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IN THE FAMILY COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

[CASE TITLE UNKNOWN]

[CASE NO. UNKNOWN]

MOTION TO UNSEAL PORTIONS OF
CHILD PROTECTIVE ACT
PROCEEDING OF ISABELLA P.
KALUA F.K.A. ARIEL SELLERS;
MEMORANDUM IN SUPPORT OF
MOTION; DECLARATION OF
COUNSEL; and EXHIBITS "1" - "2"

[JUDGE UNKNOWN]

**MOTION TO UNSEAL PORTIONS OF CHILD PROTECTIVE ACT PROCEEDING
OF ISABELLA P. KALUA F.K.A. ARIEL SELLERS**

Non-party movant Civil Beat Law Center for the Public Interest (Law Center) respectfully moves this Court to unseal portions of the Child Protective Act proceeding of Isabella P. Kalua, f.k.a Ariel Sellers (Isabella), commenced in 2019 in the Family Court of the First Circuit, pursuant to Hawai'i Revised Statutes (HRS) chapter 587A. This Court may unseal such court records where there is a "legitimate purpose" for the disclosure. HRS § 587A-40. Here, there are several.

The Law Center specifically asks the Court to unseal:

- (1) The case docket – *i.e.*, the index of pleadings;
- (2) Records sufficient to understand the factual and legal record on which the

Court approved Isabella's foster placement with Isaac K. Kalua, III and Lehua Kalua (together, the Kaluas);

- (3) Records sufficient to understand the factual record presented to the Court by the Department of Human Services (DHS) and any other person or party regarding the Kaluas' fitness as foster parents; and
- (4) Any reports filed in this matter by Special Master Stephen W. Lane.

The Law Center acknowledges that portions of the subject records may contain information that must be kept confidential by law, such as the identities of Isabella's siblings or mandatory reporters. In that case, redactions provide an appropriate solution to narrowly address legitimate privacy concerns. Redaction, however, should be altogether unnecessary for certain documents, such as DHS assessments and recommendations that focus on the Kaluas' fitness as parents. The Law Center is not asking to unseal the identities of Isabella's siblings or personal information about them.

In the alternative, if the Court declines to release redacted court records, the Law Center respectfully requests that the Court unseal the case docket and order Special Master Lane to prepare, for public disclosure, a synopsis of the factual and legal record presented to the Court for Isabella's foster placement with the Kaluas and any other information relevant to understand how this case was handled by government authorities.

This motion is brought under HRS § 587A-40, Rule 79 of the Hawai'i Family Court Rules, and Rule 10.10 of the Hawai'i Court Records Rules.

DATED: Honolulu, Hawai'i, December 13, 2023



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IN THE FAMILY COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

[CASE TITLE UNKNOWN]

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MEMORANDUM OF LAW IN
SUPPORT OF MOTION

MEMORANDUM IN SUPPORT OF MOTION

This case is a rare instance where measured openness, not complete closure, serves the best interests of children in the care of the Department of Human Services (DHS) under its foster system. As DHS has recognized through its rules, disclosure here promotes the purposes of the Child Protective Act.

DHS recommended that four-year-old Isabella P. Kalua f.k.a Ariel Sellers (Isabella) be placed in the foster care of Isaac K. Kalua, III and Lehua Kalua (together, the Kaluas). Isabella is now declared dead, and the Kaluas are charged with her murder. Continued public confidence that DHS and the foster care system can protect the most vulnerable in our community requires public scrutiny of what happened.

The Legislature intended the Child Protective Act, codified as HRS chapter 587A, to protect children from abuse and neglect. HRS § 587A-2. While these cases are generally closed and confidential, the statute expressly authorizes disclosure where there is a "legitimate purpose" for the disclosure. See HRS § 587A-40. Disclosure is proper when it serves the best interests of children in the foster care system. See *Kema v. Gaddis*, 91 Hawai'i 200, 205, 982 P.2d 334, 339 (1999) ("Thus, 'legitimate purposes'

relevant to HRS chapter 587 are limited to those that further the best interests of the children who come within the jurisdiction of the family court, pursuant to the Child Protective Act, i.e., purposes that will safeguard, treat, and provide services and plans for children in need of protection.”).

Isabella’s alleged murder at the hands of her former foster parents raises important questions about how the system failed her and whether similar failings threaten the safety of other children placed in foster care.¹ Lifting the seal on the judicial record will allow the public to understand how Isabella’s foster placement unfolded. Only by critical examination of what happened can our community improve and start to restore public trust in a foster system that from all appearances went horribly awry. While secrecy is the norm to protect the privacy of the child placed in foster care, preserving the best interests of all foster children requires openness when circumstances illustrate a fatal breakdown in the foster system itself. Moreover, Isabella’s privacy interests are greatly diminished by the extensive public disclosures about this matter, her death, and the criminal indictment of the Kaluas.

I. FACTUAL BACKGROUND

Around 2018, the State of Hawaii removed four-year-old Ariel Sellers from the custody of her biological mother Melanie Joseph, who has publicly acknowledged that she was addicted to methamphetamines at the time. John Hill, *A Hawaii Mother Haunted by the Brutal Killing of One Child Tries to Hold Onto Another*, Honolulu Civil Beat (Aug. 17, 2023); Leila Fujimori, *Grandmother of Missing Waimanalo Girl Wanted ‘A Chance’*, Honolulu Star-Advertiser (Oct. 10, 2021).² DHS then placed Isabella in the foster care of

¹ The Kaluas subsequently adopted Isabella. Movant has concurrently filed a motion to unseal Isabella’s adoption records, which motion is subject to a different standard. HRS § 578-15(b) (“good cause”).

² Attached as Exhibit 1 is a compilation of all referenced news articles. This Court may take judicial notice of facts reported by newspapers. HRE 201(b)(1) (court may take judicial notice of facts not subject to reasonable dispute that are generally known within Hawai‘i); *e.g.*, *In re Pioneer Mill Co.*, 53 Haw. 496, 497 n.1, 497 P.2d 549, 551 n.1 (1972) (taking judicial notice of newspaper articles submitted by the parties).

the Kaluas in February 2019. *Id.*; *Cummings v. Kalua*, No. 1CCV-23-1049, Dkt. 1 (Compl.) ¶¶ 10-14; e.g., *State v. Kalua*, No. 1FFC-21-832, Dkt. 1 (probable cause affidavit ¶ 12).³

Isaac Kalua had felony convictions in 2000 for terroristic threatening and assault. *State v. Kalua*, No. 1PC001001315; Kevin Dayton, *Isabella Kalua Tragedy Turns a Spotlight on the Licensing of Foster Families*, Honolulu Civil Beat (Nov. 30, 2021). Drug charges against Lehua Kalua in 2000 were dismissed after she completed drug court. *State v. Kanahele*, No. 1PC001001328, Dkt. 20 (noting defendant's "confession"); Dayton, *Isabella Kalua Tragedy*. The Kaluas also were in financial distress while Isabella was under their foster care. Isaac Kalua declared bankruptcy with over \$100,000 in consumer debt. *In re Isaac Kalua*, No. 20-00846 (Bankr. D. Haw.), Dkt. 1; Leila Fujimori, *Adoptive Parents of Isabella Kalua Were Under Financial Stress Before Child's Death*, Honolulu Star-Advertiser (Nov. 26, 2021). And, shortly before Isabella's disappearance, Lehua Kalua referenced bankruptcy plans after being sued for multiple consumer debts in excess of \$10,000. Fujimori, *Adoptive Parents of Isabella Kalua*; e.g., *Discover Bank v. Kalua*, No. 1DRC-21-1424, Dkt. 16, 20; *Midland Credit Mgmt., Inc. v. Kalua*, No. 1DRC-21-3151, Dkt. 19; *Bank of America, N.A. v. Kalua*, No. 1DRC-21-7284, Dkt. 13.

Isabella's estate and her siblings allege that, while Isabella was in the Kaluas' foster care, DHS was "warned repeatedly that the Kaluas were abusing [Isabella] – by doctors, a teacher and others – but failed to adequately investigate and advocated for the Kaluas to adopt the children." Hill, *A Mother Haunted*; Compl. ¶¶ 17-25. Joseph also has publicly discussed the signs of abuse she observed while Isabella was in the Kaluas' custody. Hill, *A Hawaii Mother Haunted*. And Isabella's grandmother publicly discussed one incident in which DHS removed Isabella from the Kaluas' home during an investigation before returning her to the Kaluas. Fujimori, *Grandmother of Missing Waimanalo Girl*.

Isabella's estate and her siblings specifically allege that DHS ignored multiple separate incidents indicative of serious abuse and neglect: (1) a July 3, 2019 eyewitness

³ This Court may take judicial notice of court records. HRE 201; e.g., *Uyeda v. Shermer*, 144 Hawai'i 163, 172, 439 P.3d 115, 124 (2019) ("The most frequent use of judicial notice of ascertainable facts is in noticing the contents of court records.").

report to DHS “that [Isabella] was seen being beaten by Lehua Kalua and was being starved”; (2) records of a August 5, 2019 wellness exam that reported suspicious bruising; (3) records of a October 14, 2019 medical visit for fractured fingers, reported about two weeks after injury; (4) records of a November 8, 2019 medical visit for fractured clavicle, reported 7-14 days after injury; (5) records of a January 17, 2020 medical visit for multiple fractures to Isabella’s right leg; and (6) a teacher’s February 24, 2020 report of Isabella’s troubling behavior and refusal to discuss her home environment. Compl. ¶¶ 17-25. When a teacher reported a concern to DHS, the Kaluas started homeschooling Isabella. *Id.* ¶¶ 25, 27. Each of the above incidents occurred while Isabella’s foster placement was subject to periodic review and the continuing jurisdiction of the family court under chapter 587A. *See* HRS §§ 587A-30 (requiring periodic review hearings), 587A-35 (authorizing continuing jurisdiction). Nevertheless, DHS recommended that the Kaluas adopt Isabella and her siblings. Compl. ¶¶ 26, 28.

In September 2021, the Kaluas reported six-year-old Isabella as missing. *6-Year-Old Reported Missing in September, But Likely Murdered a Month Before, Police Say, Hawai‘i News Now* (Nov. 10, 2021). Two months later, the Kaluas were indicted on charges in connection with Isabella’s death that included second-degree murder, abuse, hindering prosecution, persistent nonsupport, and endangering the welfare of a minor. *State v. Kalua*, No. 1CPC-21-1427, Dkt. 1; Jacob Geanous, *Grand Jury Indicts Waimanalo Girl’s Adoptive Parents on Murder Charges*, Honolulu Civil Beat (Nov. 17, 2021). An affidavit from the investigating police detective explained that Isabella’s older sister reported that the Kaluas kept Isabella in a dog cage in the bathroom with duct tape on her mouth and nose. *State v. Kalua*, No. 1FFC-21-832, Dkt. 1 (probable cause affidavit ¶ 20). Isabella’s sister further reported that the Kaluas kept Isabella in the dog cage to prevent her from sneaking food because the Kaluas would not feed her. *Id.* One night, the Kaluas woke up Isabella’s sister because Isabella was not breathing and could not be revived. *Id.* Isabella was not seen again. *Id.*

A probate court recently declared that Isabella died about a month before the Kaluas reported her missing. *In re Estate of I.P.K.*, No. 1CLP-23-509, Dkt. 83 ¶ 1 at 2 (Order Granting in Part and Continuing in Part Petition for Adjudication of Intestacy

and Appointment of Personal Representative); *see also* Allan Kew, *Missing Waimanalo Girl Declared Dead, Opening Path for Suit Against State*, Honolulu Civil Beat (July 27, 2023).

