



STATE OF HAWAII
HAWAII CORRECTIONAL SYSTEM OVERSIGHT COMMISSION
235 S. Beretania Street, 16th Floor
HONOLULU, HAWAII 96813
(808) 587-4160

TO: The Honorable Mark J. Hashem, Chair
The Honorable Cory M. Chun, Vice Chair
House Committee on Corrections, Military & Veterans

FROM: Mark Patterson, Chair
Hawaii Correctional System Oversight Commission

SUBJECT: House Bill 823, Relating to Deaths within the Correctional System
Hearing: Wednesday, February 8, 2023; 9:00 a.m.
State Capitol, Room 430

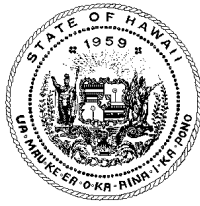
Chair Hashem, Vice Chair Chun, and Members of the Committee:

The Hawaii Correctional System Oversight Commission (the Commission) **strongly supports** House Bill 832, Relating to Deaths within the Correctional System, which requires the Department of Public Safety to release certain information to the public concerning the death of an inmate or a staff member. This measure requires the Department to proactively disclose such information in a timely manner, rather than waiting for someone to make a request as has been the practice in the past.

This issue has been subject to litigation and brought before the Hawaii State Legislature in previous years. The prior administration under Director Max Otani had agreed in principle to release some information concerning such deaths and we believe current Director Tommy Johnson takes a similar stand. We find this bill incorporates the Department's concerns about disclosing certain information.

Should you have additional questions, the Oversight Coordinator, Christin Johnson, can be reached at 808-900-2200 or at christin.m.johnson@hawaii.gov. Thank you for the opportunity to testify.

JOSH GREEN, M.D.
GOVERNOR



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
DEPARTMENT OF PUBLIC SAFETY
Ka 'Oihana Ho'opalekana Lehulehu
1177 Alakea Street
Honolulu, Hawaii 96813

TOMMY JOHNSON
DIRECTOR

Melanie Martin
Deputy Director
Administration

Michael J. Hoffman
Acting Deputy Director
Corrections

William F. Oku
Deputy Director
Law Enforcement

No. _____

TESTIMONY ON HOUSE BILL 823
RELATING TO MEDICAL RELEASE

By
Tommy Johnson, Director

House Committee on Corrections, Military and Veterans
Representative Mark J. Hashem, Chair
Representative Cory M. Chun, Vice Chair

Wednesday, February 08, 2023; 9:00 a.m.
CR 430 and Via Videoconference

Chair Hashem, Vice Chair Chun, and Members of the Committee:

The Department of Public Safety (PSD) offers comments on House Bill (HB) 823, which seeks to expand the scope of inmate deaths that are to be reported to the Governor and Legislature, require reports to be published on the PSD website, require reports on the cause of death, and mandate public access to information within the reports.

PSD notes that the employees and individuals in our care and custody, who would be directly affected by HRS 353-40, have never been consulted about their wishes concerning the disclosure of their protected health information, including the extent of such disclosure. This is an omission that requires correction with an amendment to HRS 353-40 that includes the need for authorization to release protected health information in the event of death. PSD proposes the following amendments:

- Page 2, lines 8-9: “(b) The report in subsection (a) shall include the following information, if the employee or incarcerated individual provides written authorization to release protected health information in the event of death:”

- Page 3, lines 6-12: “(c) When the official cause of death has been determined, the director shall submit a report to the governor, and the governor shall submit the report to the legislature that shall include the following information, if the employee or incarcerated individual provides written authorization to release protected health information in the event of death:”

HB 823, page 3, lines 13-14 and 20-21, proposes to disclose the clinical mortality review and allow public inspection of the clinical mortality review. PSD respectfully requests the deletion of lines 13-14, as the proposed amendment is a violation of the Hawaii Health Care Quality Improvement Act of 1989 (See HRS 671D, HRS 624-25.5, HRS 663-1.7(e)). The clinical mortality review is the process by which medical and other disciplinary experts review the circumstances of an individual death to explore root causes and identify interventions to prevent future deaths. The purpose of HRS 671D is to provide incentives and protection for participants engaging in effective professional peer review. Absent the protections for participants provided by the Hawai'i Health Care Quality Improvement Act (1989), the clinical mortality review would become a meaningless exercise and an ineffective tool for improving the quality of care at PSD facilities. The proposed amendment in lines 13-14 would create an insurmountable barrier to fully engage participants in the clinical mortality review process. PSD is in agreement with the proposed deletion on page 3, lines 9-11.

