

SCPW-20-0000200 and SCPW-20-0000213

IN THE SUPREME COURT OF THE STATE OF HAWAII

Electronically Filed
Supreme Court
SCPW-20-0000213
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SCPW-20-0000200

OFFICE OF THE PUBLIC DEFENDER, Petitioner,

vs.

CLARE E. CONNORS, Attorney General of the State of Hawai‘i;
DONALD S. GUZMAN, Prosecuting Attorney, County of Maui;
MITCHELL D. ROTH, Prosecuting Attorney, County of Hawai‘i;
JUSTIN F. KOLLAR, Prosecuting Attorney, County of Kaua‘i;
DWIGHT K. NADAMOTO, Acting Prosecuting Attorney, City and County of Honolulu,
Respondents.

SCPW-20-0000213

STATE OF HAWAII OFFICE OF THE PUBLIC DEFENDER, Petitioner,

vs.

DAVID Y. IGE, Governor, State of Hawai‘i;
NOLAN P. ESPINDA, Director, State of Hawai‘i Department of Public Safety;
EDMUND (FRED) K.B. HYUN, Chairperson, Hawai‘i Paroling Authority;
Respondents.

**FOURTH SUMMARY REPORT AND RECOMMENDATIONS
OF THE SPECIAL MASTER**

Exhibits “1” – “13”



Hawai'i



BY EMAIL

May 12, 2020

The Honorable Daniel R. Foley (ret.)
Special Master
JudgeFoley2000@hotmail.com

Re: SCPW-20-0000200 & SCPW-20-0000213 – Reentry Planning for People Returning to the Community From Hawai'i Jails and Prisons During The COVID-19 Pandemic

Dear Judge Foley:

The ACLU of Hawai'i Foundation (“**ACLU of Hawai'i**”) and Lawyers for Equal Justice (“**LEJ**”) (together, “**Nonprofit Amici**”) write to express their concerns regarding the failure of the Department of Public Safety (“**DPS**”) to meet its statutory obligations to coordinate and provide reentry planning for people returning to the community from Hawai'i jails and prisons. Such reentry planning is important under normal circumstances, but it is *crucial* during the present COVID-19 pandemic. Remarkably, DPS has taken the position that it has no responsibility at all for those released because of the pandemic.

In recognition of reentry's critical role, private citizens and community groups have filled the gap left by DPS. But there are limits to what they can do without support and coordination with DPS. Thus, Nonprofit Amici request that the Special Master recommend that the Court enter an order requiring DPS to (1) immediately provide reports on the specific steps the Reentry Coordination Office (“**RCO**”) has taken to comply with statutory mandates during the process initiated by the above-captioned proceeding, and (2) take other certain steps regarding reentry, both to come into compliance with its statutory mandates as well as to provide information to and assist those in the community who are supporting people reentering society from jail and prison during the pandemic.

EXHIBIT 12

The Importance of Reentry

Reentry planning is critically important in ensuring people successfully reenter the community. Successful reentry methods give people exiting jails and prisons chances to support not only themselves but their families, which reduces recidivism and improves public safety.¹ Studies have shown that reentry methods centered around securing post-incarceration employment,² treatment,³ education,⁴ and housing⁵ all help people make a successful transition. As 95% of all incarcerated people eventually return to the community,⁶ using evidence-based rehabilitation strategies through reentry planning must be a priority.

Such reentry planning and support is even more critical during the present pandemic. COVID-19 has devastated our national economy, with more than 33 million Americans filing for unemployment benefits.⁷ Unfortunately, Hawai'i has in

¹ “Studies show that reentry initiatives that combine work training and placement with counseling and housing assistance can reduce recidivism rates.” Nathan James, *Offender Reentry: Correctional Statistics, Reintegration into the Community, and Recidivism* Congressional Research Service (2015), <https://fas.org/sgp/crs/misc/RL34287.pdf>.

² *Id.* at 14. (“Released prisoners frequently identify employment as one of the most important factors in their efforts to stay crime-free after incarceration.”).

³ *Id.* (noting 16 studies “that evaluated the effectiveness of [therapeutic community] substance abuse treatment” and that “most indicated that program participation had a positive effect on both recidivism and substance abuse”).

⁴ *Id.* at 14-15 (“[P]ost-secondary education ha[s] a strong effect on reducing recidivism.”); see also Vera Institute of Justice, *Investing in Futures: Economic and Fiscal Benefits to Postsecondary Education in Prison* (Jan. 2019), https://storage.googleapis.com/vera-web-assets/downloads/Publications/investing-in-futures-education-in-prison/legacy_downloads/investing-in-futures-factsheet.pdf (“Expanding access to postsecondary education in prison is likely to reduce recidivism rates, resulting in a decrease in incarceration costs across states of \$365.8 million per year.”).