This case raises significant questions about the integrity of the foster care system. *E.g.*, Gina Mangieri, *The extent of state oversight at Kalua home is unclear prior to Isabella Kalua's murder*, KHON2 (Nov. 12, 2021) (“How could such atrocious acts by alleged murderers Isaac and Lehua Kalua take place in a home full of children fostered and adopted through the state’s child welfare system?”); HNN Staff, *Court documents reveal horrific allegations against adoptive parents charged with murdering girl*, Hawai’i News Now (Nov 12, 2021) (“Isabella’s death is certain to raise questions about the state’s actions in placing her with the Kaluas.”); John Hill, *Commentary: Hawaii Should Come Clean About Its Actions In A Notorious Child Abuse Case*, Honolulu Civil Beat (Sept. 14, 2023) (“Child welfare agencies and courts use our tax money to achieve the goal of protecting children. We have the right to know what they are doing, or failing to do, in our name.”); Allyson Blair, *Foster care expert says missing 6-year-old’s adoptive placement raises red flags*, Hawai’i News Now (Sept. 16, 2021) (“Steve Lane, the principal investigator in several high-profile child abuse cases in Hawaii, is even questioning whether the state should have placed the Waimanalo 6-year-old and her siblings with their adoptive family to begin with.”).

This is sadly not the first case to raise such questions. *E.g.*, Lynn Kawano, *Big Island child who starved to death was repeatedly returned to alleged abusers, records show*, Hawai’i News Now (Jan. 13, 2020) (“The Department of Human Services’ Child Welfare branch admits in a detailed summary of the investigation into Shaelynn Lehano-Stone’s death that there were safety concerns throughout the girl’s short life.”); HNN Staff, *Woman arrested in connection with toddler’s death in foster care*, Hawai’i News Now (Aug. 16, 2018) (toddler’s family expressed their “hope that Fabian’s murder will result in long-overdue changes to the way the state of Hawaii responds to complaints of child abuse against children in the state’s custody. We do not want any other family to have to endure the daily nightmare that we will be living through for the rest of our lives.”); John Hill, *Hawaii Sent At Least 10 Foster Children To An Abusive Home At The Center Of A*

Drug Ring, Honolulu Civil Beat (Nov. 22, 2022) (“Child Welfare Services, part of the state Department of Human Services, placed at least 10 foster children in a home that turned out to be abusive.”).

II. STANDARD OF REVIEW

Proceedings under Chapter 587A are generally closed, but may be opened to the public where disclosure “is in the best interests of the child or serves some other legitimate purpose.” HRS § 587A-40. The Child Protective Act protects children from abuse and neglect. HRS § 587A-2. The “best interests of the children” is the touchstone. *E.g., id.* (chapter “liberally construed to serve the best interests of the children affected”).

Kema v. Gaddis construed the public disclosure standard under the statutory predecessor, Section 587-81. 91 Hawai‘i 200, 202 n.2 206, 982 P.2d 334, 336 (1999). *Kema* held that the “legitimate purposes” for disclosure are “those that further the best interests of the children who come within the jurisdiction of the family court, pursuant to the Child Protective Act, *i.e.*, purposes that will safeguard, treat, and provide services and plans for children in need of protection.”⁴ *Id.* at 205, 982 P.2d at 339.

III. DISCLOSURE SERVES THE BEST INTERESTS OF THE CHILDREN

Congress has long recognized that deaths in foster care require greater public scrutiny to address potential systemic failures in the critical protection of all children within the system. In 1996, Congress amended the federal Child Abuse Prevention and Treatment Act (CAPTA) to require public disclosure of information from child welfare

⁴ The *Kema* Court did not reduce the standard for public disclosure to a single “best interest” standard, which would read the “legitimate purpose” language out of the statute. *See In re Honolulu Corp. Counsel*, 54 Haw. 356, 373-74, 507 P.2d 169, 178 (1973) (“It is a cardinal rule of statutory construction that a statute ought upon the whole be so constructed that, if it can be prevented, no clause, sentence or word shall be superfluous, void, or insignificant.”). The Hawai‘i Supreme Court made clear that—beyond the “best interests of the child” who is the subject to the particular proceeding—public disclosure may be warranted in instances that more widely serve the best interests of all children protected by the Child Protective Act. *Kema*, 91 Hawai‘i at 205, 982 P.2d at 339. Regardless, for the reasons stated below, public disclosure is warranted as in the best interests of Isabella and her siblings as well as for legitimate purposes that serve the best interests of all children in foster care to ensure proper oversight and accountability for the services and plans that protect children in DHS custody.

systems when child abuse or neglect “has resulted in a child fatality or near fatality.” CAPTA Amendments of 1996, 104 Pub. L. No. 235, 110 Stat. 3063, 3073, § 107(b)(2)(vi). Consistent with Hawai`i law, the 1996 amendments also permitted child welfare agencies to disclose information in other circumstances “pursuant to a legitimate State purpose.” *Id.* § 107(b)(2)(v)(VI). And when Congress held hearings several years later, the issue of court access arose. Exhibit 2, *CAPTA: Successes and Failures at Preventing Child Abuse and Neglect*, Hearing Before the Subcomm. on Select Education of the Comm. on Education and the Workforce, House of Representatives, 107th Cong. (Aug. 2, 2001). The record included a push for greater court access to proceedings as “crucial to reforming and improving the delivery of services to children under the care of the state, and to the formulation of decisions regarding these children’s futures.” *Id.* at 123-26 (Justice for Children, *CAPTA Re-Authorization Issue: Requiring “Open Courts” in Juvenile Dependency Hearings* (2001)). In response, Congress recognized – consistent with *Kema* – that state courts may provide public access to child abuse proceedings so long as access ensures “the safety and well-being of the child, parents, and families.” Keeping Children and Families Safe Act of 2003, Pub. L. No. 108-36, 117 Stat. 800, 811, § 114(b)(1)(C).

After *Kema* and the CAPTA amendments, DHS issued administrative rules to, among other things, implement the public disclosure provisions of the Child Protective Act by identifying legitimate purposes for disclosure. HAR § 17-1601-6 (implementing CAPTA and the predecessor statute HRS § 587-81). “Under established principles of statutory construction, courts should “accord persuasive weight to [DHS’s recitation of “legitimate purposes”] and follow the same, unless the construction is palpably erroneous.” *In re Water Use Permit Applications*, 105 Hawai`i 1, 9, 93 P.3d 643, 651 (2004). “Such deference ‘reflects a sensitivity to the proper roles of the political and judicial branches,’ insofar as ‘the resolution of ambiguity in a statutory text is often more a question of policy than law.’” *In re Water Use Permit Applications*, 94 Hawai`i 97, 145, 9 P.3d 409, 457 (2000).

The DHS rules provide:

Disclosure to third parties without consent or court order. Disclosure of all or a portion of the record without consent or court order shall be authorized when made pursuant to a legitimate state purpose and in accordance with 17-1601-4.⁵ *A legitimate state purpose shall include but is not limited to disclosure to the persons listed below unless otherwise specified in Public Law No. 104-235 [CAPTA], 45 C.F.R. §§205.50, 1340.14(i)(2)(xi); 42 U.S.C. §5106a and sections 17-1601-7, 17-1601-8, 17-1601-9, and 17-1601-10:*

[. . .]

(16) Disclosure to the public when:

(A) The subject of the report has been criminally charged with committing a crime relating to the child abuse or neglect report;

(B) A law enforcement agency or official, a state's attorney, or a judge of the state court system has publicly disclosed in a report, as part of his or her official duty, information regarding the investigation of a report, or the provision of services by the department;

(C) A legal custodian of the child, the alleged perpetrator, or other party has voluntarily made a public disclosure concerning a child abuse and neglect report, investigation of a report, or the provision of services by the department; or

(D) The child named in the report is missing, has suffered a near fatality, been critically injured, or has died[.]

HAR § 17-1601-6 (emphasis added).⁶

In 2010, against this backdrop, the Legislature enacted the current Child Protective Act. "The legislature is presumed to know the law when it enacts statutes, including this court's decisions, and agency interpretations." *Peer News LLC v. City & County of Honolulu*, 138 Hawai'i 53, 69, 376 P.3d 1, 17 (2016); *see also Cannon v. Univ. of Chicago*, 441 U.S. 677, 696-98 (1979) ("It is always appropriate to assume that our elected representatives, like other citizens, know the law."); *Traynor v. Turnage*, 485 U.S. 535, 546

⁵ The Law Center is not seeking to unseal the identity of any person who reported child abuse or communications between DHS and the Department of the Attorney General – the two special circumstances specified in HAR § 17-1601-4.

⁶ These rules apply to disclosure of DHS files and court records. HRS § 587A-40(b); HAR § 17-1601-8(a).

(1988) (“[W]e must assume that Congress was aware of the Veterans’ Administration’s interpretation of ‘willful misconduct’ at the time that it enacted § 1662(a)(1) . . .”). After DHS’s clear articulation in its rules of “legitimate purposes” under the prior Child Protective Act, the Legislature declined to amend the standard or otherwise further limit public access. Compare HRS § 587-81 (2009), with HRS § 587A-40. The unamended standard is strong evidence that the Legislature endorsed DHS’s recitation of “legitimate purposes.” *Keliipuleole v. Wilson*, 85 Hawai`i 217, 225-26, 941 P.2d 300, 308-09 (1997) (“Presumably, the legislature was aware of the status of the law and the policies of the BLNR, yet declined to amend the statute.”); accord *Peer News*, 138 Hawai`i at 69, 376 P.3d at 17.

