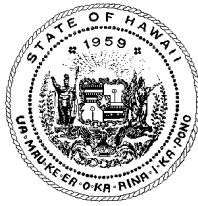


DAVID Y. IGE  
GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF PUBLIC SAFETY**

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Deputy Director  
Law Enforcement

No. \_\_\_\_\_

TESTIMONY ON HOUSE CONCURRENT RESOLUTION 46/ HOUSE RESOLUTION 31, REQUESTING THE LEGISLATIVE REFERENCE BUREAU, IN CONSULTATION WITH THE DEPARTMENT OF THE ATTORNEY GENERAL, TO CONDUCT A STUDY RELATIVE TO THE REPORTING REQUIREMENTS OF SECTION 353C-8.5, HAWAII REVISED STATUTES.

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

Friday, March 13, 2020; 10:00 a.m.  
State Capitol, Conference Room 430

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

The Department of Public Safety (PSD) offers the following comments on House Concurrent Resolution (HCR) 46 and House Resolution (HR) 31.

The Office of the Attorney General has provided further advice on the issue that HCR 46 and HR 31 seek to address, stating that the Department is free to disclose all of the information in reports to the Governor, President of the Senate, and Speaker of the House of Representatives, as required in Section 353C-8.5 (a), Hawaii Revised Statutes. Based on this advice, effectively immediately, PSD will be complying with the existing law, which would negate the need for the measure(s) currently under consideration.

Thank you for the opportunity to present this testimony.

# COMMUNITY ALLIANCE ON PRISONS

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**LATE**



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

Rep. Gregg Takayama, Chair

Rep. Cedric Gates, Vice Chair

Friday, March 13, 2020

10:00 AM - Room 430

### **STRONG OPPOSITION to HCR 46 - DEATH NOTIFICATION**

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 **JAMES BORLING SALAS, ASHLEY GREY, DAISY KASITATI, JOEY O'MALLEY, JESSICA FORTSON AND ALL THE PEOPLE WHO HAVE DIED UNDER THE "CARE AND CUSTODY" OF THE STATE**, including the eleven (11) people that we know of, who have died in the last six (6) months. We also remind the committee of the approximately 5,200 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety on any given day, and we are always mindful that more than 1,200 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 is opposed to this resolution that seeks to conduct a study of the reporting requirements regarding deaths of individuals who are in the care and custody of the state as well as those who work in correctional facilities.

THIS IS MIND-BOGGLING! It is obvious that the department of public safety has been violating the law by withholding the information mandated in section 353C-8.5, HRS.

Page 2, lines 17 - 26:

- |    |  |
|----|--|
| 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  |
| 22 |  |
| 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;            |

I have been a member of the University of Hawai'i's Institutional Review Board for twenty years. In all the research and guidance, I have reviewed over the years, I had never heard of HIPAA and 'prison structure' and prisons as medical facilities as a whole. I called people who work with HIPAA compliance and sent them the resolution and the statute. There are no HIPAA problems with releasing the information required by law. Yes, the director has discretion, but that doesn't mean COVER-UP.

The next WHEREAS about 'the existing implementation of section 353C-8.5' is ludicrous since there is no implementation – only cover-ups. Here is the law:

[https://www.capitol.hawaii.gov/hrscurrent/Vol07\\_Ch0346-0398/HRS0353C/HRS\\_0353C-0008\\_0005.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol07_Ch0346-0398/HRS0353C/HRS_0353C-0008_0005.htm)

**[\$353C-8.5] Correctional facility and community correctional center deaths; reporting.** (a) Within forty-eight hours, the director shall report to the governor, and the governor shall report to the legislature, the death of any:

- (1) 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 the grounds of a correctional facility or community correctional center where Hawaii inmates reside that causes the death of the employee; or
- (2) Hawaii inmate who is incarcerated in a state or contracted correctional facility.

(b) The report in subsection (a) shall include the following information:

- (1) The name of the decedent;
- (2) The gender and age of the decedent;
- (3) Whether the decedent was an inmate or an employee;
- (4) The location of the death or injury leading to the death;
- (5) The date and time of the death;
- (6) The cause of death; and
- (7) Any indication of sexual assault leading to the death;

provided that when the official cause of death has been determined, the director shall immediately report the official cause of death to the governor, and the governor shall immediately report the official cause of death to the legislature.

(c) Within thirty days of a death described in subsection (a), the director shall submit a report to the governor, and the governor shall submit the report to the legislature, of the clinical mortality review conducted in response to the death, including correctional actions to be taken.

(d) 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. [L 2019, c 234, §1]

Below are two examples of the reporting currently done.