⁵ James, *supra* note 1 at 15; see also Los Angeles County Office of Diversion and Reentry’s Supportive Housing Program, *A Study of Participants’ Housing Stability and New Felony Convictions* (2009), https://www.rand.org/pubs/research_reports/RR3232.html (“LA County ODR’s supportive housing program improved housing stability and reduced criminal justice involvement. . . . 86% had no new felony convictions after 12 months.”)

⁶ Timothy Hughes and Doris James Wilson, *Reentry Trends in the United States*, U.S. Dep’t of Justice, Office of Justice Programs, Bureau of Justice Statistics (last revised May 12, 2020), <http://www.bjs.gov/content/reentry/reentry.cfm>.

⁷ Nigel Chiwaya & Jiachuan Wu, *The Coronavirus Has Destroyed The Job Market in Every State: See the per-state jobless numbers and how they’ve changed*, ABC News (May 7, 2020),

some senses had it worst: the state unemployment rate has jumped from under 3% to 37%—from well below the national average to well above it—in two months.⁸ With COVID-19's impact on the job market, people leaving incarceration are particularly vulnerable to economic and housing insecurity. In this trying time, it is more important than ever that DPS does everything in its power to help ensure a seamless and successful reentry process.

DPS's Mandates Regarding Reentry Planning

Given reentry's importance, it is not surprising that the legislature has passed laws *requiring* DPS to provide comprehensive reentry planning and support to people reentering society from jails and prisons. Specifically, DPS “shall develop a comprehensive and effective offender reentry system plan.”⁹ In addition to a system-wide plan, DPS “shall develop comprehensive reentry plans . . . for individuals exiting correctional facilities,” and such plans “shall include . . . transitional programs to address the needs of individuals exiting the correctional system.”¹⁰ DPS also is responsible for developing key performance indicators—including “the number of individuals who exit jail or prison with a reentry plan”¹¹—and reporting them annually.¹² Finally, in recognition of the importance of identification documents to successful reentry, DPS has mandatory obligations to “issue civil identification cards” to persons about to reenter the community and to assist each person in obtaining “birth certificate, social security card, and any other relevant identification documents.”¹³

The responsibility to oversee the development and implementation of the comprehensive offender reentry system falls on the “offender reentry office” within

<https://www.nbcnews.com/business/economy/unemployment-claims-state-see-how-covid-19-has-destroyed-job-n1183686>.

⁸ Lynn Kawano, *Unemployment in Hawaii Tops 37% as Coronavirus Shutdown Continues*, Hawaii News Now (updated Apr. 20, 2020), <https://www.hawaiinewsnow.com/2020/04/16/unemployment-hawaii-tops-coronavirus-shutdown-continues>.

⁹⁹ Haw. Rev. Stat. § 353H-3(a).

¹⁰ Haw. Rev. Stat. § 353H-3(b).

¹¹ Haw. Rev. Stat. § 353H-8(b)(2).

¹² Haw. Rev. Stat. § 353H-9.

¹³ Haw. Rev. Stat. § 353H-32.

DPS,¹⁴ which today is called the “Reentry Coordination Office” or “RCO.” The RCO’s other statutory mandates include ensuring that each person’s “reentry needs . . . are being evaluated and met in an effective and appropriate manner” and working closely and collaborating with community partners. According to DPS’s 2019 “Comprehensive Offender Reentry Plan,” (“CORP”) the RCO’s goal is to “increase a person’s potential for successful reentry into the community.”¹⁵ This requires, among other things, “focusing on creating a continuum of care for an offender’s successful release” and “collaborat[ing] with community stakeholders to bridge the gap in services.”¹⁶

Separately, the Hawai‘i legislature established a Reentry Commission to “work with [DPS] in monitoring and reviewing the comprehensive offender reentry program.”¹⁷ In 2017, the Reentry Commission published its “Strategic Plan: 2017 – 2020,” which affirmed that its “Purpose & Mandate” is to “ensure the implementation of the comprehensive offender reentry system.”¹⁸ One of the six areas the Reentry Commission identified as a “strategic focus” is “community partnerships,” for which the stated plan is to “develop community partnership opportunities to increase employment & housing options” for people reentering the community.¹⁹ In 2019, the legislature consolidated the Reentry Commission with the Corrections Population Management Commission to form the Oversight Commission, which received “[a]ll rights, powers, functions, and duties of the [R]eentry [C]ommission.”²⁰

¹⁴ Haw. Rev. Stat. § 353H-2.5.