“Legitimate purposes” here plainly justify disclosure under HAR § 17-1601-6(16). (A) The Kaluas have been criminally charged with Isabella’s murder and persistent nonsupport and endangering the welfare of Isabella and her older sister. *E.g.*, *State v. Kalua*, 1CPC-21-1427, Dkt. 1. (B) The Office of the Prosecutor and HPD, as well as the children’s guardian ad litem, have publicly disclosed that Isabella and her siblings were in foster care and that Isabella was abused by the Kaluas. *E.g.*, *State v. Kalua*, 1FFC-21-832, Dkt. 1 ¶¶ 11-13, 20; Compl. ¶¶ 10-13, 17-32; see also *In re Estate of I.P.K.*, No. 1CLP-23-509, Dkt. 9 (order appointing guardian ad litem in No. 1FM221000191). (C) Isabella’s biological mother, her grandmother, the personal representative of her estate, and the guardian ad litem for Isabella’s siblings have publicly discussed Isabella and her siblings’ foster care status and referenced DHS investigations of abuse. Compl. ¶¶ 10-13, 17-32; John Hill, *A Hawaii Mother Haunted*; Leila Fujimori, *Grandmother of Missing Waimanalo Girl*. (D) Isabella has been declared dead. *Estate of I.P.K.*, No. 1CLP-23-509, Dkt. 83 ¶ 1 at 2. Any one of these facts alone would be sufficient to state a legitimate purpose for unsealing portions of the court record. Here, all four justifications exist.

DHS was obligated to monitor Isabella’s welfare while in foster care and provide the family court “with information concerning the child.” HRS § 587A-15; see also HRS § 587A-30 (requiring periodic review hearings). It is now publicly known that Isabella and her siblings were placed in foster care and that Isabella was entrusted to the Kaluas,

despite signs of serious abuse and neglect and other potential red flags. The basic facts are not in question. The issues are procedural, not personal. For example, did DHS adequately fulfill its duties to the court in Isabella's 587A proceeding? Did the foster system process, as effected by chapter 587A, work as intended in this instance and can it be improved? Here, public understanding and accountability for Isabella's care and ultimate death while in the custody of parents recommended by DHS are legitimate purposes that further the best interests of all children who come within the jurisdiction of the family court under chapter 587A.

Kema recognized that such public understanding can be a legitimate purpose for disclosure. *Kema v. Gaddis*, 91 Hawai'i 200, 206, 982 P.2d 334, 340 (1999) (affirming "conclusion that providing information to the media, under certain circumstances, might serve a legitimate purpose under HRS chapter 587"). While "Peter Boy" was missing, the Hawai'i Supreme Court approved the release of a "synopsis of the allegations contained in the safe home guidelines submitted in the DHS case" that included a description of the minor's injuries and other information related to his disappearance. *Id.* at 206, 982 P.2d at 340. As the family court explained: "Questions about the response of agencies and the family court to problems of child abuse and neglect are areas of legitimate concern to both the news media and the public. . . . the disclosure of some of the court records. . . could contribute to public understanding and awareness and would serve a legitimate purpose." *Id.* at 204, 982 P.2d at 338. The issue in *Kema* was whether releasing additional information could be done without harming Peter Boy's siblings (the concept later captured in CAPTA's 2003 "open courts" amendment). *Id.* at 206, 982 P.2d at 340.

In that regard, *Kema* is distinguishable. Significant facts about Isabella and her siblings' situation have been publicly discussed at length. Similar facts about Peter Boy and his siblings would not come to light until nearly two decades after the Hawai'i Supreme Court decided *Kema*. See *Acol v. DHS*, No. 1CC181000052, Dkt. 2 ¶¶ 2, 23. At that time, Peter Boy was only missing, and search efforts were underway. Here, by contrast, Isabella has been declared dead, her adoptive parents have been charged with her murder, and her estate has sued DHS for negligence. *E.g., Dwayne B. v. Granholm*,

No. 06-13548, 2007 U.S. Dist. LEXIS 60412, at *16-17 (E.D. Mich. Aug. 17, 2007) (“At the same time, the concept of the ‘best interests’ of a state ward is narrowed significantly by his or her death. Disclosure of records will no longer threaten the child’s physical or emotional security in any way. There is no longer a concern that disclosure of information will discourage potential future reports of abuse of that victim.”). The purpose of disclosure is not to help find a missing child. Disclosure of court records is needed to examine how Isabella’s case was handled – toward improving the services provided to all children in foster care, including continuing protection for Isabella’s siblings.

The Law Center accepts that not all records within the court file may be publicly disclosable.⁷ We are not seeking the identities or personal information about Isabella’s siblings, mandatory reporters, or other witnesses. We also are not seeking information that would endanger anyone’s life or well-being. But information about the Kaluas, DHS’s assessment and recommendation of the Kaluas as foster parents and then adoptive parents, and DHS’s investigations of child abuse incidents involving Isabella should be accessible (at least in redacted form) without jeopardizing those interests. At a minimum, if nothing else could be disclosed, Special Master Lane could prepare a synopsis of the records that serves the relevant “legitimate interests” here, allowing the necessary public scrutiny and accountability by summarizing the court records that explain what DHS did in this case. *See Kema*, 91 Hawai‘i at 202, 982 P.2d at 336 (“the family court directed DHS to prepare a synopsis”).

We know the law failed to fulfill its purpose in Isabella’s case. The requested disclosure is needed now to understand how that happened. This case, with extreme facts, presents the *rare* instance where confidentiality should yield to openness to protect the best interests of the children subject to the family court’s chapter 587A jurisdiction. Otherwise, the public will never have access to the information necessary to ensure the proper functioning and oversight of the foster care system. The death of

⁷ Because the docket for the proceeding is not publicly accessible, the Law Center does not know what records exist.

any child by parents that DHS recommended deserves the hard light of public scrutiny to assess what went wrong and how to fix it. Children currently in DHS custody deserve the opportunity to have better protection and services from DHS. That may not happen in the absence of some public access here.⁸ There must be some relief from the complete secrecy for a deceased child's HRS § 587A proceeding to permit a measured release that serves the legitimate interests of everyone in our community to improve foster care after something goes wrong.

IV. CONCLUSION

Based on the above, the Law Center respectfully requests that this Court unseal:

- (1) The case docket—*i.e.*, the index of pleadings;
- (2) Records sufficient to understand the factual and legal record on which the Court approved Isabella's foster placement with the Kaluas;
- (3) Records sufficient to understand the factual record presented to the Court by DHS and any other person or party regarding the Kaluas' fitness as parents; and
- (4) Any reports filed in this matter by Special Master Lane.

In the alternative, if the Court declines to release redacted court records, the Law Center respectfully requests that the Court unseal the case docket and order Special Master Lane to prepare, for public disclosure, a synopsis of the factual and legal record presented to the Court for Isabella's foster placement with the Kaluas and any other information relevant to understand how this case was handled by government authorities.

DATED: Honolulu, Hawai'i, December 13, 2023


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⁸ For example, in the Peter Boy case, DHS has sought to avoid accountability for its actions on procedural grounds. *Acol v. DHS*, No. CAAP-21-412 Dkt. 54 (arguing for dismissal of claims on standing and statute of limitations grounds).

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IN THE FAMILY COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

[CASE TITLE UNKNOWN]

[CASE NO. UNKNOWN]

DECLARATION OF COUNSEL; and
EXHIBIT "1" and "2"

DECLARATION OF COUNSEL

1. I, Benjamin M. Creps, am a staff attorney for Movant Civil Beat Law Center for the Public Interest (Law Center).
2. I make this declaration based on personal knowledge, the Law Center's business records, and public records.
3. Attached as Exhibit 1 is an exhibit that I compiled, comprising true and correct copies of the following news articles:
 - a. John Hill, *A Hawaii Mother Haunted By The Brutal Killing Of One Child Tries To Hold Onto Another*, Honolulu Civil Beat (Aug. 17, 2023), <https://www.civilbeat.org/2023/08/a-hawaii-mother-haunted-by-the-brutal-killing-of-one-child-tries-to-hold-onto-another/>;
 - b. Leila Fujimori, *Grandmother of Missing Waimanalo Girl Wanted 'A Chance'*, Honolulu Star-Advertiser (Oct. 10, 2021), <https://www.staradvertiser.com/2021/10/10/hawaii-news/grandmother-of-missing-girl-wanted-a-chance/>;

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4. In compiling Exhibit 1, I excised pages of the article printouts that were composed entirely of advertisements or other non-substantive material.

Continued on following page

5. Attached as Exhibit 2 is a true and correct copy of an excerpt from *CAPTA: Successes and Failures at Preventing Child Abuse and Neglect*, Hearing Before the Subcommittee on Select Education of the Comm. on Education and the Workforce, House of Representatives, 107th Cong. (Aug. 2, 2001).

I declare under penalty of law that the foregoing is true and correct.

DATED: Honolulu, Hawai'i, December 13, 2023


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Hawaii State Government

A Hawaii Mother Haunted By The Brutal Killing Of One Child Tries To Hold Onto Another

The mother of a Waimanalo girl allegedly murdered by the couple who adopted her says she is sober and working to prevent the state from putting her newborn son into the

 13

same system.

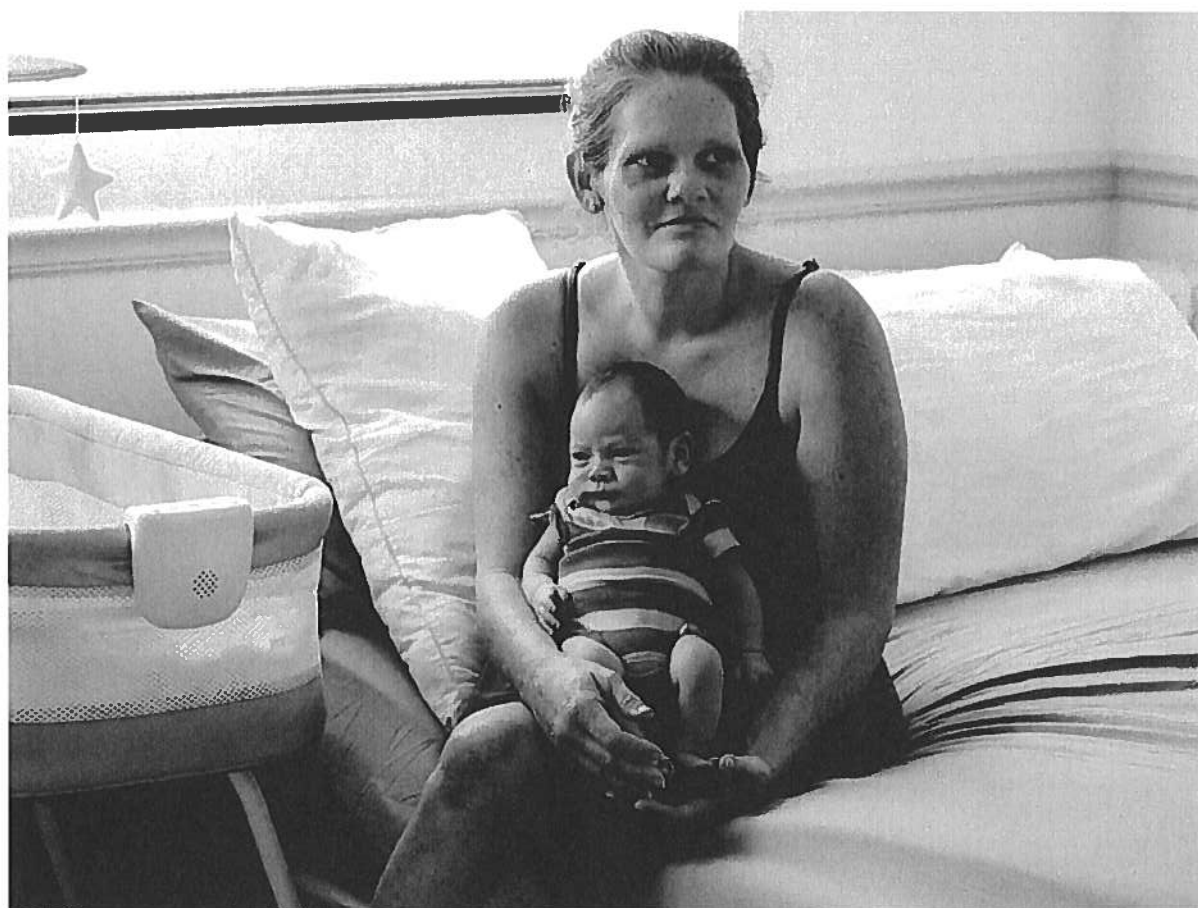
By John Hill    / August 17, 2023

 Reading time: 10 minutes.