**AUGUST 29, 2019:**

NAME	DISCLOSURE LIMITATIONS
EMPLOYEE OR INMATE	Inmate
GENDER	DISCLOSURE LIMITATIONS
AGE	DISCLOSURE LIMITATIONS
FACILITY/LOCATION OF DEATH/INJURY	Hospital
UNOFFICIAL OR PRONOUNCED DATE, TIME AND CAUSE OF DEATH REPORTED BY EMS OR HOSPITAL	As determined by Hospital staff, inmate passed on August 28, 2019, at 0142 hours, related to medical complications from cardiac arrest.
DATE AND TIME OF DEATH	As determined by the Department of the Medical Examiner, PENDING.
CAUSE OF DEATH	As determined by the Department of the Medical Examiner, PENDING.
ANY INDICATION OF SEX ASSAULT LEADING TO DEATH	NONE.

**FEBRUARY 26, 2020:**

NAME	DISCLOSURE LIMITATIONS
EMPLOYEE OR INMATE	Inmate.
GENDER: MALE OR FEMALE	Male.
AGE	80 years.
STATE EITHER FACILITY OR HOSPITAL FOR LOCATION OF DEATH OR INJURY	Halawa Correctional Facility.
DATE AND TIME OF DEATH	2/26/2020 at 0525 hours as reported by Hospice staff.
CAUSE OF DEATH	DISCLOSURE LIMITATIONS
ANY INDICATION OF SEXUAL ASSAULT LEADING TO DEATH	No.

These reports show that the department is reporting more, but not all, the information that is part of the law and in which the public has interest. As makers of the policy, you mandated that the department shall release certain information. It is obvious they are not doing so.

Why does the government spend so much time figuring out how to hide public information? Don't you see that trust in government is at an all-time low?

That is not going to happen. We are demanding democracy, accountability, transparency and access to public information. Many of us have friends and family who live and work in these facilities and we will NOT be silenced!

A study is ridiculous. This is just another stalling tactic to keep the misdeeds of the department from the public.

Community Alliance on Prisons urges the committee to defer this resolution that merely seeks to hide public information and keep the problems of this department out of public view.

Mahalo for this opportunity to testify.

Charlotte A. Carter-Yamauchi  
Director

Shawn K. Nakama  
First Assistant

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LEGISLATIVE REFERENCE BUREAU  
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State Capitol, Room 446  
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## Written Comments

### **HCR46 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**

Charlotte A. Carter-Yamauchi, Director  
Legislative Reference Bureau

Presented to the House Committee on Public Safety, Veterans, & Military Affairs

Friday, March 13, 2020, 10:00 a.m.  
Conference Room 430

Chair Takayama and Members of the Committee:

Good morning Chair Takayama and members of the Committee, my name is Charlotte Carter-Yamauchi and I am the Director of the Legislative Reference Bureau. Thank you for providing the opportunity to submit written comments on H.C.R. No. 46, 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.

The purpose of this measure is to request 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.

The measure further requests 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) A comparison of the structure of Hawaii's correctional system and related medical units with those states that routinely release information on prisoner deaths and, if available, prison employee deaths;
- (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
- (5) A report of findings and recommendations, including proposed legislation, to the Legislature no later than twenty days prior to the convening of the Regular Session of 2021.

The Bureau takes no position on the merits of this measure but submits the following comments for your consideration.

We have some concerns regarding the need for the Bureau's involvement in this requested endeavor. It seems, as indicated by the recitals contained in the measure, that the Department of the Attorney General is the agency that has already conducted significant research into this issue and seems to have an existing, comprehensive knowledge of the manner in which the Department of Public Safety is structured and operates, and how other states that release prisoners' medical information are legally and operationally structured to avoid noncompliance with federal law. The Bureau has no inherent expertise in this matter, and consequently, it seems that the Department of the Attorney General would be the more appropriate agency to conduct this research project on its own.

However, if the Committees decide to recommend the adoption of this measure and desire to keep the Bureau involved, we respectfully request that the measure be amended to have the Bureau assist with only with the drafting of any proposed legislation that may be a product of the Department of the Attorney General's findings and recommendations pursuant to this measure.

If the measure is amended to address the concerns noted above to have the Bureau assist with drafting proposed legislation, the Bureau believes that the services requested under such an amended measure would be manageable and that the Bureau will be able to provide the services in the time allotted; provided that the Bureau's interim workload is not adversely impacted by too many other studies or additional responsibilities, such as conducting studies, writing or finalizing other reports, drafting legislation, or any combination of these for the Legislature or for other state agencies, task forces, or working groups that may be requested or required under other legislative measures.

Thank you again for your consideration.