¹⁵ *Comprehensive Offender Reentry Plan (CORP)*, State of Hawaii Dep’t of Public Safety (2019), at 12, <https://dps.hawaii.gov/wp-content/uploads/2019/01/Comprehensive-Reentry-Plan-190115.pdf>.

¹⁶ *Id.*

¹⁷ Act 24, First Special Session 2009, § 3, https://www.capitol.hawaii.gov/slh/Years/SLH2009/SLH2009SS_Act24.pdf.

¹⁸ Reentry Commission, *Strategic Plan: 2017 – 2020*, State of Hawaii Dep’t of Public Safety (2017), at 5, <https://dps.hawaii.gov/wp-content/uploads/2018/01/Reentry-Commission-Strategic-Plan-Final.11.17.pdf>.

¹⁹ *Id.* at 12.

²⁰ Act 179, Session Laws of Hawaii 2019, §§ 1, 6, https://www.capitol.hawaii.gov/session2019/bills/GM1281_PDF.

DPS’s Failure To Meet Its Mandates During the Present Pandemic

Despite these clear mandates regarding reentry, DPS appears to be failing to meet them. As just one example, even though the Legislature passed a law in 2017 requiring DPS to provide civil identification documents to people reentering the community,²¹ between November 2018 and October 2019, 56% of all people exiting jails and 46% of all people exiting prisons statewide left without state ID cards.²² The numbers were just as abysmal for birth certificates and social security cards.²³ That was before the pandemic began; there is no evidence that DPS has improved in meeting its mandate after COVID-19 broke out.

Further, while the past weeks have seen hundreds of people reentering the community from jails and prisons, the DPS entity primarily responsible for reentry—*i.e.*, the RCO—has been conspicuously absent throughout. When community advocates inquired with DPS senior management about the steps DPS has taken to provide reentry support and planning during the pandemic, DPS’s responses suggested it is doing the bare minimum. For example, on April 28, 2020, a member of the Emergency Reentry Project (“EREP”)²⁴ wrote to “ask what the Reentry Coordination Office has been doing to assist in the reentry process for those who have been released due to the novel coronavirus pandemic” and to “discuss how [DPS] can work with the Emergency Reentry Project to find safe housing for people released during the novel coronavirus pandemic.”²⁵ On May 1, 2020, Director Espinda provided a vague, generic response that, instead of welcoming an opportunity to collaborate with the community around a critical component of

²¹ Haw. Rev. Stat. § 353H-32.

²² See **Attachment A** (May 11, 2020 letter from ACLU of Hawai‘i re: “Department of Public Safety’s Responsibility to Obtain Civil Identification Documents”), at 3.

²³ See *id.* (for jails, 55% exited without birth certificate and 51% exited without social security card; for prisons, 39% exited without birth certificate and 46% exited without social security card).

²⁴ The EREP is a coalition of community advocates and stakeholders that formed organically soon after the pandemic began. The EREP is focused on providing reentry support to people who are reentering society from Hawai‘i jails and prisons. The EREP includes representatives from the Office of the Public Defender, ACLU of Hawai‘i, Office of Hawaiian Affairs, Hawai‘i Innocence Project, Medical-Legal Partnership for Children, Community Alliance on Prisons, Hawai‘i Justice Coalition, Law Enforcement Assistance Diversion Program, Hawai‘i Health and Harm Reduction Center, and the Hawaii Correctional Systems Oversight Commission.

²⁵ See **Attachment B** (April 28, 2020 and May 1, 2020 correspondence between Kat Brady and Nolan Espinda re: Emergency Reentry Project), at 1-2.

reentry, recommended that the EREP—rather than DPS—“partner with the State’s Homeless Coordinator . . . to provide alternative transitional housing . . . for those inmates who risk becoming homeless upon release from PSD facilities.”^{26 27}

Even more troublingly, DPS has explicitly taken the position that it is not responsible for anyone who is a “COVID release”—*i.e.*, anyone who exits a DPS correctional facility because of the process initiated by the above-captioned proceeding. Specifically, on May 6, 2020, a representative of the EREP spoke via phone to DPS Deputy Director for Corrections Shari Kimoto regarding RCO’s role in supporting reentry efforts during the pandemic. According to Deputy Director Kimoto, who oversees the RCO, “COVID releases” are not the responsibility of the RCO or DPS; instead, those were court-ordered releases and, in any event, it was the *Office of the Public Defender’s* responsibility to make sure that people reentering society had what they needed to make a successful transition.