Melanie Joseph has been dealing with all the normal anxieties of being a new mother after the birth of her son last month — getting to pediatrician appointments, keeping a bag stocked with diapers and wipes, establishing sleeping and eating schedules.

She’s also facing a terror that few parents could imagine.



Melanie Joseph, the birth mother of Ariel Sellers sits in her studio apartment holding her newborn son, Azarius. Ariel was recently declared dead by a local judge and her adoptive parents are awaiting trial for murder. (David Croxford/Civil Beat/2023)

Two years ago, Joseph's daughter Ariel disappeared from the home where she had been placed after the state took her from Joseph.

It didn't take long for authorities to uncover perhaps the most notorious case of child abuse in recent Hawaii history.

A Waimanalo couple, Lehua and Isaac Kalua, had taken in Ariel and her sisters as foster children, then adopted them, giving Ariel a new name — Isabella Kalua.

The Kaluas confined 6-year-old Isabella to a dog cage in a bathroom to keep her from wandering around the house at night looking for the food her adoptive parents failed to provide, her older sister told authorities. The sister reported that she and Lehua Kalua found Isabella dead in the cage, her mouth and nose covered with duct tape.

The girl's body has never been found, but last month, a probate court judge declared her dead. And the Kaluas are facing murder charges with their trial scheduled to begin later this month.



Isaac and Lehua Kalua are charged with second-degree murder in connection with the death of their adoptive daughter Isabella. (Courtesy: Hawaii County Police Department/2021)

Joseph's deepest fear is that her newborn son, Azariyus, will be placed in the same foster system that took her daughter's life.

This time around, she has a much different attitude.

"I'm a lot more protective," she said.

She says that during her pregnancy, she broke the methamphetamine habit that led to her children first being taken by the state in 2018. She leaned on meth to help deal with the horror of Ariel's mistreatment and death, she said — but it just made things worse.

She's preemptively doing the services that the state wanted her to do several years ago to regain custody of her other children. She hopes that by getting ahead of the requirements, she can keep Azariyus and be

reunited with two of Ariel's sisters.

But despite her clean drug tests at Azariyus' birth and beyond, she says, the state's Child Welfare Services has already stepped in.

Two days after Azariyus was born, a state social worker filed a child safety assessment, finding that Joseph's history of substance abuse prevents her from protecting or providing for her son. The report stated that she had not proven that she is rehabilitated and listed a number of steps that she should take.

The social worker told her she'd be summoned to appear in Family Court two weeks later. Now it's been a month and she still does not have a court date. She's not sure what's going on. Nor does she know where her four surviving daughters are — though she hears rumors.

Joseph complained to Cathy Betts, director of the department that oversees CWS, that the social worker had altered the checked-box responses on her assessment after she had signed it and taken several other steps Joseph believed were improper.

The Department of Human Services did not respond to a request for comment. But in an email provided to Civil Beat, Betts told Joseph she had assigned her senior staff to look into her complaints and had alerted the Attorney General's Office.

Joseph is living in the back bedroom of a cousin's Kaneohe house. The vine-cloaked walls of the pali loom a few miles away. A small papaya tree bearing enormous fruit grows in the backyard. Joseph's worldly possessions are neatly stacked in containers against one wall. Azariyus' bassinet sits next to her king-size bed.

“It’s nice to be able to take care of my kids — at least one of them,” she said.



Melanie Joseph took a selfie with her daughter Ariel before the girl disappeared. (Courtesy: Melanie Joseph/2023)

A Death Leads To Addiction

Joseph grew up in Waimanalo and graduated from Castle High School. In her late 20s, she said, she took care of her brother, struggling with cancer.

“I was up with him 24-7,” she said. “I was the one who took care of him.”

When he died in early 2017, Joseph said, she fell into the meth habit that would derail her life.

It’s an all-too-common story in Hawaii, which has long been in the grip of the drug. In many child welfare cases, one or both parents have been using meth. Unlike on much of the mainland, meth overdose deaths in Hawaii far outnumber those caused by opioids. On Oahu from 2016 to 2021, the ratio was 3-to-1.

Joseph said that most of her acquaintances in Waimanalo are still in the throes of meth addiction — one reason she keeps her distance by living in Kaneohe.

A year or so into her addiction in 2018, when she gave birth to one of her daughters, Joseph tested positive for meth. As often happens in such cases, the state got involved.

At first, the children were placed with Joseph’s mother, Barbara Kumai. But after six months or so, Joseph said, her mother told her that the children would be moving in with Isaac (who also goes by Sonny) and Lehua Kalua.

Kumai said shortly after Ariel disappeared that the state had removed Ariel and her older sister from her home after expressing concerns about Kumai’s ability to care for them while she was dealing with her boyfriend’s serious motorcycle accident.

“The social worker said she didn’t want me to get overwhelmed,” Kumai

told the Honolulu Star-Advertiser. “She should have given me a chance.”

Joseph and her cousin, Taeia Costa, believe there was another factor in the state’s decision to place the children with the Kaluas — Lehua believed that her brother was the father of the youngest girl, which Joseph says is not true.

Signs Of Abuse

Joseph visited the kids when they lived with her mother. After they were moved to the Kalua household, she said, she saw them two or three times a week.

At the Kaluas, she says she started noticing signs of abuse.

A child related to the Kaluas would bully Ariel, taking away her toys and and trying to hit her, Joseph said. But the Kaluas did nothing.

“I kind of scolded him one day and after that, I couldn’t have visits at the house,” Joseph said.

The state arranged for her to keep seeing the kids at her mother’s house, a CWS office downtown or the Waimanalo public library.

During these visits, Joseph said, she started seeing other signs of abuse. She noticed bruises on Ariel’s arms. When she was lifting her into the car after a visit, Ariel’s shirt pulled up and Joseph saw bruises on her back and head.

Joseph said she alerted the CWS social worker, who said Ariel had been pinching herself.

“My daughter doesn’t pinch herself,” Joseph said. “That’s not normal.”

Another time, Ariel’s finger was swollen and Joseph said she asked the girl what happened. Ariel ground her foot into the floor. Joseph believes she was pantomiming someone stomping on her finger.

The social worker, she said, attributed it to a bug bite.

After Ariel disappeared, Joseph saw a Hawaii News Now report that Ariel’s finger had been broken in October 2019, while she was in the Kaluas’ care, and that there had been a delay in reporting it to the state or getting it treated.

Joseph said she also noted how hungry Ariel always seemed to be.

During the visits, Joseph would bring snacks for the kids. “She constantly wanted to eat,” Joseph said. “She’d eat whatever I brought.”

Joseph said she tried to find out what life was like for her kids in the Kalua home. But Ariel, sometimes at the insistence of her older sister, kept quiet.

“My daughter always looked happy,” Joseph said. “Every time I saw her, she had a smile on her face. But she’d never really talk to me.”

A lawsuit filed this week against the state alleges that child welfare workers were warned repeatedly that the Kaluas were abusing Ariel — by doctors, a teacher and others — but failed to adequately investigate and advocated for the Kaluas to adopt the children.

The lawsuit says that the Kaluas took Ariel to different doctors to avoid suspicion when she suffered from bruises, fractures and other injuries. Isaac Kalua took off work, according to the suit, supposedly because he

had contracted Covid-19, when he actually needed time to dispose of the girl's body.

Homeless On The Beach



Joseph said she doesn't remember a lot from the time around Ariel's disappearance. She had been homeless, living on Waimanalo beaches.

A review of Hawaii court records shows that Joseph's only interactions with law enforcement have been four citations in 2019 and 2020 for putting up an illegal tent on the beach or being in a park after closure. She has no

criminal record.

Isaac Kalua, by contrast, had felony convictions for terroristic threatening and assault. Lehua Kalua had a felony drug arrest, but her case was dismissed after she graduated from drug court. These cases could have

disqualified them from becoming foster parents, but unlike some convictions, did not automatically bar them.

When Ariel disappeared two years ago, Joseph said she knew right away that her daughter would not have run away, as the Kaluas had suggested.

“My daughter’s afraid of the dark,” she said. “She would never leave at night. She would never even come out of the house.”

What she does recall from the frantic days after Ariel’s disappearance was a growing sense of panic and fear. People were making donations, but Joseph said she didn’t care about the things people were bringing. “I just wanted to find my daughter,” she said.

In the weeks and months that followed, meth seemed to offer some respite.

“I was using for a long time because I just thought it would help me deal with it,” she said. “I just got tired of doing it. Then I got pregnant with him.” She gestured toward her newborn son.

A friend who was still using meth coaxed her to get sober, she said, and helped her get through detox. That friend has since also stopped using, and the two offer each other support. She said the father of her children, Adam Sellers, is also in rehab.

Costa, Joseph’s cousin, recalls getting a tearful phone call from her one night shortly after she got sober.

“I wasn’t there,” Costa recalls her saying. “My baby was probably crying for me, and I wasn’t there. I didn’t save her.”

Costa replied, “Honey, at that time you couldn’t even save yourself. And we’ve just got to work from here.”

After getting clean, Costa said, Joseph embarked on her mission to do the services that the state had required before Ariel’s death.

“She was the driving force there,” Costa said. “She started making all those calls.”

In the meantime, Costa said, “It’s become a full support system in the background. Everybody’s on the team cheering for her and trying to do whatever they can to open avenues and doorways for her to be able to get all the help she needs.”

Joseph is doing intensive outpatient treatment online, seeing one therapist and trying to line up another to help deal with grief over Ariel and all that’s happened.

“It’s OK,” she said. “I’m not used to talking about it, but I’ve got to start somewhere.”

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Monday, December 11, 2023 | Today's Paper | 82

HAWAII NEWS

Grandmother of missing Waimanalo girl wanted 'a chance'

By [Leila Fujimori](#) • Oct. 10, 2021

The grandmother of missing 6-year-old Waimanalo girl Isabella Kalua said her disappearance has hit her especially hard because the child was once placed in her care.

