

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai‘i to the House Committee on
Corrections, Military, & Veterans**

February 10, 2021

H.B. No. 796: RELATING TO CORRECTIONAL FACILITY AND COMMUNITY CORRECTIONAL CENTER DEATHS

Chair Ohno, Vice Chair Ganaden, and Members of the Committee:

The Office of the Public Defender (“OPD) respectfully **supports** H.B. No. 796, which seeks to update reporting requirements by the Department of Public Safety (“PSD”) when employees and incarcerated people die at correctional facilities and community correctional centers.

The legislature passed Act 234 in 2019 to address the lack of reliable information about deaths which occurred at the State’s correctional facilities and community centers. The purpose of the law was to increase transparency and collect data by requiring the director of PSD to provide reports to the Governor and Legislature within 48 hours of a death at one of its facilities.

Despite the passage of this bill, there is still a lack of transparency and PSD is still withholding information surrounding deaths that occur at state correctional facilities and community centers. The 2019 law requires that the director’s report include, *inter alia*, the name, gender, age, and cause of death of the decedent. The 2019 report that PSD provided to the legislature, however, was almost entirely void of this required information.¹

¹ Associated Press. “New Hawaii Law Shows Information Withheld In Prison Deaths.” 6 Jan. 2020, <https://apnews.com/article/a94e376098741e76c821333f87c55fdc> (all details such as the deceased inmates’ names, ages and genders were redacted).

As recently as February 5, 2021, the Star Advertiser reported that 5 Halawa Correctional Facility inmates with coronavirus died in January.² No other information required under Act 234 was provided.

Not disclosing this information not only undermines public trust and accountability but precludes advocates and policymakers from identifying problematic practices and policies within the department that may be putting the health and safety of people in its care and custody at risk. For instance, the reporting of 68 deaths at the Hampton Roads Regional Jail in Virginia sparked a federal investigation that found, “The jail’s practice of subjecting prisoners with serious mental illness to prolonged periods of restrictive housing ... shows deliberate indifference to their health and safety.”³

For these reasons, the OPD supports the proposed amendments in H.B. No. 796 which makes it clear that disclosure of such information is not discretionary and if such information is claimed to be protected that the director cites the law it is relying upon to withhold disclosure. The OPD also supports requiring race and ancestry of the decedent to be included and making a copy of the report public and readily available to the family of the decedent and the press.

A jurisdiction to look to as a model is Nevada. The Nevada Department of Corrections posts the offender’s identification number, location and time of death, age of death, date of death, gender, admission date, county of commitment, ethnicity and a press release with a photo of the deceased and other information.⁴

Providing this information not only provides much needed answers to grieving families and loved ones but comprehensive data can help identify problems and find solutions to improve our system and keep us all safer.

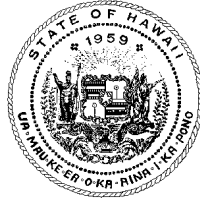
Thank you for the opportunity to provide testimony in this matter.

² Star Advertiser, “5 Halawa Correctional Facilities Inmates with Coronavirus Died in January, State Officials Say.” 5, Feb. 2021, <https://www.staradvertiser.com/2021/02/05/breaking-news/5-halawa-correctional-facility-inmates-with-coronavirus-died-in-january-state-officials-say/>.

³ United States Department of Justice Civil Rights Division at 27, <https://www.justice.gov/opa/press-release/file/1121221/download>.

⁴ State of Nevada Department of Corrections, https://doc.nv.gov/About/Statistics/Inmate_Mortality_Statistica/2020_Inmate_Deaths/.

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
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MAX N. OTANI
DIRECTOR

Maria C. Cook
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Tommy Johnson
Deputy Director
Corrections

Jordan Lowe
Deputy Director
Law Enforcement

No. _____

**TESTIMONY ON HOUSE BILL 796
RELATING TO CORRECTIONAL FACILITY AND COMMUNITY
CORRECTIONAL CENTER DEATHS.**
by
Max N. Otani, Director

House Committee on Corrections, Military, and Veterans
Representative Takashi Ohno, Chair
Representative Sonny Ganaden, Vice Chair

Wednesday, February 10, 2021; 10:00 a.m.
State Capitol, Via Video Conference

Chair Ohno, Vice Chair Ganaden, and Members of the Committee:

House Bill (HB) 796, seeks to amend Section 353C-8.5, Hawaii Revised Statutes, (HRS) by updating the Department of Public Safety's (PSD) requirements for reporting staff and inmate deaths occurring in correctional facilities and community correctional centers.

