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Unity, Equality, Aloha for all



To: SENATE COMMITTEE ON JUDICIARY AND LABOR
For hearing Monday, March 30, 2015

Re: HB1297, HD1 RELATING TO THE PENAL CODE.

Provides that the treatment of a corpse in a manner consistent with traditional Hawaiian cultural customs and practices 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.