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**TESTIMONY ON HOUSE BILL 336
RELATING TO HAWAII STATE AND
CONTRACTED CORRECTIONAL FACILITIES.**

by
Nolan P. Espinda, Director
Department of Public Safety

House Committee on Public Safety, Veterans, and Military Affairs
Representative Gregg Takayama, Chair
Representative Cedric Asuega Gates, Vice Chair

Wednesday, February 13, 2019; 10:10 a.m.
State Capitol, Conference Room 430

Chair Takayama, Vice Chair Gates, and Members of the Committee:

The Department of Public Safety (PSD) offers cautionary comments regarding House Bill (HB) 336. PSD's primary concern is in regard to the HIPAA-related obligations of the Department, as related to the immediacy of the 48-hour reporting requirement.

The Department of Public Safety is committed to transparency as related to the sensitive and important issue covered in this measure (deaths of staff and inmates in our facilities). PSD respectfully requests that the requirements of this proposal be fully vetted by the Office of the Attorney General, so as to assure that the proper balance of transparency and privacy protection can be achieved.

Thank you for the opportunity to present this testimony.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019**

ON THE FOLLOWING MEASURE:

H.B. NO. 336, RELATING TO HAWAII STATE AND CONTRACTED CORRECTIONAL FACILITIES.

BEFORE THE:

HOUSE COMMITTEE ON PUBLIC SAFETY, VETERANS, AND MILITARY AFFAIRS

DATE: Wednesday, February 13, 2019 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Room 430

TESTIFIER(S): Clare E. Connors, Attorney General, or
Lisa M. Itomura, Deputy Attorney General

Chair Takayama and Members of the Committee:

The Department of the Attorney General provides the following comments regarding this bill.

H.B. No. 336 amends chapter 353C, Hawaii Revised Statutes (HRS), by adding a new section requiring, within forty-eight hours, the director of the Department of Public Safety (PSD) to report to the Governor, and for the Governor to then report to the Legislature, (1) the death any Hawai'i inmate in a state or contracted correctional facility; and 2) the death of any correctional facility or community correctional center employee who dies on the grounds of a correctional facility or community correctional center where Hawai'i inmates reside, or sustains an injury which causes death on the grounds of a correctional facility or community correctional center where Hawai'i inmates reside.

The reports must include the name of the decedent, the decedent's age and gender, whether the decedent was an inmate or employee, the location of the death or injury leading to death, the date and time of death, the cause of death, and a report of the clinical mortality review conducted in response to the death. The PSD director and Governor must also report the official cause of death once it has been determined.

We note that PSD is a “covered entity” under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA). HIPAA and its implementing regulations prohibit covered entities from disclosing individually identifiable health information relating to the past, present, or future physical or mental health or condition of an individual, and other information. This prohibition continues up to fifty years after an individual’s death, and includes information “to which there is a reasonable basis to believe the information can be used to identify the individual.” See 45 C.F.R. § 160.103. The State Office of Information Practices has also opined that a deceased person’s private, medical and non-medical information may be protected from disclosure under section 92F-14, HRS. See OIP Opinion Letter No. 03-19 (December 16, 2003). This includes a person’s “medical, psychiatric, or psychological history.” Section 92F-14(b)(1), HRS. There may be cases, therefore, when the information required to be reported by this bill could be protected from disclosure under HIPAA and section 92F-14, HRS.

The bill does allow the director to “withhold disclosure of the decedent’s name . . . if the decedent’s identity is protected from disclosure by state or federal laws.” We are concerned, however, that a decedent’s identity could be ascertained through other information besides the person’s name. Disclosure of such information may place the director in violation of HIPAA and section 92F-14, HRS.

To prevent a situation where the director may violate federal or other law by complying with the reporting requirements of this bill, we recommend that page 2, lines 18-21, of the bill be amended to read as follows:

(c) The director shall have the discretion to withhold disclosure of the decedent’s name ~~pending notification of the death to the next of kin or if the decedent’s identity is~~ any information protected from disclosure by state or federal laws: ~~pending notification of the death to the next of kin.~~

Thank you for the opportunity to provide these comments.

COUNTY COUNCIL

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Arthur Brun
Mason K. Chock
Felicia Cowden
Luke A. Evslin
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February 12, 2019

**TESTIMONY OF FELICIA COWDEN
COUNCILMEMBER, KAUAI COUNTY COUNCIL
ON**

**HB 336, RELATING TO HAWAII STATE AND CONTRACTED CORRECTIONAL
FACILITIES**

House Committee on Public Safety, Veterans, & Military Affairs

Wednesday, February 13, 2019

10:00 a.m.

Conference Room 430

Dear Chair Takayama and Members of the Committee:

Thank you for this opportunity to provide testimony in support of HB 336, Relating to Hawai'i State and Contracted Correctional Facilities. My testimony is submitted in my individual capacity as a Member of the Kaua'i County Council.

I strongly support HB 336 that requires full notification of deaths that occur at Hawai'i's correctional facilities, including contracted private facilities, to not only the families of the deceased but also to the governor and legislators. This bill is a result of a Kaua'i prison death that did not provide full disclosure to the family of the deceased nor did any of the elected officials seem to be aware of the loss that occurred in solitary confinement. It is important that the challenges that happen in our prison systems be conveyed to our legislators, so that problems can be quickly identified and addressed. There is a group called the Friends and Families of the Incarcerated who have been working to correct this simple communication weakness for two years.

Thank you again for this opportunity to provide testimony in support of HB 336. Should you have any questions, please feel free to contact me or Council Services Staff at (808) 241-4188.

Sincerely,

A handwritten signature in cursive script that reads "Felicia Cowden".

