

**DAVID Y. IGE**  
GOVERNOR



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TESTIMONY ON HOUSE BILL 336, HOUSE DRAFT 1  
RELATING TO HAWAII STATE AND  
CONTRACTED CORRECTIONAL FACILITIES.

by  
Nolan P. Espinda, Director  
Department of Public Safety

House Committee on Judiciary  
Representative Chris Lee Chair  
Representative Joy A. San Buenaventura, Vice Chair

Tuesday, February 19, 2019; 2:05 p.m.  
State Capitol, Conference Room 325

Chair Lee, Vice Chair San Buenaventura, and Members of the Committee:

The Department of Public Safety (PSD) offers cautionary comments regarding House Bill (HB) 336, House Draft (HD) 1. PSD's primary concern is in regard to the HIPAA-related obligations of the Department, including the necessarily careful and thorough Mortality Review, which requires an average of 30 days to complete.

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**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 336, H.D. 1, RELATING TO HAWAII STATE AND CONTRACTED CORRECTIONAL FACILITIES.

**BEFORE THE:**

HOUSE COMMITTEE ON JUDICIARY

**DATE:** Tuesday, February 19, 2019                      **TIME:** 2:05 p.m.

**LOCATION:** State Capitol, Room 325

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

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Chair Lee 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 of 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 that 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, any indication of sexual assault, 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 current version of the bill contains wording implying that this information may not be protected after notification of death to the next of kin. However, this information may continue to be protected after the notification of the next of kin.

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, line 18, to page 3, line 2, of the bill be amended to read as follows:

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

The need for this deletion should have been noted by our office sooner. Thank you for the opportunity to provide these comments.



## **HB336 HD1**

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

Pepeluali 19, 2019

2:05 p.m.

Lumi 325

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HB336 HD1, 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 HD1 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 HD1. Mahalo for the opportunity to testify on this measure.

# COMMUNITY ALLIANCE ON PRISONS

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## COMMITTEE ON JUDICIARY

Rep. Chris Kalani Lee, Chair

Rep. Joy San Buenaventura, Vice Chair

Tuesday, February 19, 2019

2:05 pm

Room 325

## STRONG SUPPORT w AMENDMENTS - HB 336 HD1 - CORRECTIONAL FACILITY DEATHS

Aloha Chair Lee, Vice Chair San Buenaventura 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. The HD1 amended the bill by requiring the Director's report to include any indication of sexual assault leading to the death of an inmate or employee; and clarifying that the Director has the discretion to withhold the disclosure of any information protected from disclosure by state or federal laws pending notification of the death to the next of kin.

Community Alliance on Prisons supports with measure with the following amendments:

Page 1 - line 7: report to the legislature ~~and~~ **and the public**, the death of any...

Page 2: Amending (7) to read: Requiring the Director's report to **mandate the collection of rape kit evidence if there is** ~~include~~ any indication of sexual assault leading to the death of an inmate or employee and

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

Correctional facilities are publicly-funded, therefore, the public should be advised when a death occurs. In fact, in the interest of transparency and accountability the committee should request a list of facility deaths from the department that occurred in the last 5 years in Hawai`i or in other facilities contracted by the state and holding Hawai`i people.

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 (including two recent suicides of adult correctional officers in Honolulu

We recently learned that a 52-year old man with no health problems died in Saguaro because there was no defibrillator there. Is this the community standard of health care that is mandated??? We were then advised of another death at Saguaro shortly after this one.

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 AND ACCOUNTABILITY!

Mahalo for this opportunity to testify.

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

*Daniel Schorr*

**HB-336-HD-1**

Submitted on: 2/15/2019 7:35:06 PM

Testimony for JUD on 2/19/2019 2:05:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Louis Erteschik	Hawaii Disability Rights Center	Comments	No

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.



COMMITTEE ON JUDICIARY  
Rep. Chris Lee, Chair  
Rep. Joy A. San Buenaventura, Vice Chair

DATE: Tuesday, February 19, 2019  
TIME: 2:05 PM  
PLACE: Conference Room 325



Dear Honorable Committee Members,

Strong support for HB 336, HD1 with amendments – Relating to Hawai‘i State and Contracted Correctional Facilities

Mahalo for your public service contributions and your support for improved management and more humane treatment of incarcerated people and employees of correctional facilities.

My name is Janice Cockett and I am a volunteer with the Hawai‘i Friends of Restorative Justice (HFRJ).

This bill is a good first step in improving the standard of care used to incarcerate people in Hawai‘i and by its paid contractors in other states. The bill, however, should be amended as suggested by The Community Alliance on Prisons to include a rape kit test on all people who die in correctional facilities and it should include information on deaths for the last five years.

Hawai‘i Friends of Restorative Justice was incorporated as a non-profit in 1981 to improve alternatives available to the justice system. Since then it has produced interventions and projects to increase access to justice in a variety of areas including for incarcerated people and their loved ones and also for people harmed by crime and social injustice. Over forty papers on our work have been published along with two books. Our work is replicated nationally and internationally.

I am a proud volunteer with HFRJ and hope that our support for this measure impacts the passage of this important bill.

Mahalo,

*Janice Cockett*

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**HB-336-HD-1**

Submitted on: 2/18/2019 9:39:02 AM

Testimony for JUD on 2/19/2019 2:05:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
E. Ileina Funakoshi	Individual	Support	No

Comments:

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