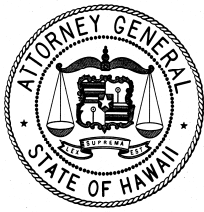
The measure also seeks to require the release of the decedent's race and ancestry in the report provided to the Governor within 48 hours of death. In practice, the Department makes every effort to notify the next of kin when a death has occurred, as a matter of respect and privacy for the decedent and his or her family. However, depending on the circumstances, that may not always be possible, and PSD must release the legally required information to the Governor within the 48-hour period whether the notification has been made or not. The Department believes the proposed requirement to release race and ancestry information in the initial 48-hour reporting to the Governor would further infringe upon the decedent's and the decedent's family's privacy and cannot be viewed as respectful in any way.

Further, the measure seeks to require the report to cite any authority relied upon by PSD in determining that information is protected by state or federal law, and requires a copy of the report to be made public and readily available to the family and news media upon the Governor's receipt of the report. The Department does not believe that the public interest outweighs the decedent's and the decedent's family's privacy rights.

PSD also notes that any death occurring in a correctional facility is thoroughly investigated, and during ongoing investigations, the disclosure of some information may interfere with the completion of the investigation. That being said, the most comprehensive source of information has always been the report of the Medical Examiner, and the Department respectfully suggests that that report be the source relied upon for definitive answers to deaths in correctional facilities.

For the reasons stated above, PSD strongly opposes this measure and respectfully requests HB 796 be held.

Thank you for the opportunity to submit testimony on HB 796.



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2021**

LATE

ON THE FOLLOWING MEASURE:

H.B. NO. 796, RELATING TO CORRECTIONAL FACILITY AND COMMUNITY CORRECTIONAL CENTER DEATHS.

BEFORE THE:

HOUSE COMMITTEE ON CORRECTIONS, MILITARY, AND VETERANS

DATE: Wednesday, February 10, 2021 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Via Videoconference

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**

(For more information, contact Lisa M. Itomura,
Deputy Attorney General, at 587-2978)

Chair Ohno and Members of the Committee:

The Department of the Attorney General submits the following comments on this bill.

This bill amends section 353C-8.5, Hawaii Revised Statutes (HRS), which requires the director of the Department of Public Safety (PSD) to inform the Governor within 48 hours of the death or injury causing a death of any PSD employee occurring on the grounds of a correctional facility or community correctional center and the death of any inmate in a state or private correctional facility. The Governor must then inform the Legislature of the death. The bill amends section 353C-8.5, HRS, to require PSD to also report the deaths of PSD employees while on duty at a correctional facility or community correctional center, and the deaths of inmates incarcerated at community correctional centers. PSD must also inform the Governor of the location where the death or injury leading to death occurred, the race and ancestry of the decedent, and, if an inmate died, whether the death was caused by an injury sustained while the inmate was incarcerated. The bill also requires the Director of PSD to specify the state or federal law relied upon if information in the death report is withheld, and after the Governor receives the report, to make a copy of the death report “public and readily available” to the family of the decedent and the press.

In addition to the protections set by the Health Information Portability and Accountability Act (HIPAA), deceased inmates and their families have privacy rights protected under article I, section 6, of the Hawai'i Constitution, which states:

The right of the people to privacy is recognized and shall not be infringed without the showing of a compelling state interest. The legislature shall take affirmative steps to implement this right.

An inmate's privacy rights also survive his or her death. See Office of Information Practices (OIP) Opinion Letter No. 03-19, pp. 12-14 (citing developments in the law since its previous OIP Op. Ltr. No. 90-18). These rights include "reputational interests and family-related privacy interests." See, e.g., OIP Op. Ltr. No. 03-19, pp. 12-14. Therefore, in the absence of consent from the decedent's family or authorized representative, information contained in the death reports can only be released if the agency (here PSD) balances the passage of time since death against the sensitivity of the information involved to determine the strength of the person's privacy right. PSD must then balance the privacy interest against the public interest in disclosure, and only if the public interest outweighs the privacy interest can the information be disclosed. OIP Op. Ltr. No. 03-19, p. 14.

It is unclear from this bill, however, what compelling public interests are served by making the death reports covered by section 353C-8.5 "readily available" to the press. To address this constitutional concern, we recommend amending the bill to identify expressly the compelling public interests served by the public release of the death reports.

Thank you for the opportunity to provide these comments.