Thank you for the opportunity to provide testimony on HB 823.

TESTIMONY IN SUPPORT OF HB 823

TO: Chair Hashem, Vice Chair Chun, & Committee Members

FROM: Nikos Leverenz
Grants & Advancement Manager

DATE: February 8, 2023 (9:00 AM)

Hawai'i Health & Harm Reduction Center (HHRC) **strongly supports** HB 823, which expands the scope of inmate deaths that are reported to the Governor and Legislature.

This bill should be strengthened to require that the names of those in the care and custody of the Department of Public Safety (PSD) be released to the public as expeditiously as possible. The longstanding PSD practice of claiming that the identity of a deceased prisoner or inmate was "protected medical information" is a grossly unfounded assertion and a woefully aberrant practice that is not in alignment with established penological practices in other jurisdictions.

We hope that the new director of PSD can offer the Legislature, and the public it represents, express assurances that it shouldn't take a lawsuit or legislative enactment to properly manage basic administrative functions of this state's carceral facilities in accord with acceptable penological practices, [as has been the case here](#).

HHRC's mission is to reduce harm, promote health, create wellness, and fight stigma in Hawai'i and the Pacific. We work with many individuals who are impacted by poverty, housing instability, and other social determinants of health. Many have behavioral health problems, including those relating to substance use and underlying mental health conditions, and have been deeply impacted by trauma, including histories of physical, sexual, and psychological abuse.

Thank you for the opportunity to testify on this measure.

Opportunity Youth Action Hawai'i

February 08, 2023

House Committee on Corrections, Military & Veterans

Hearing Time: 09:00 a.m.

Location: State Capitol

Re: HB 823, Relating to Deaths Within the Correctional System

Aloha e Chair Hashem, and members of the Committee:

We are writing in **strong support of** HB 823, Relating to Deaths Within the Correctional System.

This bill will expand the scope of inmate deaths that are reported to the Governor and Legislature; require reports to be published on the Department of Corrections and Rehabilitation website; require reports on the cause of death and mandate public access to certain information within those reports; and take effect on the effective date of section 353-40, Hawai'i Revised Statutes.

The lives of those in correctional facilities matter just as much as those that are not. And their deaths should be investigated, treated, and reported on with the utmost respect and diligence. The public deserves complete transparency on the happenings within the correctional and justice systems of Hawai'i.

Our collective, Opportunity Youth Action Hawai'i (OYAH), works to support young people under the age of 25 who are disconnected from school and work, referred to as "opportunity youth." This developmental time period is extremely consequential to the individual growth and overall life chances of our children. **We support this measure.**

Opportunity Youth Action Hawai'i is a collaboration of organizations and individuals committed to reducing the harmful effects of a punitive incarceration system for youth; promoting equity in the justice system; and improving and increasing resources to address adolescent and young adult mental health needs. We seek to improve the continuity of programs and services for youth and young adults transitioning from minor to adult status; eliminate youth houselessness and housing market discrimination against young adults; and promote and fund more holistic and culturally-informed approaches among public/private agencies serving youth.

Please support HB 823.

COMMUNITY ALLIANCE ON PRISONS

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

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



COMMITTEE ON CORRECTIONS, MILITARY, & VETERANS

Rep. Mark J. Hashem, Chair

Rep. Cory M. Chun, Vice Chair

Wednesday, February 8, 2023

Room 430

9:00 AM

STRONG SUPPORT FOR HB 823 - DEATH W/I CORRECTIONAL SYSTEM

Aloha Chair Hashem, Vice Chair Chun 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 4,058 Hawai`i individuals living behind bars¹ and under the “care and custody” of the Department of Public Safety/Corrections and Rehabilitation on any given day. We are always mindful that 965 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 appreciates this opportunity to share our strong support for HB 823, which expands the scope of inmate deaths that are reported to the Governor and Legislature and requires reports to be published on the department’s website with information on the cause of death and mandates public access to certain information within these reports.

