
HOUSE CONCURRENT RESOLUTION

REQUESTING THE LEGISLATIVE REFERENCE BUREAU, IN CONSULTATION WITH THE DEPARTMENT OF THE ATTORNEY GENERAL, TO CONDUCT A STUDY RELATING TO THE REPORTING REQUIREMENTS OF SECTION 353C-8.5, HAWAII REVISED STATUTES.

1 WHEREAS, section 353C-8.5, Hawaii Revised Statutes, enacted
2 by Act 234, Session Laws of Hawaii 2019 (Act 234), requires the
3 Director of Public Safety to report, within forty-eight hours,
4 the death of a correctional facility or community correctional
5 center employee who dies on the grounds of a correctional
6 facility or community correctional center where Hawaii inmates
7 reside, or who sustains an injury on those grounds that causes
8 the death of the employee; and

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10 WHEREAS, section 353C-8.5, Hawaii Revised Statutes, also
11 requires the Director of Public Safety to report, within forty-
12 eight hours, the death of a Hawaii inmate who is incarcerated in
13 a state or contracted correctional facility; and

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15 WHEREAS, section 353C-8.5, Hawaii Revised Statutes,
16 specifies the information that shall be included in the report,
17 which includes identifying information of the decedent, but
18 allows the Director discretion to withhold disclosure of the
19 decedent's name or any information protected from disclosure by
20 state or federal laws; and

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22 WHEREAS, Act 234 was intended to address concerns that
23 inmate deaths had become a common occurrence in the State's
24 criminal justice system and that information about these deaths
25 was neither informative nor transparent; and

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27 WHEREAS, on January 5, 2020, the Honolulu Star-Advertiser
28 reported on a prisoner who died on Christmas morning after being



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1 assaulted at the Oahu Community Correctional Center, noting
2 prison officials had not publicly announced the death; and
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4 WHEREAS, the Department of the Attorney General cited the
5 federal Health Insurance Portability and Accountability Act of
6 1996, or HIPAA, as requiring the withholding of information to
7 safeguard patients' private health care information, and
8 indicated that it does not consider the name of an inmate who
9 dies in custody to be a public record, including suicides and
10 homicides; and
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12 WHEREAS, according to the article, a number of other
13 states, including Arizona, California, Nevada, and Oregon, do
14 publicly announce homicides, suicides, and other inmate deaths
15 and routinely name the prisoners who died; and
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17 WHEREAS, the Department of the Attorney General also stated
18 the HIPAA analysis depends on factors including how the prison
19 system is structured and whether the prisons as a whole or only
20 their medical units are covered by responsibilities under HIPAA;
21 and
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23 WHEREAS, the existing implementation of section 353C-8.5,
24 Hawaii Revised Statutes, is not accomplishing Act 234's purpose;
25 indeed, the discretion to withhold information under that law
26 appears to be resulting in nondisclosure as the rule; now,
27 therefore,
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29 BE IT RESOLVED by the House of Representatives of the
30 Thirtieth Legislature of the State of Hawaii, Regular Session of
31 2020, the Senate concurring, that this body requests the
32 Legislative Reference Bureau, in consultation with the
33 Department of the Attorney General, to conduct a study on the
34 structure of Hawaii's correctional center system and related
35 medical units as compared to those states that routinely release
36 information on prisoner deaths, and recommend legislation or
37 restructuring, if necessary, that would allow the State to
38 obtain the information sought by section 353C-8.5, Hawaii
39 Revised Statutes; and
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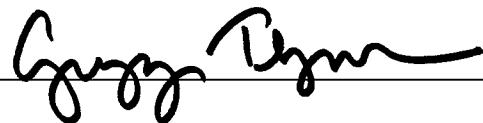
BE IT FURTHER RESOLVED that the study include:

- (1) The Department of Public Safety's compliance with the informational disclosure requirements of section 353C-8.5, Hawaii Revised Statutes;
- (2) HIPAA requirements as they relate to correctional facility or community correctional center injuries and deaths of employees and deaths of inmates;
- (3) The structure of Hawaii's correctional system and related medical units as compared to those states that routinely release information on prisoner deaths and, if available, prison employee deaths; and
- (4) Whether the states favoring disclosure over nondisclosure rely upon any statutes or restrictions on the type of information that may be disclosed, or other authority to avoid HIPAA violations when making such disclosures; and

BE IT FURTHER RESOLVED that the Legislative Reference Bureau, in consultation with the Department of the Attorney General, is requested to submit a report of its findings and recommendations, including proposed legislation, to the Legislature no later than twenty days prior to the convening of the Regular Session of 2021; and

BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the Director of the Legislative Reference Bureau, Director of Public Safety, and Attorney General.

OFFERED BY:



FEB 18 2020

