



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

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 1077, S.D. 1, RELATING TO HAWAII STATE AND CONTRACTED CORRECTIONAL FACILITIES.

**BEFORE THE:**

HOUSE COMMITTEE ON PUBLIC SAFETY, VETERANS, AND MILITARY AFFAIRS

**DATE:** Wednesday, March 13, 2019      **TIME:** 10:30 a.m.

**LOCATION:** State Capitol, Room 430

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

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Chair Takayama 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) 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.

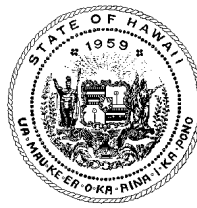
We note that PSD is a “covered entity” under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA). HIPAA and its implementing regulations prohibit covered entities from disclosing individually identifiable health information relating to the past, present, or future physical 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~~].

Thank you for the opportunity to provide these comments.

DAVID Y. IGE  
GOVERNOR



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**DEPARTMENT OF PUBLIC SAFETY**  
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No. \_\_\_\_\_

TESTIMONY ON SENATE BILL 1077, SENATE DRAFT 1  
RELATING TO HAWAII STATE AND CONTRACTED  
CORRECTIONAL FACILITIES.

by  
Nolan P. Espinda, Director  
Department of Public Safety

House Committee on Public Safety, Veterans, and Military Affairs  
Representative Gregg Takayama, Chair  
Representative Cedric Asuega Gates, Vice Chair

Wednesday, March 13, 2019; 10:39 a.m.  
State Capitol, Conference Room 430

Chair Takayama, Vice Chair Gates, and Members of the Committee:

The Public Safety Department (PSD) supports the intent of Senate Bill (SB) 1077, Senate Draft (SD) 1, 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.

The Department appreciates the Senate's amendment in SB 1077, SD 1, incorporating the recommendation of the Attorney General, to prevent violation of federal or other law regarding disclosure of a decedent's name. However, the requirement that the findings of the clinical mortality review be reported within 48 hours of the incident is unrealistic, since such a review takes, on average, 30 days to complete.

Thank you for the opportunity to present this testimony.



**SB1077 SD1**

**RELATING TO HAWAII STATE AND CONTRACTED CORRECTIONAL FACILITIES**  
House Committee on Public Safety, Veterans, & Military Affairs

March 13, 2019

10:30 a.m.

Room 430

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The Office of Hawaiian Affairs (OHA) **SUPPORTS** SB1077 SD1, 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, engendering a growing level of public concern and distrust. 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 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 only further deepened this public distrust.

By requiring immediate reporting on inmate deaths to the Governor and the Legislature, SB1077 SD1 would improve transparency and provide an appropriate level of urgency in addressing the safety of those in our State’s custody. 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 not provided for here, this Legislature is currently seriously considering such a system 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** SB1077 SD1. Mahalo for the opportunity to testify on this measure.

# COMMUNITY ALLIANCE ON PRISONS

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## COMMITTEE ON PUBLIC SAFETY, VETERANS, AND MILITARY AFFAIRS

Rep. Gregg Takayama, Chair

Rep. Cedric Gates, Vice Chair

Wednesday, March 13, 2019

10:30 am

Room 430

### SUPPORT - SB 1077 SD1- FACILITY DEATH NOTIFICATIONS

Aloha Chair Takayama, Vice Chair Gates 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 respectfully requests that the better language of HB 336 HD2 be inserted in this bill. The House version is more comprehensive than this bill.

Mahalo for this opportunity to testify.

**SB-1077-SD-1**

Submitted on: 3/8/2019 9:26:30 PM

Testimony for PVM on 3/13/2019 10:30:00 AM

<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 we 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-SD-1**

Submitted on: 3/11/2019 3:23:27 PM

Testimony for PVM on 3/13/2019 10:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Raymond Catania	Kauai Relatives and Friends of the Incarcerated	Support	No

Comments:

To Committee on Public Safety, Veterans and Military Affairs

To the Honorable Chair Gregg Takayama and Vice-Chair Cedric Asuega Gates,

The Kauai Relatives and Friends of the Incarcerated support SB1077 SD1. We also think that it is imperative for the Governor and the general public to be notified when there is an inmate death within 48 hours and that we also strongly support having a "Rape Kit" to be available in the facilities that house our inmates and having people trained in its use. Disclosure and causes of an inmate or employee's death is extremely important.

Thank you,

Blu Dux, Henrietta Napolis, Donna Friend, Debra Napolis, Carolyn Richy, Jo Amsterdam and Ray Catania

**SB-1077-SD-1**

Submitted on: 3/10/2019 11:34:25 AM

Testimony for PVM on 3/13/2019 10:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Raelyn Reyno Yeomans	Individual	Support	No

Comments:

SUPPORT. Please strengthen and expand this bill. Transparency is important!



**SB-1077-SD-1**

Submitted on: 3/11/2019 1:53:16 PM

Testimony for PVM on 3/13/2019 10:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Diana Bethel	Individual	Support	No

Comments:

The House version of SB 1077 SD1 is more comprehensive and transparent.

Especially, please amend this bill to include the language on sexual assault from page 3 line 6 through page 5 line 6 from HB 336 HD2.

Thank you.

**SB-1077-SD-1**

Submitted on: 3/12/2019 7:44:53 AM

Testimony for PVM on 3/13/2019 10:30:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Barbara Polk	Individual	Support	No

Comments:

I support reporting deaths in custody. There have been too many and some have been hidden too long.

Please pass SB1077