Over the 27 years CAP has been working on justice issues, there have been countless families crying to me for information on what happened to their loved ones because they have been given the run-around by the department. The former AG’s assertion that the state could not release information about facility deaths because of the health privacy act.

Thankfully a recent ruling by Judge Tonaki made more information available and this bill reflects that decision.

¹ Department of Public Safety, Weekly Population Report, January 30, 2023.

https://dps.hawaii.gov/wp-content/uploads/2023/01/Pop-Reports-Weekly-2023-01-30_George-King.pdf

A short article from September 22² on jail deaths provides incite:

Millions of people enter jail in the U.S. every year. They've become a revolving door for those with mental health issues or substance-abuse disorders.

The U.S. Supreme Court ruled that inmates are entitled to life-saving medical care, but that isn't quite guaranteed.

"The jailers don't recognize that jails are, in fact, de facto the largest drug detoxification centers in the country, the largest mental illness facilities in the country. And so these jails require a level of treatment that's just totally missing," said Andrew Klein who wrote "Death before Sentencing: Ending Rampant Suicide, Overdoses, Brutality, and Malpractice in America's Jails." "The result is a totally unacceptable death rate across the country in the nation's jails."

Jail deaths rose 11 percent since 2000 when the U.S. Department of Justice began tallying these deaths. Suicides are the leading cause of jail deaths. Fatal drug overdoses are the fastest growing cause of death.

In Hawai`i recent deaths of pretrial detainees has made the public more keenly aware of what information we don't have, making this bill very important,

An interview from last January³ on NPR with data from the Bureau of Justice Statistics tells us more about how prisons were affected early on in the pandemic. NPR's Michel Martin speaks with researcher Wendy Sawyer about the new data.

*As the country continues to struggle with the effects of the latest COVID surge, we wanted to take a look at how the pandemic has affected one particularly vulnerable population - those who are incarcerated. The number of people incarcerated across the United States dropped early on in the pandemic. That, it turns out, was due to COVID-related factors like staff shortages and halted courtroom procedures. But now the number of people in prisons and jails is back up, and disturbingly, deaths increased dramatically. **Deaths increased 46% in prisons from 2019 to 2020, 32% among people on parole and 6% among people on probation.** We don't yet know about jail deaths in 2020 because it hasn't yet been reported, but we know these things because the Bureau of Justice Statistics recently released new data that can help us see how policy choices and emergency conditions in 2020 affected correctional facilities and incarcerated people during the first year of the pandemic. We called Wendy Sawyer to help us understand*

² 1A Remaking America: What's Being Done About The Rise In Jail Deaths?, September 8, 2022 4:16 PM ET.
<https://www.npr.org/2022/09/08/1121881816/1a-remaking-america-whats-being-done-about-the-rise-in-jail-deaths>

³ New data shows startling rise in prison deaths during 2020
January 22, 2022 5:04 PM ET
<https://www.npr.org/2022/01/22/1075108313/new-data-shows-startling-rise-in-prison-deaths-during-2020>

this information. She's been studying the numbers in her role as research director for the Prison Policy Initiative, and she's with us now. Wendy Sawyer, welcome.

Ms. Sawyer's final comment says it all:

SAWYER: Yeah. You know, well, I think that the lives of people in prison matter, but I'm not naive. I know some people don't care about people in prison, and I'd say, if that's how you feel, then what I'm saying might not resonate with you. But the data doesn't have to make you care. It should make you think about what actually has been going on in prisons and jails. You know, the truth is worse than what many people would assume is going on.

Prison officials say part of their job is to take care of and, on occasion, to show mercy to incarcerated people. Yet they allowed releases to drop off in 2020. They let nearly 50% more people die. Maybe they don't actually believe that compassion is part of their job. Maybe they believe the opposite. I think that that's something that all of us should be thinking about is what is actually going on in prisons.