These recent interactions clarify that DPS holds an exceedingly narrow view of its responsibilities to provide reentry support and ensure public safety during this pandemic. But contrary to DPS’s view, neither Hawai‘i law nor any of DPS’s own administrative documents carve out any exceptions that let DPS idle on the sidelines while the rest of the community scrambles to support people who urgently need our support.

Private Efforts to Support Reentry

In light of DPS’s failure to provide adequate reentry support, private citizens and other community groups have stepped in to fill the gap left by DPS. The EREP is one of those groups. So far, EREP has secured over \$35,000 in grant money to buy cell phones for people reentering society so that they can stay in touch with relevant parties in the criminal legal process and, just as importantly, so that they can reconnect with family and friends, make calls to begin securing housing, employment, and benefits, and take other steps to put their lives back together. The EREP has also identified and brokered provisional agreements with several hotels (on at least Oahu and Maui) who are willing to provide short-term transitional

²⁶ *See id.* at 3.

²⁷ Ironically, the following is one of the “Guiding Principles” outlined in the CORP: “A reentry coalition shall be established to promote partnerships and collaboration that support positive change and successful offender reentry.” *CORP* at 18.

housing for people reentering society. Many other community groups similarly stand ready to collaborate with DPS to ensure successful reentry.²⁸

While these non-governmental groups have made meaningful progress, the reality is that they need cooperation and support from DPS to be most effective, and to bridge the gap in a way that maintains a truly unbroken continuum of care. But when DPS drops a formerly incarcerated person outside correctional facility gates—without coordinating in advance a warm hand-off to a family member, transition program, or stable housing—DPS is in essence setting that person up to fail at reentry. Any resulting failure is as much DPS's responsibility as it is that person's.

Requests

Fortunately, there are commonsense steps that DPS can—and must—take, both to comply with Chapter 353H of the Hawaii Revised Statutes and to ensure that people reentering the community are successfully able to get back on their feet. Nonprofit Amici specifically request that the Special Master make the following recommendations to the Court:

- DPS should immediately file a report that: (1) outlines the specific actions the DPS and the RCO have taken to comply with their statutory mandates during the process initiated by the above-captioned proceeding, (2) outlines the current budgets for the RCO, to include how DPS has been spending money relating to reentry on a monthly basis during calendar year 2020, (3) states the number and proportion of people exiting jails and prisons for whom “reentry plans” have been developed on a monthly basis during calendar year 2020, and (4) includes a sample “reentry plan.”
- DPS should immediately begin (1) providing information about reentry-related resources to people who are exiting or imminently exiting DPS facilities, and (2) meaningfully assisting them in accessing such resources.

²⁸ Some of the many organizations that provide reentry support or are reentry-adjacent include: Hawai'i Friends of Restorative Justice, Waikiki Health Center, Pacific Justice and Reconciliation Center, YWCA, Habilitat, First LAP, Maui Economic Opportunity, Aloha House, Mental Health Kokua, Catholic Charities, Hawai'i Island Going Home Consortium, and Men of PA'A.

- DPS should immediately begin communicating and collaborating with community partners, including the EREP, in good faith to create and facilitate a seamless continuum of care.
- DPS should immediately begin coordinating with Hawai'i Health & Harm Reduction Center (which will manage the cell phone grant obtained by the EREP) to provide cell phones, and other support, to people exiting or imminently exiting DPS facilities.²⁹
- DPS should immediately expedite plans to provide essential items for reentry, including identification documents, bus passes, gate money, clothing, and food cards.

Conclusion

For the above reasons, Nonprofit Amici request that the Special Master and the Court consider implementing recommendations that will both meaningfully improve the lives of those who are exiting DPS facilities amid the pandemic, and ensure that DPS takes the steps needed to come into compliance with its mandates.

Sincerely yours,



Wookie Kim
Staff Attorney
ACLU of Hawai'i



Mateo Caballero
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Lawyers for Equal Justice

Counsel for Nonprofit Amici

Enclosures: Attachment A (May 11, 2020 letter from ACLU of Hawai'i re: "Department of Public Safety's Responsibility to Obtain Civil Identification Documents")

Attachment B (April 28, 2020 and May 1, 2020 correspondence between Kat Brady and Nolan Espinda re: Emergency Reentry Project)

²⁹ Starting May 18, 2020, people can call HHHRC at 808-521-2437 and ask for the reentry phone or reentry navigation program.



