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March 11, 2019

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

**HB 336, HD2, RELATING TO HAWAII STATE AND CONTRACTED
CORRECTIONAL FACILITIES**
Senate Committee on Public Safety, Intergovernmental, and Military Affairs
Tuesday, March 12, 2019
1:15 p.m.
Conference Room 229

Dear Chair Nishihara and Members of the Committee:

Thank you for this opportunity to provide testimony in support of HB 336, HD2, 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, HD2, which 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. A group called the Friends and Families of the Incarcerated has been working to correct this simple communication weakness for the past two years.

Thank you again for this opportunity to provide testimony in support of HB 336, HD2. Should you have any questions, please feel free to contact me or Council Services Staff at (808) 241-4188.

Sincerely,

FELICIA COWDEN
Councilmember, Kaua'i County Council

AMK:lc

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL & MILITARY AFFAIRS

Senator Clarence Nishihara, Chair

Senator Glenn Wakai, Vice Chair

Tuesday, March 12, 2019

1:15 pm

Room 229

STRONG SUPPORT- HB 336 HD2 - DEATHS IN CORRECTIONAL FACILITIES

Aloha Chair Nishihara, Vice Chair Wakai 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.

Community Alliance on Prisons is in strong support of this measure. We respectfully request that death notifications be made PUBLIC - not just to the governor and the legislature. These are publicly funded and publicly operated facilities. The community must be included in notifications of deaths in these facilities where our families and friends live and work. 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.

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. This bill requires collection of sexual assault evidence if there is an indication of sexual assault, counseling within 24 hours of a sexual assault, and establishes policies and standards of transparency to achieve a zero-tolerance for sexual assault.

We know that a correctional officer died at OCCC because no one had a key to enter his station. There have been far too many deaths as well as deaths from suicides at various facilities in Hawai`i or contracted by Hawai`i. We know of several recent deaths at Saguaro and were just told that a 52-year old man with no health problems man died in the last few weeks because there was no defibrillator there. Shortly after this death another one occurred at the same facility. Who is watching out for the people incarcerated by Hawai`i serving their sentences far, far away?

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. Demanding transparency and accountability from one of Hawai`i's most secretive and unaccountable agencies is long overdue.

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-HD-2

Submitted on: 3/8/2019 5:38:27 PM

Testimony for PSM on 3/12/2019 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Laurie Field	Testifying for Planned Parenthood Votes Northwest and Hawaii	Support	No

Comments:

HB-336-HD-2

Submitted on: 3/8/2019 4:00:01 PM

Testimony for PSM on 3/12/2019 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Louis Erteschik	Testifying for 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.

HB-336-HD-2

Submitted on: 3/11/2019 7:21:34 AM

Testimony for PSM on 3/12/2019 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
E. Ileina Funakoshi	Individual	Support	No

Comments:

HB-336-HD-2

Submitted on: 3/10/2019 11:22:23 AM

Testimony for PSM on 3/12/2019 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Raelyn Reyno Yeomans	Individual	Support	No

Comments:

Strong Support! Please also include notification accessible to the public.

HB-336-HD-2

Submitted on: 3/11/2019 8:35:08 AM

Testimony for PSM on 3/12/2019 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Christine Weger	Individual	Support	No

Comments:

Aloha, our track record of violent deaths of our incarcerated citizens is a shame. This bill will only make the investigation and reporting about such events in jails consistent with reporting violent deaths occurring anywhere else in the State. Why should there be one open, transparent system for outside deaths and another for the death of our incarcerated citizens? What purpose does this serve?

Counseling and evidence collection for sexual assault--a zero tolerance policy--aren't these things that have become standard and expected when sexual assault occurs on the outside?

Especially in Hawaii jails, where we have an unusually high rate of these incidents, people need to have the assurance that they are being investigated fairly and not covered up to prevent embarrassment or responsibility. A dual, secretive system does the opposite: it only encourages the public to assume, rightly or wrongly, that corruption is at work.

Please pass this measure with the House provisions regarding sexual assault.

Mahalo,

Christine Weger, Atty at Law

HB-336-HD-2

Submitted on: 3/11/2019 10:07:44 AM

Testimony for PSM on 3/12/2019 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Carla Allison	Individual	Support	No

Comments:

I support HB336 HD2. This bill promotes transparency where currently there is secrecy.