If this level of mortality was happening in the community there would be a big outcry to do something. Every incarcerated person comes from a family, a neighborhood and is a member of a larger community. If we don't care about one sector of society – other than our own, we are all doomed. Humans are social beings and to survive, we need each other.

THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

700 Bishop Street, Suite 1701
Honolulu, HI 96813

Office: (808) 531-4000
Fax: (808) 380-3580
info@civilbeatlawcenter.org

House Committee on Corrections, Military & Veterans
Honorable Mark J. Hashem, Chair
Honorable Cory M. Chun, Vice Chair

**RE: Testimony Supporting H.B. 823, Relating to
Deaths Within the Correctional System**

Hearing: February 8, 2023 at 9:00 a.m.

Dear Chair and Members of the Committee:

My name is Brian Black. I am the Executive Director of the Civil Beat Law Center for the Public Interest, a nonprofit organization whose primary mission concerns solutions that promote governmental transparency. Thank you for the opportunity to submit testimony **strongly supporting H.B. 823**.

The public should know the identity of people who die while incarcerated. This bill would codify a process for public disclosure of these deaths and alleviate any confusion for the Department of Public Safety regarding the scope of other privacy and confidentiality laws.

This issue has been a problem since the Department changed its interpretation of HIPAA in 2020 and started withholding the identity of individuals who died while in its custody and care. Notwithstanding the fact that the Department had disclosed the identity of deceased individuals for years after the HIPAA Privacy Rule took effect in 2001 and the fact that many correctional facilities across the country disclose the same information, the Department refused to identify those who died in prison in Hawai'i.

In October 2021, the Law Center represented Honolulu Civil Beat in challenging the Department's change in position. In November 2022, the circuit court confirmed that basic information identifying individuals who died while in the Department's custody and care must be publicly disclosed and cannot be withheld under HIPAA.

H.B. 823 tracks a proposal that was discussed with and supported by the Department last year. The only material deviation from that prior proposal is that H.B. 823 continues a requirement that the Department publicly disclose cause of death and indications of sexual assault within seven days (and disclose again in the second report once the official cause of death is determined). The disclosure of this information is critical for the second report in subsection (c), but the Law Center defers to the Committee as to whether (b)(6) and (7) should be deleted.

Thank you again for the opportunity to testify **strongly supporting H.B. 823**.

COMMITTEE ON CORRECTIONS, MILITARY & VETERANS

Rep. Mark Hashem, Chair; Rep. Cory Chun, Vice Chair

Wednesday, February 8, 2023, 9:00 a.m.

Room 430 and online

LATE

SUPPORT OF HB823: Relating to Deaths Within the Correctional System

Dear Chair Hashem, Vice Chair Chun, and Members of the Committee:

My name is Elizabeth Rossi, and I am Director of Strategic Initiatives at Civil Rights Corps (“CRC”). CRC is a nonprofit organization that works nationwide to challenge systemic injustices in the criminal legal system. We have brought more than 17 lawsuits challenging wealth-based pretrial detention and highlighting the devastating harms caused by these systems. Much of my work has focused on Texas and Tennessee, including leading the litigation that ended the unconstitutional jailing of people in the Houston area charged with misdemeanors who were detained solely because they couldn’t pay cash bail.

Based on this experience, my organization strongly supports HB 823, which would bolster transparency around in-custody deaths in Hawaii and provide the basic information necessary for holding accountable officials who fail to protect the people in their care.

The criminal legal system in the state of Texas is not a model of much, but state law does have relatively robust reporting requirements relating to in-custody deaths, including a requirement that the government agency where the death occurred file a report with the Texas Attorney General within 30 days that includes information like the date and time the person was taken into custody; the date and time they died; the manner of death (e.g. natural, suicide, homicide, etc.) and medical cause of death; whether a weapon was involved in the death; the location of death (e.g. jail cell, jail medical unit, hospital, processing area, etc.); whether the person exhibited mental health issues or made suicidal statements; and a narrative summary of how the death occurred. These reports are sometimes delayed or incomplete, and the narrative summaries routinely fail to provide key information or elide important facts—but they provide crucial information nonetheless.

