

DAVID Y. IGE
GOVERNOR



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

**TESTIMONY ON SENATE BILL 1077
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, February 5, 2019; 1:15pm
State Capitol, Conference Room 229

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

The Department of Public Safety (PSD) offers cautionary comments regarding Senate Bill (SB) 1077. 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 testimony.

COMMUNITY ALLIANCE ON PRISONS

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

Phone/E-Mail: (808) 927-1214 / kat.caphi@gmail.com



COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL & MILIARY AFFAIRS

Sen. Clarence Nishihara, Chair

Sen. Glenn Wakai, Vice Chair

Tuesday, February 4, 2019

1:15 pm

Room 229

SUPPORT w AMENDMENT - SB 1077 - NOTIFICATION of FACILITY DEATHS

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 5,400 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.

SB 1077 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 and 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~~ **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 Saguaro in the last few weeks because there was no defibrillator there.

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

SB-1077

Submitted on: 2/2/2019 5:25:04 PM

Testimony for PSM on 2/5/2019 1:15:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Louis Erteschik	Testifying for Hawaii Disability Rights Center	Comments	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.

SB-1077

Submitted on: 2/3/2019 7:47:15 PM

Testimony for PSM on 2/5/2019 1:15:00 PM

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

Comments:

I am e. ileina funakoshi, chair of Public Safety Committee of PC Neighborhood Bd #21 asking for your strong support of this bill on notification of cause of death to the Governor and Legislature. Hopefully, this will decrease the number of litigation filed against the department.



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

LATE

ON THE FOLLOWING MEASURE:

S.B. NO. 1077, RELATING TO HAWAII STATE AND CONTRACTED CORRECTIONAL FACILITIES.

BEFORE THE:

SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS

DATE: Tuesday, February 5, 2019 **TIME:** 1:15 p.m.

LOCATION: State Capitol, Room 229

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

Chair Nishihara and Members of the Committee:

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

S.B. No. 1077 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) 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, 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 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. There may be cases, therefore, when the information required to be reported by this bill could be protected from disclosure under HIPAA.

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 from other information besides the person's name. Disclosure of such information may place the director in violation of HIPAA.

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.

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.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
TELEPHONE: (808) 529-3111 · INTERNET: www.honolulu.org

LATE

KIRK CALDWELL
MAYOR



SUSAN BALLARD
CHIEF

JOHN D. McCARTHY
JONATHAN GREMS
DEPUTY CHIEFS

OUR REFERENCE SN-JK

February 5, 2019

The Honorable Clarence K. Nishihara, Chair
and Members
Committee on Public Safety, Intergovernmental,
and Military Affairs
State Senate
415 South Beretania Street, Room 214
Honolulu, Hawaii 96813

Dear Chair Nishihara and Members:

SUBJECT: Senate Bill No. 1538, Relating to Bail

I am Acting Major David Chang of the Central Receiving Division, Honolulu Police Department (HPD), City and County of Honolulu.

The HPD opposes the passage of Senate Bill No. 1538, Relating to Bail. The HPD does not have access to financial information to determine the ability of suspects to afford bail. Obtaining any personal background information would require officers to interview suspects in custody. This would place arrested persons in a dilemma to waive their Fifth Amendment right to provide information to officers for the setting of bail or remaining silent and not having a voice in bail matters. Anything short of respecting a suspect's Fifth Amendment right jeopardizes the entire criminal procedure process. Interviews regarding financial and background information should be left to the Hawaii State Judiciary, Adult Client Services Branch, Intake Section and not to the police.

The HPD urges you to oppose Senate Bill No. 1538.

Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to read "David Chang".

David Chang, Acting Major
Central Receiving Division

APPROVED:

A handwritten signature in black ink, appearing to read "Susan Ballard".

Susan Ballard
Chief of Police

Serving and Protecting With Aloha



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

ON THE FOLLOWING MEASURE:

S.B. NO. 1077, RELATING TO HAWAII STATE AND CONTRACTED CORRECTIONAL FACILITIES.

BEFORE THE:

SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS

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Lisa M. Itomura, Deputy Attorney General

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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 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. There may be cases, therefore, when the information required to be reported by this bill could be protected from disclosure under HIPAA.

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(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.

SB-1077

Submitted on: 2/5/2019 9:48:34 AM

Testimony for PSM on 2/5/2019 1:15:00 PM

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

Comments:

WE STRONGLY SUPPORT THIS BILL, but ask for an amendment to mandate a RAPE TEST KIT PROCEDURE for all inmate deaths. This amendment would ensure that possible evidence of a rape crime will not go unchecked in the event that a prisoner's death wasn't made to look like a suicide when in fact it was a cover up of a rape.