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Hawai'i

BY EMAIL

May 11, 2020

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**Re: Department of Public Safety's Responsibility to Obtain Civil
Identification Documents**

Dear Director Espinda, Deputy Director Kimoto, Officer Lortz, Co-Chair Hansen, and Co-Chair Bissen:

ATTACHMENT A

Letter re: Department of Public Safety's Responsibility to Obtain Civil
Identification Documents
May 11, 2020
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It has come to the attention of the ACLU of Hawai'i Foundation (“**ACLU of Hawai'i**”) that the Department of Public Safety (“**DPS**”) has struggled to comply with its mandates under § 353H-32 of the Hawaii Revised Statutes to provide people with civil identification documents before being released from Hawai'i jails and prisons. As explained below, civil identification documents are essential to successful reintegration of incarcerated community members after being released. During the present COVID-19 pandemic, the failure to provide such documents puts these people and their families at risk, and makes it even harder for them to get back on their feet. We urge you to comply with the law and assist people in obtaining their identification documents as they are being released.

Section 353H-32 of the Hawaii Revised Statutes, which concerns “offender reentry” and “identification documents,” became law in 2017. DPS’s mandate under this statutory section is clear. DPS “shall issue civil identification cards” for people who are imminently reentering society.¹ Additionally, DPS “shall assist” inmates in “obtain[ing] the inmate’s birth certificate, social security card, and any other relevant identification documents necessary for the inmate to transition into the workforce.”²

More than three years later, DPS has not met this mandate, both for people leaving jails and for people leaving prisons.³ In 2019, DPS reported that more than half of all people exiting from jails statewide did not have civil identification

¹ Haw. Rev. Stat. § 353H-32.

² *Id.*

³ The Native Hawaiian Justice Task Force (NHJTF) met with many Native Hawaiian pa‘ahao at Hālawā Correctional Facility and prepared a report to formulate policies and procedures to eliminate the disproportionate representation of Native Hawaiians in the criminal justice system. The report ultimately informed their 2017 testimony in support of SB1039 SD2 (the identification documentation bill). NHJTF confirmed that inmates released from state correctional institutions often do not have any form of official documentation necessary to apply for employment, find housing, and comply with parole conditions. Conversations with local service providers have confirmed that, years later, Native Hawaiian pa‘ahao are still leaving correctional facilities without vital documents. Office of Hawaiian Affairs, Native Hawaiian Task Force Report 23 (2012), *available at* http://www.oha.org/wp-content/uploads/2012NHJTF_REPORT_FINAL_0.pdf; S.B. 1039 IDENTIFICATION (2017), Testimony on S.B. 1039 by Office of Hawaiian Affairs (statement in support of SB 1039), *available at* https://www.capitol.hawaii.gov/session2017/testimony/SB1039_SD2_TESTIMONY_PBS_03-16-17_.PDF.

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documents.⁴ Between November 30, 2018 and October 30, 2019, 55.65% of those released left without their ID card, 54.51% without their birth certificate, and 51.11% without their social security card.⁵ Those exiting from prison did not fare much better: 46.13% left without their ID card, 39.39% left without their birth certificate, and 45.82% left without their social security card.⁶ Thus, DPS currently is failing to comply with its mandate. The failure to provide identification documents to incarcerated and reentering individuals is putting already vulnerable people at further risk of harm during the present pandemic by leaving individuals susceptible to housing and economic insecurity.⁷

The ACLU of Hawai'i cannot emphasize enough how important identification documents are for successfully reentry. The U.S. Department of Justice has recognized the provision of identity documents as being "critical to successful reentry."⁸ Without proper identification, people face considerable barriers to reentry. People need state-issued identification documents—as well as the vital documents needed to obtain such identification—to apply for employment, pursue educational opportunities, find housing, comply with conditions of parole, fill prescriptions, and apply for other services for themselves and their families. Despite the outsized importance of identification documents, people released from jail and prison often do not have these documents. People may not have had these documents upon entry into the criminal legal system, and these documents are also often lost during the criminal legal process.⁹ Compounding the problem is that former inmates adapting to their new lives on the outside face larger barriers to obtaining these documents. In a House hearing on a similar bill concerning the provision of vital identification documents, formerly incarcerated individuals testified that it took months and even a full year for these documents to be

⁴ Dep't of Pub. Safety, *Reentry Coordination Office Annual Report on Civil Identification Documents* (2019), available at <https://dps.hawaii.gov/wp-content/uploads/2020/01/RC-12.4.19-Minutes-DRAFT-01.02.20.pdf>.

⁵ *Id.*

⁶ *Id.*

⁷ Two critical components of reentry, housing and employment, are nearly impossible to obtain without identification. Accordingly, providing identification while people are still incarcerated proves the most successful model to support effective reentry.

⁸ U.S. Dep't of Justice, *Prison Reform: Reducing Recidivism by Strengthening the Federal Bureau of Prisons* (2017), available at <https://www.justice.gov/archives/prison-reform>.

