



**HB1297**  
**RELATING TO THE PENAL CODE**  
House Committee on Judiciary

February 26, 2015

2:00 p.m.

Room 325

The Office of Hawaiian Affairs (OHA) **SUPPORTS WITH AMENDMENTS** HB1297, 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.

To better accomplish this bill's important goal, OHA respectfully recommends amending page 1, lines 9-11, to read as follows:

sensibilities[-]; provided that the preparation of a corpse for burial and the burial of a corpse in a manner consistent with traditional Hawaiian cultural customs and practices shall not be a violation of this section."

Therefore, OHA urges the committee to **PASS WITH AMENDMENTS** HB1297.

Mahalo for the opportunity to testify on this important measure.

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Unity, Equality, Aloha for all



To: HOUSE COMMITTEE ON JUDICIARY  
For hearing Thursday, February 26, 2015

Re: HB1297 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.



*Ko`olau Foundation*

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

February 24, 2015

Testimony in Support – H.B. 1297 – Relating to the Penal Code

To: Rep. Karl Rhoads, Chair / & Members  
House Judiciary Committee

From: Mahealani Cypher, Board Member  
Ko`olau Foundation

Aloha, Chair Rhoads and Members of the House Judiciary Committee:

The Ko`olau Foundation offers its strong support for H.B. 1297, which would decriminalize the traditional and customary Hawaiian practice of preparing our loved ones for burial.

Among our Foundation's purposes is to advocate for the preservation and perpetuation of Native Hawaiian traditional and customary practices. Passage of this bill would facilitate a return to such practices, enabling this to be more commonplace. In our view, it is better for the `aina, it reduces the hardships on island families, and expands the carrying capacity of our cemeteries.

We urge your support and approval of House Bill 1297.

Mahalo for this opportunity to offer our mana`o.



# KO`OLAUPOKO HAWAIIAN CIVIC CLUB

February 24, 2015

TO: Rep. Karl Rhoads, Chair  
Rep. Joy A. Buenaventura, Vice Chair  
& Members, Committee on Judiciary

FROM: Alice P. Hewett, President  
Ko`olaupoko Hawaiian Civic Club

RE: H.B. 1297 – Relating to the Penal Code – Testimony in Support

Aloha Chair Rhoads, Vice Chair Buenaventura and Members of the Judiciary Committee:

On behalf of the Ko`olaupoko Hawaiian Civic Club, we offer our strong support for House Bill 1297, which would update our state penal code to address the traditional Hawaiian burial process.

Hawaiian traditional burials involve reducing the remains of our loved ones to iwi, wrapping them in kapa, and placing in lauhala or other containers of natural materials before burial.

We believe these types of burials are much more appropriate for our islands, because they do not involve infusion of chemicals like formaldehyde, which is used as a preservative, and which can potentially leech into our `aina. These “clean burials” also require less space than modern six-foot burial plots, thereby allowing for many more plots on limited land space in Hawai`i. And finally, they can reduce the cost of funerals; today’s funerals have become so costly, they are a financial hardship for many island families.

This bill facilitates and would encourage a return to traditional Hawaiian burial process by updating the Penal Code. And the process need not be limited to only Hawaiian families, but could be an option for non-Hawaiian families as well.

We urge your committee to approve this bill.

Mahalo 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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