Barbara Kumai took in her biological granddaughter, whose birth name was Ariel Sellers, and her older sister, now 12, in 2017 when they were 2 and 8 and shortly after losing her own son to cancer.

Kumai's daughter, Melanie Joseph, and the father of the girls, Adam Sellers, were addicted to drugs at the time, became homeless and could not keep them.

Four of Joseph's five children eventually were placed by state Department of Human Services child welfare officials in the home of her adoptive parents, Isaac K. "Sonny" Kalua III and his wife, Lehua.

Isabella was last seen asleep in her room at the Kaluas' Puha Street home in Waimanalo at about 9 p.m. Sept. 12, according to Honolulu police.

The Kaluas have said they think the child may have been abducted or simply wandered off, according to family spokesman William Harrison, who has said police were immediately called at 6 a.m. Sept. 13 when the couple awoke to find her gone. They also reportedly allowed police to search the house.

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A massive search involving police, the FBI and other government agencies, and community volunteers failed to turn up any sign of Isabella. The community has been holding rallies across Oahu in hopes she will be found and that someone with knowledge of her whereabouts will speak up.

DHS Child Welfare Services allowed Kumai to keep her two grandchildren until late 2018, when her boyfriend got into a serious motorcycle accident.

"The social worker said she didn't want me to get overwhelmed," the 51-year-old said. "Every time she came to visit, I had just come home from the hospital and I was tired."

Then one evening, Kumai said, the social worker told her to "pack up the girls." At 7:30 the next morning, the social worker arrived and took them a block away to the Kaluas' house.

"She should have given me a chance," Kumai said. "I wanted to try. You don't know how many times I called her and left messages. I felt something wasn't right."

Kumai said she thought the decision to move the children may have been because of her own past.

"I made the same mistakes," she said, explaining that her own drug use led to her children being removed by state child welfare officials. "That was so many years ago. I was trying to tell (the social worker) that people change. I changed a lot."

Six months after Isabella and her sister were placed with the Kaluas, Kumai said the same social worker returned to her house with the children.

Kumai said she was told that Lehua Kalua was under investigation and was asked, "If found guilty, if I would take them back. I said, 'Yeah.' Then suddenly, boom! The investigation is over with and everything is OK. That was the end of my visits."

Kumai shared no firsthand knowledge of abuse but said, "That's my granddaughter we're talking about. It makes me angry. I want to go over and say something, but I can't. I shouldn't. If they couldn't handle them, they should stop making up stories. If they kept everything cordial, we could have helped out too."

The state Department of Human Services said it could not speak to the specifics of any case due to confidentiality concerns.

Police removed three of Isabella's sisters from the Kalua home Sept. 13.

CWS said if a child is subject to imminent harm, law enforcement is authorized to remove a child from the custody of the family. "Following law enforcement removal of a child, only then may CWS assume temporary foster custody until it is determined that the child can or cannot be safely returned to the care of the child's family," the agency said.

"If there is family that is willing and eligible to be a resource caregiver, that is the preference, when placing a child outside of the child's family home."

Family and friends question why the Kaluas were allowed to adopt Isabella. DHS says with adoptions, a child's guardian ad litem and Family Court must agree, and an extensive background check on adult family members in the home is done.

Since Family Court hearings and records are closed to the public, it is unknown whether CWS has requested permanent removal of Isabella's siblings or whether an abuse case was ever opened concerning the Kaluas.

Taryn Napoleon, Joseph's cousin, said Isabella's paternal grandmother, a licensed clinical social worker, wants to provide a home for her grandchildren who were removed from the Kalua home.

"She's reached out to Child Welfare to get her grandbabies," she said. "She was never notified they were taken into custody. She never had the opportunity to get them. For a 30-year veteran in the human services field, it's kind of sad. She should have had the opportunity."

Meanwhile, relatives and volunteers have continued searching for Isabella. The community has been holding rallies across Oahu in hopes the child will be found and that someone with knowledge of her whereabouts will speak up.

"She didn't just disappear," Napoleon said.

"I'm hoping something will surface," Kumai said. "Someone will crack and say something. I'm sure it haunts them if they did something to her. They got to worry every day if they get caught, I'm hoping, if they have any conscience."

The Honolulu Police Department said in an email, "The investigation into young Isabella Kalua's disappearance is ongoing, and HPD personnel are continuing to interview witnesses and process evidence."

Have you seen Isabella Kalua?

The 6-year-old from Waimanalo was reported missing on Sept. 13.

>> Description: Also known as Ariel Sellers, she is 3-feet, 3-inches tall, weighs about 46 pounds, has brown hair and brown eyes and was likely wearing a black hoodie, black leggings, colorful socks and Nike slides.

>> Contact: HPD or Crimestoppers at 808-961-8300.



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Hawaii

Isabella Kalua Tragedy Turns A Spotlight On The Licensing Of Foster Families

Some convictions automatically disqualify families taking in foster children, but in many cases the state has discretion.



18

By Kevin Dayton   / November 30, 2021

 Reading time: 11 minutes.



One of the most pressing, puzzling questions in the alleged murder of 6-year-old Isabella Kalua is how her adoptive family was ever deemed qualified to provide foster care for her and her siblings in the first place.

Isaac “Sonny” Kalua III, Isabella’s adoptive father, had felony convictions for terroristic threatening and assault that could have disqualified him from ever becoming a state-licensed foster parent. That might have prevented his adoption of Isabella this year.

Isabella’s adoptive mother, Lehua Kalua, was arrested in a felony drug case in 2000 under her maiden name of Kanahele, and she submitted a statement to the court in 2001 that a judge in her case said amounted to a “confession,” according to court records.

Her case was dismissed after Lehua Kalua graduated from drug court in 2002, but that old felony drug arrest also could have disqualified the Kalua family from being licensed to care for Isabella or other foster children.

State rules governing the licensing of foster families make it clear the child welfare system has discretion to refuse to license a foster family when household members have any convictions that suggest there is a risk to a child.

For example, state rules specify a history of workplace violence or arrests for driving under the influence can disqualify a family. In fact, any conviction under circumstances that indicate a household member poses a risk to the “health, safety or well-being of children” can be grounds for

denial. But offenses like the Kalua's fall into a gray area — unlike some criminal convictions, they did not automatically disqualify them.

As a result, Isabella and her 12-year-old sister were allowed to move in with the Kaluas in February of 2019, according to a police affidavit, and on Jan. 26 the girls were adopted into the family along with a younger sibling.

Isaac and Lehua Kalua are now charged with second-degree murder in the disappearance of Isabella, along with hindering prosecution, endangering the welfare of a minor and persistent nonsupport of the child.



Lehua and Isaac Kalua, who were charged with second-degree murder in connection with the death of their adoptive daughter Isabella. The case raises questions about state rules that govern which families can be licensed to provide foster care.

Isabella, whose birth name was Ariel Sellers, was reported missing from

the family's Waimanalo home on Sept. 13. Her body has not been found.

Isabella's 12-year-old sister told authorities she and Lehua Kalua found Isabella dead in a dog cage where she was forced to sleep in a bathroom of the house, with duct tape over her nose and mouth, according to a police affidavit. The sister told police that Isabella "didn't wake up."

Isabella was tied up with duct tape "plenty of times" while they lived in the Kalua home, and was forced to sleep in the dog cage because she would wander the Waimanalo house seeking food, the sister told police. She told authorities that was because Lehua Kalua didn't feed Isabella.

Lehua Kalua is also charged with abuse of a family or household member.

The Child Welfare Services administrative rules that spell out the licensing requirements for Hawaii foster families require that candidates disclose criminal convictions. The state also mandates criminal history checks of applicants, using fingerprints to run FBI clearances.

The state also requires checks of the child abuse and neglect registries in Hawaii and any other state where the applicants have lived in the previous five years.

In general, the child welfare system rules require that the adults in the household "shall not have a criminal history record or background which poses a risk to the health, safety or well-being of children in care."

That specifically includes felony convictions for child abuse or neglect, spouse abuse, a crime against children, "or for a crime involving violence, including rape, sexual assault or homicide, but not including other physical assault or battery," according to the rules.



The Hawaii Department of Human Services' rules specify certain kinds of crimes that prevent families from being licensed to provide foster care, but convictions for drug offenses or assault can be overlooked if they did not occur in the previous five years.

The rules go on to prohibit licensing for any family with a member in the household who has a felony conviction within the last five years “for physical assault, battery, or a drug-related offense.”

That portion of Hawaii's state rules tracks federal law almost word for word, including the specific exceptions that make it possible for families to qualify as foster homes when household members have assault or drug-related convictions for offenses that happened more than five years ago.

The Kaluas' criminal cases fell well outside that time frame, and in any event, Lehua Kalua was never actually convicted.

In Isaac Kalua's case, a criminal history check would have turned up his convictions for terroristic threatening, two counts of second-degree assault and attempted assault, all of which he pled guilty to in 2000. Lehua Kalua's drug arrest — although it did not end in a conviction — should also have appeared.

Kalua was sentenced to two weeks in jail and five years probation, and ordered to undergo substance abuse treatment. But given the time that passed before the arrival of Isabella and her siblings in the Kalua household in 2019, the CWS rules did not specifically prohibit placement of the children there.

The state Department of Human Services refused to discuss the Kalua case specifically, but said in a written reply to questions that “if the potential resource caregiver or adopted parent has a criminal conviction other than those above specified felony convictions, CWS will conduct an assessment that considers the type of criminal offense, when it occurred, and evidence of rehabilitation to determine if the criminal history poses a risk to the health, safety, or well-being of children ...”

But Steve Lane, a longtime Hawaii foster parent and a paralegal, contends that it is “outrageous” that foster children could have been placed in the Kalua home given the safeguards that are supposed to be built into the system.

Those safeguards include Family Court supervision of the case, and a court-appointed guardian ad litem appointed to represent the interests of the children.

As for the foster licensing of the Kaluas, “the guidelines that the state provides for foster placement ... provide more than adequate opportunity

Honolulu Police Department

for the state to say no,” said Lane, who has served as a “special master” assigned to review the facts in several child abuse cases. “There is plenty of latitude to say no, especially when you get a foster parent with multiple felony violent offenses and convictions.”

“Having been both a foster parent and an adoptive parent, I would never have been licensed had I had a record like that,” Lane said. “It is inconceivable to me that this could have happened.”

Isabella Kalua’s body has not been found, but her adoptive parents have been charged with second-degree murder.

Bill Bettencourt, senior fellow with the Center for the Study of Social Policy in Washington, D.C., said any application to become a foster parent by someone with a history such as that of Isaac Kalua should have been reviewed “at the highest level” of CWS.

Bettencourt stressed that he cannot speak to the specifics of the Hawaii case, but said an arrest and conviction for a violent offense is “pretty extreme.” Bettencourt was deputy director of the Family and Children’s Services Division in San Francisco from 1995 to 2001.