⁹ Nancy La Vigne, et al., Urb. Inst., *Release Planning for a Successful Reentry* 12 (2008).

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secured.¹⁰ The delay in obtaining documentation delayed an individual's "reintegration and cause[d] unnecessary hardship for a person working hard to get his/her life started after incarceration."¹¹ In addition to bureaucracy and red tape that present an inordinate time burden, individuals often have to seek these documents without any support upon release. The need for a civil legal attorney to obtain certain documents presents a significant barrier, as it means individuals must either go to Legal Aid or other organizations to seek assistance. Organizations that help individuals obtain their vital documents are few and far between. Recently, the Medical-Legal Partnership—which assisted the bulk of reentering community members in acquiring identification documents—lost funding. Financial challenges connected to obtaining identification present an additional barrier to reentry.¹² People returning home from prison and jail are often cash-strapped and often do not have a secure source of income. The cost of obtaining an ID card, birth certificate, and a social security card can therefore present a significant burden and may result in recidivism.

Without DPS's assistance in obtaining critical identification documents, recently released individuals are effectively being set up for failure. And the barriers that exist under normal circumstances are amplified by the grim reality of the COVID-19 pandemic. Stay-at-home orders issued to stem the spread of the virus have virtually frozen the economy, forcing more than 33 million Americans to file for unemployment benefits in a span of seven weeks.¹³ Unfortunately, Hawai'i has not escaped COVID-19's devastating economic impact. In fact, a state-by-state

¹⁰ S.B. 1039 IDENTIFICATION (2017), Testimony on S.B. 1039 by Community Alliance on Prisons (statement in support of SB 1039).

¹¹ *Id.*

¹² Photo identification and birth certificates can be costly to obtain. An additional burden exists in many states that only accept original or certified copies of documents, as many low-income people are unable to afford the cost of a certified copy. General fees for photo identification can run as much as \$29 while birth certificates range from \$5-23. The filing fees associated with an N-565 application for the replacement of naturalization/citizenship documentation cost a staggering sum of \$555. Nancy La Vigne, et al., Urb. Inst., *Release Planning for a Successful Reentry* 12 (2008); Nat'l Law Ctr. on Homelessness & Poverty, *Photo Identification Barriers Faced by Homeless Persons* 5 (2004), available at https://nlchp.org/wp-content/uploads/2018/10/ID_Barriers.pdf ("NLCHP's survey indicated that 36% of clients could not get a photo ID because they could not afford one.")

¹³ Nigel Chiwaya & Jiachuan Wu, *The Coronavirus Has Destroyed The Job Market in Every State: See the per-state jobless numbers and how they've changed*, ABC News (May 7, 2020), <https://www.nbcnews.com/business/economy/unemployment-claims-state-see-how-covid-19-has-destroyed-job-n1183686>.

analysis shows that Hawai'i is one of the hardest hit states by the shut-down orders.¹⁴ State employment statistics have fallen to historic lows,¹⁵ leaving returning community members particularly vulnerable. In this economic climate, identification documents are even more important to ensure previously incarcerated individuals are able to secure jobs and housing.

Far too many people with justice involvement are already woefully unprepared to return home. Thankfully, DPS is uniquely situated to assist incarcerated individuals in securing identification documents, which can go a long way to ensuring that people are able to get back on their feet quickly and safely. Given the ongoing pandemic, DPS must now more than ever carry out its statutory mandate to support reentering community members by immediately providing them with identification documentation.

* * *

At this point, systemic steps need to be taken to ensure that all prisoners have recognized identification documents on release which will help them reenter society and survive during the COVID-19 pandemic. While we understand this is a challenging time where DPS has competing obligations, supporting returning community members should be a priority. To address the issues we have raised, DPS should commit to immediately doing the following for those set to be released due to COVID-19:

- Inform all current inmates of DPS's statutory mandate to provide assistance in obtaining identification documents;

¹⁴ *Id.* ("Hawaii, Kentucky, Georgia, Michigan, Louisiana, and Rhode Island have seen the largest percentage of cuts, with around 1-in-4 workers in each of those states losing their jobs."). Since March 14, Hawai'i has seen 30.1% of the state labor force file for unemployment.

¹⁵ Hawai'i's unemployment rates have dipped below those of even the Great Depression. The Department of Labor has received more than 250,000 initial filings since the pandemic hit. Marcel Honore, *Here's How the Coronavirus Has Transformed Hawaii*, Honolulu Civil Beat (Apr. 26, 2020), <https://www.civilbeat.org/2020/04/heres-how-the-coronavirus-has-transformed-hawaii/> ("Thousands of jobs and paychecks have evaporated, driving unemployment rates higher than the islands saw during the Great Depression.")