COUNTY COUNCIL

Arryl Kaneshiro, Chair
Mason K. Chock, Vice Chair
Bernard P. Carvalho, Jr.
Felicia Cowden
Bill DeCosta
Luke A. Evslin
KipuKai Kualii



OFFICE OF THE COUNTY CLERK

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Council Services Division
4396 Rice Street, Suite 209
Lihu'e, Kaua'i, Hawai'i 96766

February 9, 2021

**TESTIMONY OF FELICIA COWDEN,
COUNCILMEMBER, KAUAI COUNTY COUNCIL
ON**

**HB 796, RELATING TO CORRECTIONAL FACILITY AND COMMUNITY
CORRECTIONAL CENTER DEATHS**

House Committee on Corrections, Military, & Veterans

Wednesday, February 10, 2021

10:00 a.m.

Via Videoconference
Conference Room 430

Dear Chair Ohno and Members of the Committee:

Thank you for this opportunity to provide testimony in support of HB 796, Relating to Correctional Facility and Community Correctional Center Deaths. My testimony is submitted in my individual capacity as a Member of the Kaua'i County Council.

HB 796 updates the reporting requirements by the Department of Public Safety for deaths occurring at correctional facilities and community correctional centers, and requires race and ancestry of the decedent to be included in the report. The availability of information to family members of the decedent is an important, and sometimes comforting step of a person's grieving process. It is also a critical layer in the Department of Public Safety's accountability to the municipal government and strengthens public trust. Kaua'i Friends and Family for the Incarcerated held this as an essential step as a result of lack of information access to the family of incarcerated deceased Greg Silva, of whom I held focus for over two years to achieve this goal.

Thank you again for this opportunity to provide testimony. Should you have any questions, please feel free to contact me or Council Services Staff at (808) 241-4188 or via E-mail to cokcouncil@kauai.gov.

Sincerely,

FELICIA COWDEN
Councilmember, Kaua'i County Council

AMK:mn

COMMUNITY ALLIANCE ON PRISONS

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

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



COMMITTEE ON CORRECTIONS, MILITARY AND VETERANS

Rep. Takashi Ohno, Chair

Rep. Sonny Ganaden, Vice Chair

Wednesday, February 10, 2021

10:00 AM

STRONG SUPPORT FOR HB 796 - DEATH NOTIFICATION TRANSPARENCY

Aloha Chair Ohno, Vice Chair Ganaden, 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 more than 4,100 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 1,000 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.

Mahalo nui for scheduling this bill that is so important to the community. Community Alliance on Prisons has been working with families over the decades who have lost their loved ones who were incarcerated.

Act 234 was passed in 2019 because there was little to no reporting on the deaths of people in state custody. In speaking with reports who have been on the beat for a long time, I learned that in the old days, there was reporting of these deaths, and then they become more scarce and hard to find. This bill seeks to reaffirm and strengthen the law.

I have represented Community Alliance on Prisons as the Prisoner Advocate on the UH Institutional Review Board for 20 years. HIPAA is often discussed at meetings and just to be completely accurate, I asked if HIPAA would prevent the notification of the death of an incarcerated person. NO! HIPAA is about protecting medical privacy. The reporting in this bill is about the death of a person and adds 'race or ancestry' as well as other clarifying information, but there is no disclosure of health information, which is protected by HIPAA for 50 years. <https://www.hhs.gov/hipaa/for-professionals/security/laws-regulations/index.html>

An article about Act 234 in the Miami Herald quoted the special assistant to the Attorney General: “*Krishna Jayaram, special assistant to Attorney General Clare Connors, said much of the information called for in the new law is withheld because the public safety department is subject to the federal Health Insurance Portability and Accountability Act, which protects private health care information.*”

This statement raises questions:

1. ***Is Hawai`i the only state that is subject to the Health Insurance Portability and Accountability Act?***

ANSWER # 1: Of course not, a federal law applies to all, which is why state Corrections Departments in Arizona and Nevada report information regarding deaths on their websites. The public has a right to know what happens in publicly-funded facilities.

The Arizona Department of Corrections, Rehabilitation, & Reentry has a web page for death notifications <https://corrections.az.gov/inmate-death-notifications> and they issue press releases like this latest one:

Inmate Death Notification - Charles A. Trask
February 5, 2021

FLORENCE (Friday, February 5, 2021) - Inmate Charles A. Trask, 75, ADCRR #188597, died on February 4 at Banner University Medical Center. He was transported to the hospital on January 6.

Trask was admitted to ADCRR custody in 2004 after he was sentenced out of Maricopa County for the molestation of a child.

His assigned housing location was ASPC-Eyman.

All inmate deaths are investigated in consultation with the county medical examiner’s office.

The Nevada Department of Corrections reports the person’s inmate number, name, location at time of death, date of death, gender, admit date, county, and ethnicity.