FELICIA COWDEN
Councilmember, Kaua'i County Council

AMK:dmc



HB336

RELATING TO HAWAII STATE AND CONTRACTED CORRECTIONAL FACILITIES Ke Kōmike Palekana Lehulehu, Nā Koa Kahiko, a me Nā Kuleana Pū'ali Koa

Pepeluali 13, 2019

10:00 a.m.

Lumi 430

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HB336, which would improve transparency and urgency in procedures surrounding the deaths of inmates by requiring the Department of Public Safety (PSD) to expediently report to the Governor and Legislature information about inmate and correctional employee deaths.

Inmate deaths have become too common an occurrence in our criminal justice system, and information about these deaths is sparsely disclosed. In recent years, a rash of violent deaths and apparent suicides among young, mostly Native Hawaiian inmates held in local and out-of-state facilities, has prompted public outrage, especially in the Hawaiian community. The public is increasingly distrustful of our criminal justice system and concerned about the safety of our family and community members held in the “custody and care” of PSD. Moreover, the Department’s lack of transparency about its violent incident procedures, the circumstances surrounding specific violent events and inmate deaths, and the parameters and findings of PSD investigations on these matters, has deepened public distrust.

By requiring immediate reporting on inmate deaths to the Governor and the Legislature, HB336 would improve transparency and increase urgency in addressing the safety of those in our State’s care. Ideally, this information should also be disseminated to the public, pending notification of next of kin, and an external system of oversight should be established to independently investigate violent incidents and PSD procedures. Although such a system is not provided for here, this Legislature is currently seriously considering such a structure in other measures this session. OHA nonetheless supports this measure’s reporting requirement as a critical first step toward helping the public and the Legislature better understand potential systemic shortcomings, that may continue to make our criminal justice system unsafe for our pa’ahao. Such increased transparency will also help to remediate public trust and strengthen public safety.

Therefore, OHA urges the committee to **PASS** HB336. Mahalo for the opportunity to testify on this measure.

HB-336

Submitted on: 2/8/2019 5:10:40 PM

Testimony for PVM on 2/13/2019 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Louis Erteschik	Hawaii Disability Rights Center	Support	Yes

Comments:

As the state's designated protection and advocacy system are authorized under federal law to obtain records of incidents involving potential neglect or abuse of individuals with disabilities. This would encompass suicide reports at the prisons and arguably the death of any individual with a disability at a prison. We were surprised when we read in the newspaper that the Judiciary Task Force that was looking into criminal justice reforms was unable to secure information regarding incidents such as those described in this bill. We believe that a reporting requirement as contained herein is quite appropriate.

COMMUNITY ALLIANCE ON PRISONS

P.O. Box 37158, Honolulu, HI 96837-0158

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COMMITTEE ON PUBLIC SAFETY, VETERANS & MILITARY AFFAIRS

Rep. Greg Takayama, Chair

Rep. Cedric Gates, Vice Chair

Wednesday, February 13, 2019

10 am

Room 430

SUPPORT w AMENDMENTS - HB 336 - CORRECTIONAL FACILITY DEATHS

Aloha Chair Takayama, Vice Chair Gates and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai'i for more than two decades. This testimony is respectfully offered on behalf of the families of **ASHLEY GREY, DAISY KASITATI, JOEY O'MALLEY, JESSICA FORTSON AND ALL THE PEOPLE WHO HAVE DIED UNDER THE "CARE AND CUSTODY" OF THE STATE** as well as the approximately 5,500 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety on any given day. We are always mindful that more than 1,600 of Hawai'i's imprisoned people are serving their sentences abroad thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

HB 336 requires the Director of Public Safety, in the event of any death of an inmate who is in a state or contracted correctional facility or correctional facility or community correctional center employee, to provide a report to the Governor and Legislature with certain information regarding the death. Authorizes Director to withhold disclosure of decedent's name under specific conditions.

Community Alliance on Prisons supports with measure with the following amendments:
Page 1 - line 7: report to the legislature, **and the public**, the death of any..

Page 2: **A rape kit shall be collected in all facility deaths.**

Community Alliance on Prisons is deeply concerned about this because of a suspicious death that occurred last January that the department classified as a suicide. The woman's body was washed before the family could request a rape evidence kit be taken.

Correctional facilities are publicly-funded, therefore, the public should be advised when a death occurs. **In fact, the committee should request from the department for a list of facility deaths in the last 5 years in Hawai'i or other facilities contracted by the state.**

We know that a correctional officer died at OCCC because no one had a key to enter his station and there have been many deaths from suicides at various facilities in Hawai`i. We were just told that a 52-year old man with no health problems man died in Saguario in the last few weeks because there was no defibrillator there.

Is this the community standard of health care that is mandated???

The community needs transparency and accountability, not just the bill for us to pay for this dysfunctional department's misdeeds.

Community Alliance on Prisons urges the committee to pass this important bill.

PLEASE VOTE FOR TRANSPARENCY!

Mahalo for this opportunity to testify.

*"Power corrupts, and there is nothing more corrupting
than power exercised in secret."*

Daniel Schorr

HB-336

Submitted on: 2/13/2019 2:50:38 AM

Testimony for PVM on 2/13/2019 10:00:00 AM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
De MONT R. D. CONNER	Ho'omanapono Political Action Committee (HPAC)	Support	Yes

Comments:

WE STRONGLY SUPPORT THIS BILL, BUT SEEK AN AMENDMENT THAT A RAPE KIT PROCEDURE BE CONDUCTED ON EACH DECEASED IMNATE BEFORE THE BODY IS WASHED OR CHANCE OF EVIDENCE BEING DESTROYED. THAT THE NORMAL HANDLING OF RAPE KIT COLLECTION BE FOLLOWED. Mahalo.