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- Ensure that incarcerated individuals have at least a state-issued identification card upon release while the department works to meet REAL ID standards;¹⁶
- Continue to aid those who receive expedited release in obtaining documentation even after their departure from correctional facilities.

On a permanent basis, DPS needs to take adequate, long-term steps to prevent individuals from leaving jails and prisons without their identification documents. In addition to the recommendations above, DPS should pledge to:

- Set up procedures to inform inmates of the mandate upon intake, six months prior to release, and ensure caseworkers continuously remind inmates;¹⁷
- Initiate the process of assisting **all** inmates in obtaining documentation at least 150 days prior to the inmate being released;¹⁸
- Enact a plan to develop critical relationships with the government agencies to obtain identification documents.¹⁹

¹⁶ A bill was recently passed to allow people to obtain state identification when they cannot meet REAL ID Act requirements. Specifically, special accommodations have been made for bedridden individuals “who have medical or mental conditions that make them unable to appear in person to be photographed, fingerprinted, and present REAL ID Act requirements. Qualified applicants are eligible for a ‘non-compliant State ID’ card that provides a valid form of identification to access medication, banking information and other services.” DPS should inquire into opening the aforementioned process to incarcerated individuals who similarly cannot appear in person to meet REAL ID Act requirements. City & Cty. of Honolulu, Dep’t of Customer Services, *Non-Compliant Hawaii State Identification Card* (Feb. 27, 2020), available at <https://www.honolulu.gov/cms-csd-menu/site-csd-sitearticles/37484-hawaii-state-id-non-compliant.html>.

¹⁷ Upon information and belief, inmates are not receiving adequate notice about the ability to request assistance obtaining identification documents. Specifically, when people first arrive and are processed into their respective facilities, they are not being given any information concerning identification documents. This practice of not being provided information continues throughout their imprisonment. DPS can easily inform these inmates of the department’s statutory mandate to help them obtain identification documents. DPS should supply this information upon processing into the facility and at least six months before the incarcerated individual is set to be released. Concurrently, caseworkers should continuously remind inmates about their ability to request these documents.

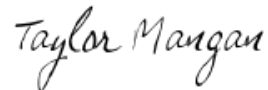
¹⁸ Currently, only inmates “released to work furlough, extended furlough, or community placement programs” have DPS assistance initiated at least ninety days prior to the inmate being released. For individuals born outside the United States, obtaining identification documentation is more difficult and thus DPS should initiate the process earlier than the provided timeframe.

¹⁹ As a government agency, DPS is uniquely situated to build relationships with other states and out-of-country agencies to help obtain vital documents for people who are incarcerated. Should DPS continue to encounter difficulty creating relationships to obtain documents from varied agencies,

Letter re: Department of Public Safety's Responsibility to Obtain Civil
Identification Documents
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We would appreciate your response acknowledging receipt of this letter and commitment to take additional steps to comply with HRS §353H-32 by **May 20, 2020**. Thank you in advance for your time and attention to this matter. If you have any questions or comments, please feel free to contact me at 808-522-5908 or tmangan@acluhawaii.org.

Sincerely yours,



Taylor Mangan
Legal Fellow

DPS should immediately consider working with an organization or nonprofit that can create these relationships. Organizations like VitalChek, a service that allows individuals to order certified government-issued vital records online, have direct relationships with agencies issuing vital records in over 300 state and local governments nationwide. The Medical-Legal Partnership—a project of the William S. Richardson School of Law—created similar relationships with agencies to obtain vital records for reentering community members.

From: **Kat Brady** kat.caphi@gmail.com
Subject: EMERGENCY REENTRY PROJECT
Date: April 28, 2020 at 5:14 PM
To: Espinda, Nolan P Nolan.P.Espinda@hawaii.gov

KB

EMERGENCY REENTRY PROJECT

April 28, 2020

Dear Director Espinda:

We hope that this finds you and those you love safe and in good health during these very uncertain times.

On behalf of the Emergency Reentry Project, we write today seeking the assistance of PSD's Reentry Coordination Office (RCO) to meet the immediate housing and reentry needs of persons released from our correctional facilities to comply with the Hawai'i Supreme Court's Order to reduce populations to the design capacity.