“Everywhere, if there was any kind of a violent conviction, that would be a flag, a rare exception made, and the circumstances would have to be something that happened a long time ago, and nothing since, perhaps,” he said. “What were the circumstances? Was this a young, stupid thing this person got involved in, and then got their life together, for example?”

“I would make the assumption that they looked at the court record, they looked at the circumstances, and there were some things in there that even though it looks bad on the surface, were determined to be worthy of taking a look at, given the fact that nothing (further) had happened in 20 years,” Bettencourt said.

Bettencourt also said the CWS system may be more willing to overlook minor criminal offenses in cases where a child-specific placement is being considered. Those are cases where the state contemplates placing a child with people who are blood relations of the biological parents, or are such close friends or neighbors that they might be considered hanai.

“In those circumstances, you do want to try to keep kids in their community, with their school, with their friends, with their connections,” Bettencourt said. In those kinds of situations an old marijuana arrest, for example, might seem less important than the bonds a child has to friends or family who are willing to take them in.

“That’s more like where that happens,” he said. “It’s definitely going to be much more likely to happen when it’s somebody who is family or like family, where you can reduce the impact of this child having to be removed from their parent.”

This is not a new debate for the state.

National research shows Hawaii places almost half of its foster children with relatives — which is the highest rate in the nation — and Hawaii CWS officials in 2003 considered the issue of potential foster parents with old criminal records in a hefty report on the state system.

The report noted that Hawaii applies the same criminal history check

requirements to child-specific placements — those involving family members or friends of the family — as it does to general licensed foster homes.

But the 2003 report detailed an internal discussion about cases in which CWS caseworkers did a cursory assessment of factors, including criminal histories, before deeming families to be suitable to provide foster care and placing children there.

Problems arose in some of those cases when a different social worker tasked with overseeing licensing later concluded some of those families were “unlicensable,” according to the report.

“When the standards were first applied to relatives, many relatives did not meet the standards, and the department was faced with the dilemma of removing children from homes in which they had already established bonds, or leaving them in homes that could not meet licensing standards,” according to the 2003 report.

“Although efforts were made to help the families meet licensing requirements (in areas such as space requirements), a significant number had a prior criminal history record (e.g., conviction on record (a) long time ago, rehabilitated, no subsequent arrests or convictions),” the report explained. “In some cases, when the department attempted to remove the child, the removal was denied by family court.”

“Unfortunately until the department is able to maintain a population of foster homes larger than the population of children needing placement, licensing families who only marginally meet these standards will continue,” the report added.

A follow-up CWS Statewide Assessment Report published in 2017 said criminal history background checks were again “an area needing improvement,” and explained the state had begun to develop new procedures.

In a written response to questions about those reports, CWS said that “similar issues and needs remain. These issues and needs are not unique to our state.”

“As a department, we have worked with our federal oversight agencies, community stakeholders, and numerous philanthropic organizations, to build more robust resources for foster youth and their families,” CWS said in its statement.

CWS also said in its written statement it is in the process of updating its licensing requirements to conform to 2019 federal guidance.

That federal guidance does not amend the list of convictions that automatically disqualify families from providing foster care, but CWS said the new rules may be helpful to social workers in cases where family members have histories that include arrests or convictions.

“Although the proposed administrative rules are still being finalized, it is anticipated that the proposed rules may affect, among other areas, the criminal background checks, including the rehabilitation assessment,” the department said in its written statement.

“The proposed new administrative rules will provide clarification to the licensing requirements so that CWS will be able to find qualified resource caregiver homes for our youth in foster care,” according to the statement.

The CWS statement also said the department has received “credible threats” in the aftermath of the Kalua case, and “we have become very concerned for the well-being and safety of our CWS workers, who are also grieving this loss.”

“We call on the community to allow our dedicated staff to safely continue with their critical work to respond to reports of child abuse and neglect, and to provide support for the children in the foster care system,” said the written statement from CWS. “We remain committed to protecting our vulnerable children and making decisions based on what is in their best interests.”

The department asks that anyone who suspects child abuse or neglect call 1-888-380-3088.

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Commentary

John Hill: Hawaii Should Come Clean About Its Actions In A Notorious Child Abuse Case



Almost nothing is known about the actions of the public officials who handed over Ariel Sellers to the Waimanalo couple accused of killing her.

By [John Hill](#)

September 14, 2023 · 9 min read



About the Author

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John Hill

John Hill is the Investigations Editor at Civil Beat. You can reach him by email at jhill@civilbeat.org or follow him on Twitter at [@johncornellhill](https://twitter.com/johncornellhill).



Editor's note: *Civil Beat Investigations Editor John Hill is launching a new investigative column that examines issues of transparency and government accountability at all levels and in all areas of Hawaii.*

Will anyone ever have to answer for Ariel Sellers' death?



I'm not talking about her adoptive parents, Isaac and Lehua Kalua. They are accused of keeping the 6-year-old girl they renamed Isabella in a dog cage with her mouth duct-

taped so she would not roam the house at night seeking the food they failed to provide. A trial early next year will decide the Waimanalo couple's fate.

No, I am talking instead about the public servants and government contractors who took part in handing her over to the Kaluas.

To be clear, I am not equating the actions of these public officials with the horrible crimes that led to arguably the most notorious child abuse case in recent Hawaii history. But they are professionals with great responsibilities – and when something goes very wrong, as it did here, they should be held accountable.

It's easy – but not always fair – to second-guess child welfare officials. Social workers cannot be expected to always know which of the many parents and foster caregivers they oversee are going to do something horrible. Sometimes no one outside the family has any reason to suspect bad things are happening behind closed doors.

This is like Peter-Boy on the Big Island. And it's not revenge, its the public's right to know. Ariel's sister saw her in the cage with

surfchick · 2 months ago

If the Kaluas were in financial despair why did they change from foster status to adoption? They are "allegedly" evil but

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Thank you, John Hill, for this excellent investigative report. You are right, there are too many unanswered questions and

ahhnow · 2 months ago

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This was not such a case. The Kaluas had criminal records that would have been enough for the Department of Human Services to reject them as foster parents, much less adoptive parents. They were in financial straits that also could have disqualified them.

And a lawsuit now alleges that there were several reports to the state and others that the Kaluas were abusing Ariel for more than a year before she disappeared. They are, of course, just allegations, but the lawsuit gives very specific details, including dates, places and people. And Ariel's biological mother Melanie Joseph told Civil Beat she also warned state social workers about her fears that Ariel was being abused.

The poor girl is dead after unimaginable suffering. But what do we know about the actions of the various state social workers, contractors and court officials?

Almost nothing.

Who Was The Judge?

What about the Family Court judge who approved the adoption? Under Hawaii law adoptive parents must be “fit and proper persons and financially able to give the individual a proper home and education.” A judge must make sure this standard is met.

In addition to his criminal record of felony assault and terroristic threatening, Isaac Kalua filed for bankruptcy in July 2020, several months before Ariel’s adoption. He listed \$130,893 in debt beyond what he owed on his house, mostly from credit cards and lines of credit.

I asked the state Judiciary the name of this judge. The answer – everything about adoption proceedings is private, even the name of the judge.

“Once an adoption is granted, all records are placed under seal,” a spokesman for the Judiciary wrote in an email. “In light of these statutory mandates, the Judiciary is prohibited from disclosing the names of judges who grant adoption petitions because this would indirectly be disclosing confidential information.”

But how does this apply to the Ariel Sellers case? It’s been reported publicly scores of times that she had been adopted by the Kaluas. It is no longer confidential.

Judges don’t have lifetime tenure. They petition the Hawaii Judicial Selection Commission to approve them for new six-year terms. The commission should think long and hard about granting another term to the judge who approved

Ariel's adoption, or at least ask some tough questions. The public needs to know the identity of that judge so people have a chance to comment.

What about the social workers and their supervisors at DHS, and the contractors who advise them about whether a placement is safe, including Catholic Charities, which is named in the lawsuit?

I asked DHS whether it or any other entity had conducted a review of what went wrong in Ariel's case and, if so, if I could see it. I also asked for an interview with Cathy Betts, DHS director since 2020 and before that deputy director.

No response on the Betts interview. As for the review: "DHS has done an internal review of the confidential records of the case. The records are not able to be disclosed because they are prohibited from disclosure by law."



A trial for Isaac and Lehua Kalua, accused of second-degree murder in the death of their adoptive daughter, is scheduled for early next year. (Honolulu Police Department photos)

It's true that federal law requires state child welfare agencies to keep records confidential, including abuse reports, to protect the rights of

children and their parents and guardians.

But there are exceptions. One federal provision calls for the states to allow public disclosure of “the findings or information about the case of child abuse or neglect which has resulted in a child fatality or near fatality.”

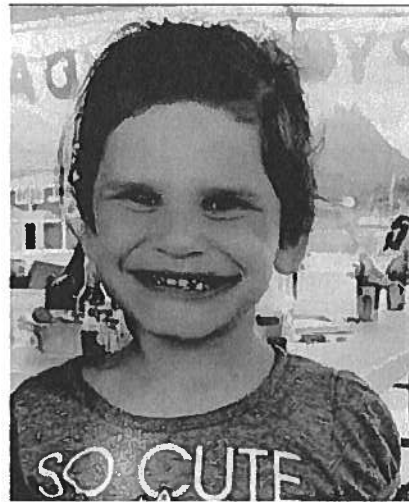
Earlier this year, I asked DHS for “findings and information” in child abuse deaths and near deaths for the past several years. The department did provide some very barebones information about several cases – but not Ariel’s.

The reason? Though the girl had been missing for more than a year, she had not been officially declared dead.

A judge made that declaration in July, so I once again asked DHS for its “findings and information.” The department said it was waiting for the court to send a written order or death certificate.

This month, I asked again. No response. Apparently, the department is still waiting and feels no need to contact the court itself. Maybe the court will never send anything and DHS will use that as an excuse to never provide information.

DHS also failed to respond to my question about whether any disciplinary action had been taken as a result of its review.



Ariel Sellers, renamed Isabella Kalua by her adoptive parents, disappeared two years ago. (Honolulu Police Department photo)

Taking a step back, the confidentiality provisions are meant to protect the privacy rights of children and their parents or guardians.

Tragically, Ariel's privacy rights are now moot. And the Kaluas stand accused of killing

her. Their public trial would seem to pretty much demolish any expectations they had of privacy.

Another exception to the privacy provisions in federal law: The states are required to disclose information to a government entity or its agent that have "a need for such information in order to carry out its responsibilities under law to protect children from child abuse and neglect."

So it would seem that the Legislature, as the overseer of DHS, could demand to see the records.

I asked Rep. Lisa Marten, who represents the district that includes Waimanalo, where Ariel lived her short life, why the Legislature doesn't use its oversight powers to demand answers.

"My role is not revenge," she said.

Marten does not want to be seen as attacking DHS because she hopes to have a productive dialogue with child welfare officials to make improvements to the system.

“I want to appreciate what they do instead of attacking them,” she said.



