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## HOUSE RESOLUTION

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

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

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

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

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

WHEREAS, on January 5, 2020, the Honolulu Star-Advertiser reported on a prisoner who died on Christmas morning after being assaulted at the Oahu Community Correctional Center, noting prison officials had not publicly announced the death; and

WHEREAS, the Department of the Attorney General cited the federal Health Insurance Portability and Accountability Act of 1996, or HIPAA, as requiring the withholding of information to safeguard patients' private health care information, and indicated that it does not consider the name of an inmate who dies in custody to be a public record, including suicides and homicides; and

WHEREAS, according to the article, a number of other states, including Arizona, California, Nevada, and Oregon, do publicly announce homicides, suicides, and other inmate deaths and routinely name the prisoners who died; and

WHEREAS, the Department of the Attorney General also stated the HIPAA analysis depends on factors including how the prison system is structured and whether the prisons as a whole or only their medical units are covered by responsibilities under HIPAA; and

WHEREAS, the existing implementation of section 353C-8.5, Hawaii Revised Statutes, is not accomplishing Act 234's purpose; indeed, the discretion to withhold information under that law appears to be resulting in nondisclosure as the rule; now, therefore,

BE IT RESOLVED by the House of Representatives of the Thirtieth Legislature of the State of Hawaii, Regular Session of 2020, that this body requests the Legislative Reference Bureau, in consultation with the Department of the Attorney General, to conduct a study on the structure of Hawaii's correctional center system and related medical units as compared to those states that routinely release information on prisoner deaths, and recommend legislation or restructuring, if necessary, that would allow the State to obtain the information sought by section 353C-8.5, Hawaii Revised Statutes; and

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;

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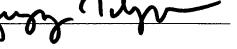
 (2) HIPAA requirements as they relate to correctional facility or community correctional center injuries and deaths of employees and deaths of inmates;

- (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 Resolution be transmitted to the Director of the Legislative Reference Bureau, Director of Public Safety, and Attorney General.

OFFERED BY:



FEB 1 8 2020