Why can’t Hawai`i be as transparent?

https://doc.nv.gov/About/Statistics/Inmate_Mortality_Statistica/2020_Inmate_Deaths/

Nevada Department of Corrections Public Information Office: 775-977-5530

Acting PIO W.C. “Bill” Quenga Cell: 775-350-0037

Press Release

For Immediate Release: January 6, 2021

The Nevada Department of Corrections (NDOC) reports that on Thursday, December 31, 2020 at approximately 6:15 a.m., Offender Steven Abram, #13038 died at Northern Nevada Correctional Center in Carson City, Nevada. Abram a 65-year-old male, was a U.S. citizen and Clark County commit serving Life for First Degree Murder. Abram arrived at the NDOC on July 28, 1977. An autopsy will be scheduled per NRS 209.3815. Next-of-kin has been notified.

###

2. *Why did Hawai'i stop reporting this information?* Arrests, escapes, and other incidents are reported. Why then is the public, whose hard-earned tax dollars fund these public institutions, not notified of deaths? Why is this information hidden from the public now, when it used to be reported? What changed?

ANSWER #2: In the dearth of information, the answer lives. We can only assume that the state does not want the public to know that so many in their care and custody have died.

Newspapers report the arrests, convictions, and the name of people who escape, so it is puzzling that the department, who used to report the names of people who died while in their 'care and custody' stopped reporting this information.

The Legislature must demand transparency, accountability and access to information about deaths in taxpayer-funded public institutions.

Community Alliance on Prisons implores the committee to ensure that deaths, suicides, and other incidents are reported to the public who pay for the safety and security of those who live and work in our correctional facilities.

In the spirit of accountability and transparency, we humbly ask that you pass this measure.

Mahalo for this opportunity to testify.

*"It is not only what we do, but also what we do not do,
for which we are accountable."*

Moliere

LATE

**Testimony on HB796
February 8, 2021
House Committee on Corrections, Military & Veterans (CMV), State of Hawaii**

Aloha Honored Members of the House CMV Committee


Kokua Kalihi Valley fully supports HB796, Relating to Correctional Facility and Community Correctional Center Deaths. HB796 requires timely reporting on corrections employee and inmate deaths, including basic demographic data (such as race and ancestry) and time, location, and cause of death.

Many of our Kalihi subcommunities are over-represented in our prison systems due to significant economic, social, and cultural barriers to equity and empowerment. Prisoners are among our beloved friends and family members. Transparency is essential for family members, advocacy groups and community leaders to fully and supportively partner with the State in developing a just, humane and caring rehabilitation system that aligns with Hawaii's unique cultural and community values and the best practices in community, social and human service.

Thank you.



Dr. David Derauf
Executive Director
Kokua Kalihi Valley
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Honolulu, Hawaii 96819
808 791 9400
dderauf@kkv.net



Michael Epp
Special Projects Coordinator
Kokua Kalihi Valley
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HB-796

Submitted on: 2/8/2021 11:19:41 AM

Testimony for CMV on 2/10/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Raelyn Reyno Yeomans	Individual	Support	No

Comments:

Strong Support! Transparency and accountability is crucial.

HB-796

Submitted on: 2/8/2021 12:34:01 PM

Testimony for CMV on 2/10/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Andrea Quinn	Individual	Oppose	No

Comments:

Dear Honorable Committee Members,

Please support HB156.

Thank you,

Andrea Quinn

HB-796

Submitted on: 2/8/2021 1:50:19 PM

Testimony for CMV on 2/10/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jennifer Noelani Ahia	Individual	Support	No

Comments:

I support this bill!

HB-796

Submitted on: 2/8/2021 1:39:36 PM

Testimony for CMV on 2/10/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
wendy hudson	Individual	Support	No

Comments:

Aloha- I support this bill because we need transparency and accountability from PSD. I am a criminal defense attorney and have seen client's families suffer because they can't get this information about a loved one when they've died in custody. This is a no brainer.

HB-796

Submitted on: 2/8/2021 2:46:17 PM

Testimony for CMV on 2/10/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Daphne Barbee	Individual	Support	No

Comments:

Aloha Committee members,

My name is Daphne Barbee. I am an attorney in private practice. I strongly support HB 796. This bill will create transparency about the deaths in prison for both incarcerated persons and guards. This should be public information. I would suggest adding "assault" along with sexual assault because I have heard of inmates dying because of assaults. These are human beings, not merely statistics. Numbers are easy to forget and overlook but saying their names puts humanity identity over the mask of invisibility. Please pass this bill. Thank you.