The bill includes providing necessities by establishing counseling services within 24 hours of a sex assault along with policies & standards of transparency to achieve a zero-tolerance policy for sex assault. The amendment includes the collection of sex assault evidence.

This bill also needs to include notifications of death to the public, not just government and legislative bodies.

ROBERT K. MERCER
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March 11, 2019

TO: Committee on Public Safety, Intergovernmental and Military Affairs
RE: HB 336 HD 2
HEARING DATE: Tuesday, March 12, 2019
TIME: 1:30 PM
CONF. ROOM: 229
POSITION: **SUPPORT**

Dear Chair Nishihara, Vice Chair Wakai, and Members of the Committee:

I **support HB 336, HD 2** which would require the Director of the Department of Public Safety, within forty-eight hours, to report to the Governor, and for the Governor to report to Legislature, certain information concerning: (1) The death of an inmate incarcerated in a state or contracted correctional facility; or (2) The death, or injury causing the death, of an employee of a correctional facility or community correctional center on the grounds where Hawaii inmates reside.

The HCR 85 Task Force noted that prisons are closed institutions, and quoted with approval professor Michele Dietsch who said:

Prisons and jails . . . operate far away from public view. In such closed environments, abuse is more likely to occur and less likely to be discovered. Staff members and inmates with malicious intent often find they can act with impunity, while those with more benign objectives may find their plans thwarted by a lack of resources or an institutional culture that is unsupportive of their efforts or content with the status quo. Insular environments tend to put prisoners at risk of abuse, neglect, and poor conditions, and the lack of outside scrutiny provides no challenge to this treatment.¹

In a closed environment transparency is vitally important, and HB 336, HD 1 would provide such transparency with respect to deaths occurring in our prisons. Therefore I strongly urge you to pass HB 336, HD 1.

Thank you for the opportunity to comment on this bill.

¹ *Creating Better Outcomes, Safer Communities, Final Report of the HCR 85 Task Force on Prison Reform to the Hawaii Legislature, 2019 Regular Session*, p. 34.

HB-336-HD-2

Submitted on: 3/11/2019 11:13:27 AM

Testimony for PSM on 3/12/2019 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara Polk	Individual	Support	No

Comments:

Chair Nishihara and Vice-Chair Wakai:

I am very concerned by the number of deaths in jails and prisons over the past year or two. It is high time the public and the legislature monitored, this situation.

Please pass HB336HD2

HB-336-HD-2

Submitted on: 3/11/2019 1:17:37 PM

Testimony for PSM on 3/12/2019 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Diana Bethel	Individual	Support	No

Comments:

HB 336 HD2 is an important bill that would help improve conditions in our correctional facilities.

The public deserves to know when and why someone has died in our correctional facilities.

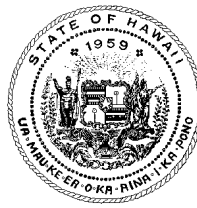
It is also imperative that sexual assault be taken seriously.

This requires collection of assault evidence, counseling, and a clear zero-tolerance policy.

Hiding these kinds of events is not only detrimental to the Department of Public Safety but it erodes public trust in our criminal justice system.

DAVID Y. IGE
GOVERNOR

LATE



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

NOLAN P. ESPINDA
DIRECTOR

Maria C. Cook
Deputy Director
Administration

Jodie F. Maesaka-Hirata
Deputy Director
Corrections

Renee R. Sonobe Hong
Deputy Director
Law Enforcement

No. _____

TESTIMONY ON HOUSE BILL 336, HOUSE DRAFT 2
RELATING TO HAWAII STATE AND CONTRACTED
CORRECTIONAL FACILITIES.

by
Nolan P. Espinda, Director
Department of Public Safety

Senate Committee on Public Safety, Intergovernmental,
And Military Affairs
Senator Clarence K. Nishihara, Chair
Senator Glenn Wakai, Vice Chair

Tuesday, March 12, 2019; 1:15 p.m.
State Capitol, Conference Room 229

Chair Nishihara, Vice Chair Wakai, and Members of the Committee:

The Public Safety Department (PSD) supports the intent of House Bill (HB) 336, House Draft (HD) 2, as the Department is committed to transparency as it relates to the sensitive and important issue covered in this measure, the deaths of staff and inmates in our facilities.

PSD, however, has the following concerns. The requirement that the clinical mortality review at a correctional facility or community correctional center be disclosed within 24 hours cannot be fulfilled, since it takes, on average, 30 days to complete.