State Rep. Lisa Marten does not want to be in the position of attacking the state child welfare agency. (Lisa Marten photo)

She pointed out that State Auditor Les Kondo is due to complete an audit of DHS sometime soon, and

that the Legislature has beefed up child welfare budgets, including money for a state contractor to visit foster homes more regularly. A new working group will also review DHS, though its recommendations are in no way binding.

But none of this directly addresses what happened in Ariel’s case. As for that, Marten said, the civil suit will force DHS to explain itself.

I appreciate Marten’s efforts – and her willingness to at least talk to me, unlike Betts – but I disagree that seeking accountability from officials amounts to “revenge.” I also know that many civil suits settle out of court before the facts come out – in fact, that is often why they settle out of court. So I would not rely on that venue for a reckoning.

A California Case Offers An Alternative

I wondered what kind of public accountability took place in the aftermath of notorious child abuse cases in other states, and so simply Googled something like “worst child abuse cases.”

At the top of the results was the case of the Turpin children in Riverside County, California. The 13 children, aged 2 to 29, had been abused for years, chained to their beds and given inadequate food, left living in filthy conditions. The parents are serving terms of 25 years to life in state prison.

Some of the children were subsequently placed in a foster home where they were allegedly abused again, and the adult children reported that the county had been remiss in releasing money held for them to help them navigate their new lives.

It turns out there had been some earlier horrific cases of child abuse in Riverside County. And the response to those cases and the Turpin “house of horrors” offers some contrasts to Hawaii’s response to Ariel’s death.

For one, in 2018, Riverside County’s director of the Child Services Division resigned amid civil lawsuits over the county’s failure to act in two cases of severe child abuse that resulted in more than \$11 million in settlements. That same year, the county hired an outside expert to do a “root-cause analysis” of what went wrong in cases that led to civil lawsuits and make reforms.

In 2021, the county Board of Supervisors paid a law firm \$868,000 to assess the county’s care of the Turpin children and the overall child welfare system. The law firm assembled a team of experts

from UC Berkeley, UCLA and elsewhere. It analyzed 30,000 pages of records and interviewed more than 100 people.

It issued a 634-page report replete with recommendations for change. Much of the report pertaining to the Turpin children was redacted – they are all still alive and retain privacy rights – but at least the body that oversees the child welfare system got a detailed accounting.

I don't know whether these efforts made a difference in Riverside County. But they underscore a basic truth that Hawaii officials should embrace.

Child welfare agencies and courts use our tax money to achieve the goal of protecting children. We have the right to know what they are doing, or failing to do, in our name.

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By Scott Marshall · September 15, 2023 · 5 min read

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HAWAII NEWS

Adoptive parents of Isabella Kalua were under financial stress before child's death

By [Leila Fujimori](#) • Nov. 26, 2021

The Waimanalo couple accused of murdering their 6-year-old adopted daughter Isabella "Ariel" Kalua was under mounting financial pressure in the months and weeks preceding her death.

Court records show that on Sept. 10, three days before the couple reported Isabella missing from their home, Lehua Kalua told a Kaneohe District Court judge she was working on filing for bankruptcy. And she previously told the courts she was filing for bankruptcy in two other cases initiated by banks against her for a total of over \$12,000 in nonpayment of loans, court records show.

Isaac "Sonny" Kalua III, doing business as Sonny K. Enterprises, filed July 17, 2020, for Chapter 13 bankruptcy because of debts totaling \$476,738. A mortgage adjustment that started Nov. 1 was meant to save their two-story house on Puha Street, where authorities say the child died after suffering repeated abuse.

The Kaluas were indicted Nov. 17 by an Oahu grand jury on charges of second-degree murder and abuse of both Isabella and her 12-year-old sister, and on related charges of persistent nonsupport, hindering prosecution, abuse and endangering the welfare of a minor. According to court documents and comments made by a deputy prosecutor during a bail hearing, Isabella was allegedly kept in a dog cage and denied food, and Lehua Kalua had duct-taped her mouth and nose, causing her death.

Although the Kaluas reported the child missing Sept. 13, authorities believe she died in mid-August when she was last seen alive on the home's surveillance video. Her body has not been found.

The Kaluas were arrested Nov. 10, when an extensive search of their house, yard and vehicles was conducted.

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The Kaluas were foster parents to Isabella and three of her siblings, whom the couple also sought to adopt. Based on Child Welfare Services guidelines, they likely were receiving assistance of \$576 to \$676 a month per child, depending on the child's age, and perhaps an additional payment of up to \$570 per child with special needs.

Isabella's relatives have said the girl may have had a learning or developmental disability and was supposed to have been tested for autism.

Foster children who are adopted continue to receive the same amount of financial assistance from the state until age 18.

A federal employee by day at Pearl Harbor Naval Shipyard, Isaac Kalua, a musician, ran a side business for audio/video production and sales, retail, management and entertainment with a monthly income of \$7,512 and expenses of \$5,012.

Bankruptcy court documents filed July 17, 2020, showed Kalua owed \$345,845 on a mortgage loan and had \$130,893 in unsecured claims, which included credit card debt and personal loans as far back as 2006, including a Sam's Club card with a

balance of more than \$10,400.

The couple drove a 2007 Cadillac Escalade and a 2007 Lexus ES350.

Lehua Kalua's company, Rubysonrise LLC, was registered in 2016 and terminated Dec. 6, 2019, state Department of Commerce and Consumer Affairs records show. Buzzfile, a business information database, says the company was operating a jewelry and family clothing business that earned an estimated \$70,000 annually.

A Facebook page called LulaRoe Lehua Kalua with 2,900 followers indicates the sale of clothing by LulaRoe, the Utah-based, multilevel- marketing company known for its colorful leggings.

Earlier this year three banks filed complaints against Lehua Kalua due to loan defaults totaling more than \$12,000.

The state Department of Human Services' Child Welfare Services, which oversees foster care, told the Honolulu Star-Advertiser that one determination of the fitness of potential foster and adoptive parents is their current situation and financial stability.

Isabella and her sisters first became involved with the Kaluas in 2018, when the girls' biological mother, Melanie Joseph, who suffered from drug addiction and was homeless, asked a friend whether his sister, Lehua Kalua, would be willing to care for her baby. Kalua agreed and took in the infant, now 3, as a foster child.

At the time, Isabella and her older sister were living with Joseph's mother, Barbara Kumai. Sometime in late 2018 or early 2019, Kumai told the Star-Advertiser, a CWS social worker "pressured" her to give up the two girls after Kumai's boyfriend was hospitalized following a serious accident.

The social worker, Kumai said, abruptly called one evening and told Kumai to pack their things and have them ready to go by morning.

Marilyn Yamamoto, a Hawaii member of the National Family Advocacy Team, which supports changes in foster care and adoption policies and procedures, said, "The agency concern that she was overwhelmed by a family medical issue was shocking because the duty of CWS is to assist families to achieve and maintain family preservation, not to use a temporary challenge to deny and terminate all extended family rights through adoption."

A spokeswoman for the DHS has declined comment, citing privacy laws.

The Kaluas also got custody of Joseph's youngest child, now 1. A hearing for her adoption had been scheduled for Nov. 16.

Isabella's three siblings were removed from the home Sept. 13 and are under CWS supervision.

Correction: An earlier version of this story misidentified Kaneohe District Court as Honolulu District Court.



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6-year-old reported missing in September, but likely murdered a month before, police say

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The adoptive parents of 6-year-old Isabella "Ariel" Kalua were arrested Wednesday following a raid of their home and subsequently charged with murder.

By HNN Staff

Published: Nov. 10, 2021 at 7:33 PM HST | Updated: Nov. 11, 2021 at 11:13 AM HST



HONOLULU (HawaiiNewsNow) - While the investigation into the disappearance of 6-year-old Isabella "Ariel" Kalua remains ongoing, police announced Wednesday that they believe she was murdered in mid-August.

Here's a timeline of the case:

- Mid-August: Police said they believe Isabella "Ariel" Kalua was murdered — a full month before she was reported missing.
- Sept. 12: The girl's adoptive parents, Isaac and Lehua Kalua, told HPD that Isabella was last

seen asleep in her room at their home on Puha Street.

- Sept. 13: The girl's adoptive parents reported her missing.
- Week 1 in her disappearance: Isabella's biological family organized search efforts throughout east Oahu with the help of community volunteers.
- Sept. 20: HPD officially suspended its search for the missing girl, but said the investigation would continue.
- Late last week: Police said the missing person's case turned into a murder case focused on the Kaluas. Officials did not specify what evidence led to the switch.
- Nov. 10: [Authorities arrested Isaac and Lehua Kalua](#) at their home in Waimanalo, which is where Isabella was last seen alive. Both are being held without bail.

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Police said the investigation into the disappearance of 6-year-old Isabella "Ariel" Kalua remains ongoing.

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Since Isabella's disappearance, the six-year-old's biological family has been holding rallies in Waimanalo, in front of the Kalua's house, and at Child Welfare Services to demand justice.

Officials said so far Isabella's body has not been recovered and searches of the Kaluas' property continue.

Police said the investigation remains ongoing.

Authorities asked anyone who may have interacted with Isabella and her sisters as far back as 2019 and through August 2021 to contact investigators on the case or Honolulu CrimeStoppers (955-8300).

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- [More than 3 weeks since 6-year-old's disappearance, community continues to seek answers](#)



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Hawaii

Grand Jury Indicts Waimanalo Girl's Adoptive Parents On Murder Charges

Lehua Kalua and Isaac Kalua were both charged with second-degree murder on Wednesday.

 3

By Jacob Geanous / November 17, 2021

Reading time: 3 minutes.



The adoptive parents of a missing Waimanalo girl were indicted on murder charges Wednesday, Honolulu Prosecuting Attorney Steven Alm said.

Lehua Kalua, 44, and Isaac “Sonny” Kalua, 52, were both charged with second-degree murder, hindering prosecution, endangering the welfare of a minor and persistent nonsupport in connection with the death of their adoptive daughter, 6-year-old Isabella Kalua, who was named Ariel Sellers before she was adopted.

Isabella’s adoptive mother was also charged with abuse of a family or household member, according to a press release from Alm’s office that announced the grand jury indictment.



Lehua and Isaac Kalua were arrested last week and charged with second-degree murder in connection with the death of their adoptive daughter Isabella.

“The allegations in this case are heinous beyond description,” Alm said. “And we will hold Lehua and Isaac Kalua accountable for their alleged crimes against this defenseless child.”

Second-degree murder carries a mandatory penalty of life in prison with the possibility of parole, but the Kaluas both face possible sentences of life without the possibility of parole because Isabella was younger than nine years old when she was allegedly murdered.

The charges come after the pair was arrested a week ago Wednesday and made their first court appearances on Friday in a livestream from Oahu Community Correctional Center.

They are being held without bail.

According to court documents, an older sibling of Isabella’s told investigators earlier this month that the adoptive parents kept Isabella in a dog cage in the bathroom with duct tape over her nose and mouth and that she “didn’t wake up.”