The Special Master's Second Report (SCPW-20-0000213) filed with the Hawai'i Supreme Court on 23-APR-2020 spoke about the work of the Emergency Reentry Project on page 12:

In addition to the governmental efforts to address the needs of the prison population, there has been very promising community efforts undertaken to find housing for released inmates with the "Hospitality for Hope" program created by the American Hotel and Lobbying Association. The goal of this program is to "support communities across the country by connecting hotel properties with the health community, struggling to find housing and support as the COVID-19 public health crisis grows." There are also efforts to obtain cellular phones for released inmates who need them so that they can keep in contact with their attorneys and others. This is a collaborative effort between the OPD, ACLU, the Office of Hawaiian Affairs, Hawai'i Innocence Project, Medical-Legal Partnership for Children, Community Alliance on Prisons, Hawai'i Justice Coalition, Law Enforcement Assistance Diversion Program, Hawai'i Health and Harm Reduction Center, the Oversight Commission, and others. Discussions about and planning for these potential community responses remain ongoing.

We write today to ask what the Reentry Coordination Office has been doing to assist in the reentry process for those who have been released due to the novel coronavirus pandemic?

We also request that the RCO supply more information to the courts and attorneys in order to facilitate the release of incarcerated individuals during this public health emergency.

We further request that the RCO review the list of names of those individuals who have been recommended for release and identify those who are veterans, since we have learned that there are currently twenty (20) beds for veterans available on O`ahu.

Another way the Department of Public Safety can help flatten the curve is by supporting the use of hotels as the Hawai'i Oversight Commission has done for

ATTACHMENT B

by supporting the use of hotels as the Hawai'i Oversight Commission has done for those individuals who will be houseless upon release. The Emergency Reentry Project is talking with hotels about housing released individuals, ideally at one property, to facilitate service provision. Should the need arise, would the department support the use of hotel rooms as outlined in the Crush the Curve report by 3 UH Professors?

Director Espinda, the expertise of your RCO staff and the resources of this office have never been more essential than they are now during the COVID-19 pandemic.

We can only imagine the enormous pressure and time crunch that you and other Department of Public Safety officials are under as you try to control the novel coronavirus COVID-19 within your facilities, and prepare individuals for expedited releases.

The release of 716 people to date is a good start, however, this is nowhere near what the CDC guidance recommends. Social distancing is impossible in Hawai'i correctional facilities and public health officials have asserted that jails and prisons are petri dishes for infection.

Please feel free to contact me at this email or at 927-1214 to set up a call with our group to discuss how the Department of Public Safety can work with the Emergency Reentry Project to find safe housing for people released during the novel coronavirus pandemic.

Mahalo for your consideration.

Sincerely,

Kat Brady, Member
EMERGENCY REENTRY PROJECT

--

Kat Brady, Coordinator
COMMUNITY ALLIANCE ON PRISONS
P.O. Box 37158
Honolulu, Hawai'i 96837-0158
Phone: (c) 808-927-1214

Watch **Hawai'i InJustice on `Olelo Channel 54**

Advocacy for Justice Award to CAP
<http://vimeo.com/10450424>

CAP Facebook Page: <https://www.facebook.com/CommunityAllianceOnPrisons>

CAP Blog: <http://caphawaii.wordpress.com>

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY

919 Ala Moana Boulevard, 4th Floor
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NOLAN P. ESPINDA
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Administration

Shari L. Kimoto
Deputy Director
Corrections

Renee R. Sonobe Hong
Deputy Director
Law Enforcement

No. _____

May 1, 2020

Via Electronic Mail

Kat Brady, Coordinator
kat.caphi@gmail.com
Community Alliance on Prisons
P.O. Box 37158
Honolulu, Hawai'i 96817-0158

RE: Response to Inquiry Regarding PSD's Reentry Coordination Office

Dear Ms. Brady:

I am responding to your email dated April 28, 2020, inquiring about efforts made by the Reentry Coordination Office (RCO) relating to housing for offenders released during the novel coronavirus pandemic. The RCO continues to work with statewide correctional facilities to identify inmates with no residence or job and provide them with supportive services. Since the beginning of the Covid-19 onset, inmates were referred to the Waikiki Pu'uuhonua Prison Program for housing, medical, and transitional services. The RCO also receives from the Governor's Homeless Coordinator a daily listing of community shelter vacancies statewide and forwards the information to each facility, so that exiting offenders, including veterans, who have not yet arranged for housing, receive up-to-date information to help guide them towards viable housing options. The RCO also works to provide the State's Homeless Coordinator with a list of inmates with upcoming dates for release, identifying those inmates who would require housing.

My recommendation would be for the Emergency Reentry Project to partner with the State's Homeless Coordinator in a coordinated effort to provide alternative transitional housing (e.g., hotel rooms) for those inmates who risk becoming homeless upon release from PSD facilities.

Sincerely,

Nolan P. Espinda
Director