Taking Harris County, TX as an example: this state-mandated transparency has allowed the public to learn relatively promptly about the 28 deaths that occurred in the county jail in 2022, and the four that have occurred so far in 2023. Information that the jail is required by state law to make public showed that four of the 2022 deaths were suicides. We learned that one 27-year-old man who was a diabetic died because he was denied insulin. And we know that 9 people died within just three days of being taken into custody. We know that one man died of a drug overdose almost three months after arrest, raising questions about whether jailers brought narcotics into the facility. And we know that all of the people who died were being detained pretrial, including several who were in Harris County custody only because they couldn’t pay \$500 or \$1000 to a bonding company.

To be clear, there is a lot that the public still does *not* know about the individuals who have died in Harris County custody, but from the information available, advocates have been able to sound the alarm and demand changes from the state commission on jail standards, local officials, the

state legislature, and news media in Texas and around the country. For example, organizers seeking change are rallying today in Austin, TX outside of a meeting of the Texas Commission on Jail Standards to demand that legislators redirect funds from jails and prisons toward public health and especially mental health care. A Pulitzer-prize winning journalist based in Houston published a lengthy investigation today, February 7, into in-custody deaths, relying heavily on the in-custody reports that state law requires and finding that 46% of the people who died of unnatural causes in Houston area jails had been flagged as mentally ill. One non-profit organization uses the data from the AG reports to generate graphics and analysis, which are freely available online. And impacted family members have been able to find each other, organize, and develop policy platforms demanding change from elected officials.

Although Texans deserve even more details more quickly, especially in cases involving law enforcement use of force, the information that is available is helpful in pointing the way to sorely needed systemic reforms, especially the need to decarcerate: Each of the 28 people who died in Harris County custody in 2022, and the four who have died so far in 2023, were being detained pretrial, meaning they had not yet been convicted of a crime. The number—and needlessness—of these deaths is one crucial reason that the Texas state legislature will again be focused on bail reform during this year’s legislative session.

Our organization stands as a resource for you—both to explain the crucial importance of transparency around deaths in custody, and to share the best practices that we have identified through our engagement nationwide. We respectfully urge you to pass HB 823.

HB-823

Submitted on: 2/5/2023 1:54:09 PM

Testimony for CMV on 2/8/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Will Caron	Individual	Support	Written Testimony Only

Comments:

I support HB823.

HB-823

Submitted on: 2/6/2023 10:20:24 AM

Testimony for CMV on 2/8/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Barbara Polk	Individual	Support	Written Testimony Only

Comments:

Please support HB823 concerning the public reporting of deaths of employees and incarcerated persons in our prisons, jails, and any other place where people are held. These facilities act on behalf of the public--it's important that we have the opportunity to know what happens in them.

HB-823

Submitted on: 2/7/2023 5:50:31 AM

Testimony for CMV on 2/8/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Raelyn Reyno Yeomans	Individual	Support	Written Testimony Only

Comments:

Strong support for HB823.

LATE

HB-823

Submitted on: 2/7/2023 10:46:45 AM

Testimony for CMV on 2/8/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Diana Bethel	Individual	Support	Written Testimony Only

Comments:

Aloha,

I am writing in strong support of HB823 which requires that deaths of employees and incarcerated people be reported to the Governor, Legislature, and the public within the timeframes specified.

In a democracy, it is essential for the public to know what has caused a death in a correctional or a corrections-related facility or program. It is a problem when the State intentionally withholds this critical information from the public and even withholds the details from the family of the deceased.

My only suggestion is that HB823 be effective immediately upon passage of the bill, rather than waiting until 2024.

Please pass HB823. Mahalo for your consideration.

Diana Bethel

LATE

HB-823

Submitted on: 2/8/2023 4:43:34 AM

Testimony for CMV on 2/8/2023 9:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Shannon Rudolph	Individual	Support	Written Testimony Only

Comments:

Support