HB-796

Submitted on: 2/8/2021 3:08:32 PM

Testimony for CMV on 2/10/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Carolyn Eaton	Individual	Support	No

Comments:

Aloha, my name is Carolyn Eaton and I strongly support HB 796. Transparency and accountability must be the watchwords of The Department of Public Safety, as with all administrators of State government. The people of Hawai'i deserve no less.

HB-796

Submitted on: 2/8/2021 6:01:07 PM

Testimony for CMV on 2/10/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Courtney Mrowczynski	Individual	Support	No

Comments:

I strongly **support** HB796. Act 234 was passed in 2019, which mandates that this information be released. Transparency and accountability from our correctional facilities are absolutely essential.

HB-796

Submitted on: 2/8/2021 6:56:10 PM

Testimony for CMV on 2/10/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Marissa Baptista	Individual	Support	No

Comments:

I support HB796!!

HB-796

Submitted on: 2/8/2021 11:15:40 PM

Testimony for CMV on 2/10/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Carrie Ann Shirota	Individual	Support	No

Comments:

Dear Chair Ohno, Vice Chair Ganaden and Committee Members:

Please pass HB 796 that seeks to update reporting requirements by PSD when employees and incarcerated persons die in our jails and prisons. This bill also requires that the race and ancestry of the decedent is disclosed, and places the burden on the Department of Public Safety to cite to an authority in order to claim that the information contained in the report is protected by state or federal law. Finally, this bill would require the report to be available to the public upon the Governor's receipt of the report.

Why is this bill important and necessary? Jails and prisons are our most closed institutions, and Hawai'i has a legal duty to provide for the health and safety of incarcerated persons under its jurisdiction.

This bill would provide reporting standards, consistent with other jurisdictions, relating to deaths in custody and would contribute to transparency and accountability. Please pass HB796.

Respectfully submitted,

Carrie Ann Shirota, Esq.

HB-796

Submitted on: 2/9/2021 5:43:04 AM

Testimony for CMV on 2/10/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Nathan Yuen	Individual	Support	No

Comments:

I strongly support HB 796. The public deserves timely notification if and how people die in state custody. We cannot address problems, Institutional abuse cannot be monitored without transparency. I strong support HB 796.

LATE

HB-796

Submitted on: 2/9/2021 10:40:37 AM
Testimony for CMV on 2/10/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Carla Allison	Individual	Support	No

Comments:

My name is Carla Allison and I strongly support HB796 because it will help bring transparency and accountability to Hawaii's PSD. Other states, such as Nevada and Arizona, operating under the same federal law, do provide information on their websites. Previously Hawaii did release this information. Restoring reporting is needed to restore trust. Please support HB796. Thank you.

HB-796

Submitted on: 2/9/2021 4:49:58 PM

Testimony for CMV on 2/10/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Dante Carpenter	Individual	Support	No

Comments:

Chair Takashi Ohno & Committee Members:

Aloha Kakou. My name is Dante Keala Carpenter, Member-Advisor to 'Ohana H'opakele, a restorative justice advocate. I am in support of this measure which will make public the names of employees as well as incarcerated individuals in Hawai'i state or other facilities hired by PSD.

'Ohana Ho'opakele has advocated for alternatives to prisons in the form of pu'uhonua for pa'ahau for several years. *Pu'uhonua* is defined as a "sanctuary, refuge, asylum or place of peace & safety" for *pa'ahau* - prisoners, convicts and/or inmates.

Mahalo a nui loa. Dante Carpenter

HB-796

Submitted on: 2/9/2021 5:19:34 PM

Testimony for CMV on 2/10/2021 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Diana Bethel	Individual	Support	No

Comments:

Aloha Chair Ohno, Vice Chair Ganaden, and Members of the Committee,

I am writing in strong support of HB 796 which updates the reporting requirements for the Department of Public Safety to report deaths of inmates or employees - requiring inclusion of race and ancestry data, citation of authority relied on by the Department in the case of nondisclosure, and public and family access to the report upon the Governor's receipt of the report.

The public has the right to know when as well as how and why someone in a correctional facility, either an inmate or employee, dies. When the State takes custody of a person in a correctional facility, it is responsible for their health and safety.

Ultimately, we, the taxpayers, bear the responsibility for oversight of what happens inside the walls of our institutions. That's why transparency and accountability are so essential to the operations of the Department of Public Safety. When the Department refuses to release the names of the deceased, it is a cause for concern. Transparency and accountability create trust. That is what has been missing for so long from the Department of Public Safety.

If the new leadership of the Department of Public Safety wants to restore trust in the Department, they need to earn it. A good first step is to provide this critical information to the public as well as the family in a timely manner.

Please pass HB 796. Mahalo for your consideration.

Diana Bethel, Honolulu