory, we can – in modern times – duplicate the clean burial process practiced by our kupuna kahiko. The remains would be reduced to `iwi, and the skeletal remains could then be wrapped in kapa, placed in a lauhala or other natural container, and buried.

This kind of burial eliminates the need for formaldehyde preservation, it eliminates the need for expensive burial caskets, it provides work for cultural practitioners who weave lauhala or prepare kapa, it requires much less burial space and greatly reduces the cost of funerals and the burial process.

We would appreciate your passing this bill out of committee and, eventually, into law.

Mahalo for this opportunity to testify.



# KO`OLAUPOKO HAWAIIAN CIVIC CLUB

March 4, 2015

To: Senator Gilbert S.C. Keith-Agaran, Chair  
Senator Maile S.L. Shimabukuro, Vice-Chair / &Members  
Committee on Judiciary and Labor

From: Alice P. Hewett, President  
Ko'olaupoko Hawaiian Civic Club

Re: S.B. 1166, S.D. 1 – Relating to the Penal Code

Aloha Chair Keith-Agaran, Vice-Chair Shimabukuro and Committee Members:

The Ko'olaupoko Hawaiian Civic Club offers its strong support for Senate Bill 1166, Senate Draft 1, which would update the Hawai'i Penal Code to ensure that traditional Hawaiian burials are maintained as a legal alternative for treatment of our deceased family members.

For centuries, our Hawaiian people used this method of burial to honor their loved ones. Today, many burials involve the use of preservative chemicals that are not good for our `aina. In addition, the cost of modern funerals have become exorbitant, creating hardships on many grieving families.

The growing population of kupuna in our state – some call it the “baby boomer” generation – will place increasing pressures on island cemeteries to accommodate the larger burial plots now required for modern burials. Hawaiian burials require much less space and therefore can increase the capacity of cemeteries.

Reinstating or legalizing these kinds of traditional burials, which involve reducing the remains to `iwi (bone), offers an alternative to our community, a “clean burial”.

We urge your committee to approve this legislation and pass it into law.

Mahalo nui loa for allowing us to share our mana`o.

*The Ko'olaupoko Hawaiian Civic Club was established in 1937 and is a not-for-profit community organization dedicated to preserving and perpetuating the history, heritage and culture of Native Hawaiians. Its membership is open to people of Hawaiian ancestry and those who are “Hawaiian at heart”.*

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**To:** [JDL Testimony](#)  
**Cc:**  
**Subject:** \*Submitted testimony for SB1166 on Mar 5, 2015 09:30AM\*  
**Date:** Tuesday, March 03, 2015 11:56:43 AM

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**SB1166**

Submitted on: 3/3/2015

Testimony for JDL on Mar 5, 2015 09:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

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