The Department is also concerned with the amendment to Section 353C-8(c), Hawaii Revised Statutes, requiring PSD to collect and preserve human biological specimens as evidence that may be used in a police investigation and any subsequent prosecution if there is any indication of sexual assault leading to the death of any individuals specified in (1) and (2).

Collection and preservation of human biological specimens as evidence for use in a prosecution requires special equipment and training in forensic evidence collection such as those employed by county police departments, the medical coroner, and the Sex Abuse Treatment Center (SATC). PSD does not employ trained staff who are Sexual Assault Nurse Examiner (SANE) or Sexual Assault Forensic Examiners (SAFE). If there is an allegation of sexual assault, PSD transports the inmate to the SATC or its contracted staff in each county to conduct a SANE/SAFE examination.

This measure also conflicts with the duties of the county coroner as outlined in HRS Section 841-3: Duties, which specifically cover managing the death of any person in a prison. Also, HRS Section 841-14: Autopsies and further investigation identify, who, in the interest of public safety or welfare may cause an autopsy by the coroner's physician. To ensure compliance with the duties of the county coroner, PSD recommends the following amendment:

“(c) The department of public safety shall preserve any forensic evidence consisting of human biological specimens for collection by the relevant criminal investigation entity or coroner, if there is any indication of sexual assault leading to the death of any:”

PSD's recommendations will ensure compliance with state and/or federal laws and will not negatively impact the forensic collection of evidence being considered by this measure.

Thank you for the opportunity to present this testimony.



HB336 HD2

RELATING TO HAWAII STATE AND CONTRACTED CORRECTIONAL FACILITIES Senate Committee on Public Safety, Intergovernmental, & Military Affairs

March 12, 2019

1:15 p.m.

Room 229

The Office of Hawaiian Affairs (OHA) **SUPPORTS** HB336 HD2, which would improve transparency and urgency in procedures surrounding the deaths and sexual assaults of inmates, by requiring the Department of Public Safety (PSD) to expediently report inmate and correctional employee deaths to the Governor and Legislature, provide an annual report on sexual assaults of inmates to the Legislature, and collect evidence to investigate possible sexual assaults preceding inmate 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. Not surprisingly, the public has grown increasingly distrustful of our criminal justice system and concerned about the safety of family and community members held in the “custody and care” of PSD. PSD’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 only further deepened this public distrust.

Sexual assaults of inmates has also become an issue of concern for justice advocates and families of pa’ahao. Testimony offered on this measure in previous hearings has highlighted the public’s concern for the safety of inmates who may be exposed to sexual violence, as well the lack of public information about sexual assault incidents in correctional facilities. Some have suggested that sexual violence may be among the circumstances surrounding inmate deaths; these weighty concerns warrant a serious response with the highest degree of scrutiny. PSD should take every measure to investigate sexual assault against inmates in its care, and ensure the integrity of future investigations related to possible sexual assault preceding and potentially contributing to inmate deaths.

By requiring immediate reporting on inmate deaths, periodic reporting on sexual assaults against inmates, and the collection of biological samples to support future investigations related to sexual assault that may be correlated with inmate deaths, HB336 HD2 would improve transparency and provide an appropriate level of urgency in addressing the safety of those in our State’s care. Ideally, this information (anonymized as

appropriate to protect individuals and families) should also be disseminated to the public, pending notification of families, 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 overall.

Therefore, OHA urges the Committee to **PASS** HB336 HD2. Mahalo for the opportunity to testify on this measure.



COMMITTEE ON JUDICIARY

Rep. Chris Lee, Chair

Rep. Joy A. San Buenaventura, Vice Chair

LATE

DATE: Tuesday, March 12, 2019
TIME: 1:15 PM
PLACE: Conference Room 229

Dear Honorable Committee Members,

Strong support for HB 336, HD2 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

Board of Directors

Rich Turbin, Esq., President • Roger Epstein, Esq., Vice President • Madonna Castro Perez, Secretary,
Lisa Jensen, Treasurer • Cheri Tarutani, MSW • Ian Crabbe • Daphne Ho'okano, MSW • Thomas Haia, JD
Leela Bilmes Goldstein, PhD

P.O. Box 3654 • Honolulu • Hawai'i • 96811 • www.hawaiifriends.org