Lehua Kalua then filled the bathtub with water and put the girl in it to see if she would wake up, but it did not work, according to court documents.

That sibling was also allegedly forced to help carry her sister’s body to their bedroom and was asked to “keep a secret.”

Isabella’s sister said that Lehua Kalua bought the dog cage because Isabella would sneak food at night because her adoptive mother wouldn’t feed her, according to court documents.

Lehua allegedly put duct tape on Isabella “plenty of times” and her sister said she was also duct taped on other occasions, which their adoptive

father allegedly saw but did nothing about.

Isabella was last seen on surveillance cameras at the home on Aug. 18, according to court documents, which is around the time police believe she was killed.

However, the couple did not report the girl missing until a month later, in mid-September, triggering a massive search involving the community and both local and federal law enforcement agencies.

The girl's body has not been found.

“This case has touched every person in our community and many across the country and we will do everything in our power to bring Ariel’s alleged killers to justice,” Alm said in the press release. “I thank the Honolulu Police Department and the FBI for their extraordinary efforts to investigate this matter and chase down every lead.”

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Honolulu

Missing Waimanalo Girl Declared Dead, Opening Path For Suit Against State

Isabella Kalua has been missing for almost two years and her adoptive parents have been charged with murder.



By Allan Kew   / July 27, 2023

 Reading time: 2 minutes.



A probate court judge on Thursday formally declared the death of 6-year-old Isabella Kalua, opening the door to a civil lawsuit that could recover damages for her three surviving siblings.

The Waimanalo girl, whose birth name was Ariel Sellers, was presumed dead after her adoptive parents Lehua and Isaac Kalua reported her missing in 2021.

The Kaluas have since been charged with her murder. Prosecutors alleged that the Kaluas confined Isabella in a dog cage, put duct tape over her mouth and failed to feed her. The Kaluas pleaded not guilty and are awaiting trial.



Isaac and Lehua Kalua were charged with second-degree murder in connection with the death of their adoptive daughter Isabella. (Honolulu Police Department/2021)

But the girl's body has never been found.

A state judge appointed Nicole Cummings to be a guardian ad litem for Isabella and her siblings and to pursue possible litigation on their behalf.

According to the statute of limitations, any civil lawsuit would have to be filed within two years of the last date Isabella was known to be alive, which the court determined was on or around Aug. 18, 2021. That couldn't happen until the girl was officially pronounced dead.

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Allan Kew [✉](#) [📡](#)

Allan Kew is a reporter for Civil Beat. You can follow him on twitter at [@AllanSCKew](#), and you can reach him at akew@civilbeat.org.

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ALWAYS INVESTIGATING

The extent of state oversight at Kalua home is unclear prior to Isabella Kalua's murder

by: Gina Mangieri

Posted: Nov 12, 2021 / 06:14 PM HST

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HONOLULU (KHON2) — How could such atrocious acts by alleged murderers Isaac and Lehua Kalua take place in a home full of children fostered and adopted through the state's child welfare system (CWS)? Always Investigating sought answers.

Police said child welfare involvement scales back upon adoption. The state's Department of Human Services (DHS) said there still is an oversight. How much oversight matters not just for what could have happened to Isabella Kalua, also known as Ariel Sellers, but for the safety of her fostered and adopted siblings going forward, as well as for other children statewide.

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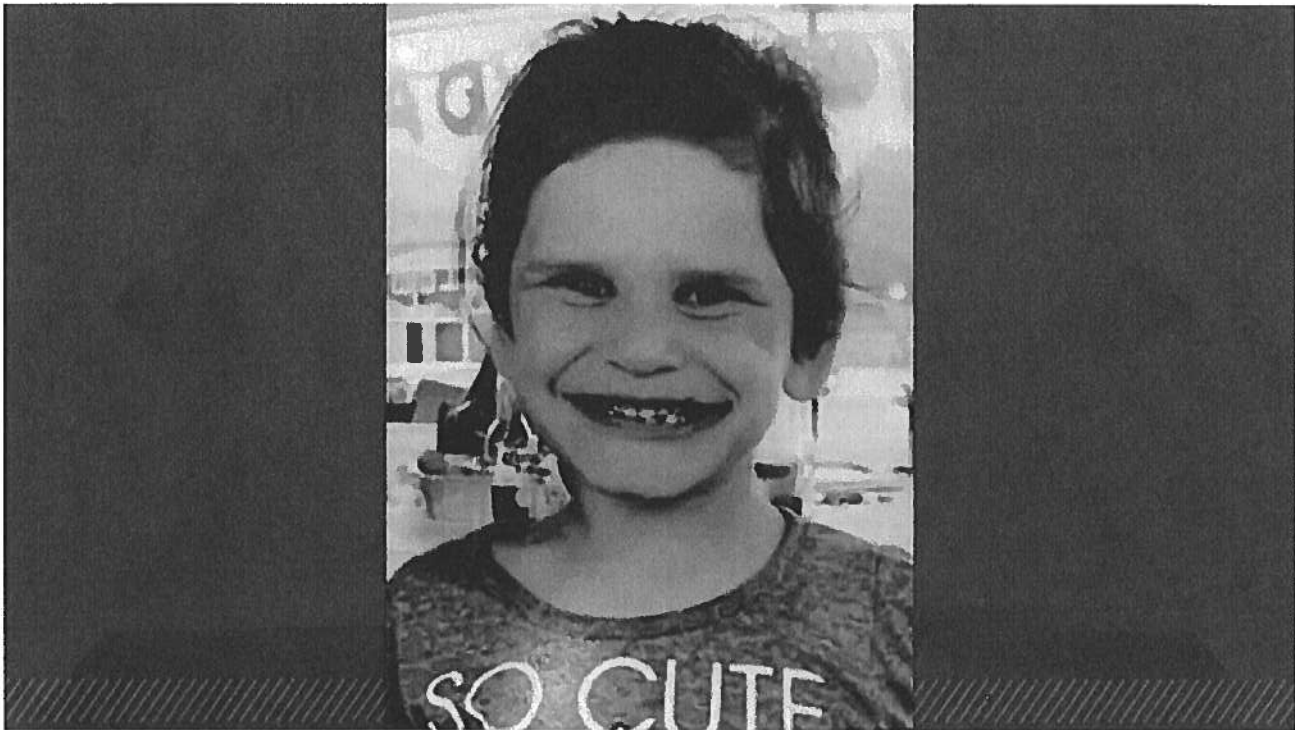
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The **day Isaac and Lehua Kalua were arrested in connection with the murder of Ariel**, one of their adopted daughters who had come to them as a foster child, police said this:

“At some point fairly recently within the past year or two, at least Ariel was legally adopted by the Kaluas,” explained Maj. Ben Moszkowicz of HPD. “Once adoptions are completed, the CWS involvement in the case kind of scales its way back so they’re not conducting the same level of checks or things like that they would prior to adoption.”

- MAJ. BEN MOSZKOWICZ OF HONOLULU POLICE DEPARTMENT



Isabella Kalua, 6, was reported missing on Monday, Sept. 13, 2021. (Courtesy: Honolulu CrimeStoppers)

Always Investigating asked DHS if there is a difference in oversight between adopted and fostered kids?

A spokesperson replied: "After a child is adopted, the child is no longer under the custody of DHS, and DHS is involved because of the adoption assistance/adoption subsidy. However, CWS takes every report of child abuse or neglect seriously."

DHS added that "upon adoption of a child, the Family Court and DHS closes its cases (a social worker is no longer assigned)."

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DHS would not disclose whether and how often anyone from DHS was at the Kalua house during summer and fall of 2021 before the disappearance but added: “case management is provided to families with a child who is under the custody of DHS.”

Even as of summer 2021, at least one child in the Kalua home — the youngest of the four siblings — was and still is a foster, a DHS custody — according to court documents, which state the other three had been adopted.

Family, friends, Waimanalo community hold vigil for Isabella Kalua after adoptive parents arrested for alleged murder ➤

Ariel’s oldest sibling turned out to be the key witness revealed in court documents today — details of starvation, Ariel being duct-taped and caged until she stopped breathing and did not wake up sometime in August.

“As far as the other children, Ariel’s sisters, we know they are in CWS custody, and they’re safe at this time,” Moszkowicz said. “So, we’re hopeful that they’ll take whatever measures are necessary to continue to protect these children.”

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DHS said: "Case management is provided to families where direct services are provided that are in the best interests of the child that is either at risk of being removed from the home or the child is under the custody of DHS."

Court documents reveal Isabella Kalua's adoptive parents kept her in dog cage, duct taped 'plenty of times' ➤

According to the document, the sibling revealed Ariel's torture in a Nov. 5th interview, nearly two months after the initial missing child alert was initiated. Police would not tell KHON2 whether this was the first interview with that child or if it was a follow-up, other than to say: "The entire investigation is not included in the affidavit."

Police did say they had gone back to take a different tact on the investigation recently after FBI guidance.

"In particular, the insight provided by the FBI insight behavioral analysis unit into the mindset of the suspects, in this case, was instrumental in helping advance the investigation to where it is today," Moskowicz added.

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The behavioral analysis extends, not just to suspects, but witnesses, too.

“We gave them (the FBI) a bunch of evidence and they turned around and gave us the evidence back but told us, maybe look at it from this angle, or maybe when you talk to this person, talk about this,” Moskowicz explained. “But those kinds of very slight changes to the tactic that the homicide team was taking was able to create this development.”

‘We need all of Hawaii’: Police encourage community to rally together to locate 6-year-old girl in Waimanalo



More than just behavioral analysis is at work in the case now, though, as authorities continue the

search for Ariel's body

"You're probably talking about a significant amount of time passing," explained Dr. Katelynn Perrault, associate professor of forensics and chemistry at Chaminade University. "So, finding things, like bones, would be pretty typical of this type of scenario. Remains that are above ground typically will decompose more quickly than remains that are below ground."

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Experts said any movement of the body and evidence from the scene of a murder will complicate the trail.

Drones and canine units are key tools in the search for remains of Isabella Kalua



"There can be things like odors that can remain behind, but typically they don't last over a period of months," Perrault said, adding that canines will be instrumental regardless of where the body was disposed. There are cases where dogs are able or have been able to detect human remains in or underneath concrete. The odors from things like trash versus from human remains; they can actually differentiate if human remains were to be found in somewhere like a dump."

Police also indicated the case could grow beyond just a murder charge, looking for evidence related to the surviving siblings as well.

"We're looking for witnesses who know and may have interacted with Ariel and her sisters between 2019 and Aug 2021 to come forward," Moskowicz said.

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“Child Welfare Services is part of the child welfare system,” a DHS spokesperson explained. “This system includes law enforcement, the courts, schools, medical staff, extended family and neighbors. We ask the community to please report what you see and what you hear so we may investigate where risk of child abuse or neglect is suspected, or where child abuse and neglect has occurred.”

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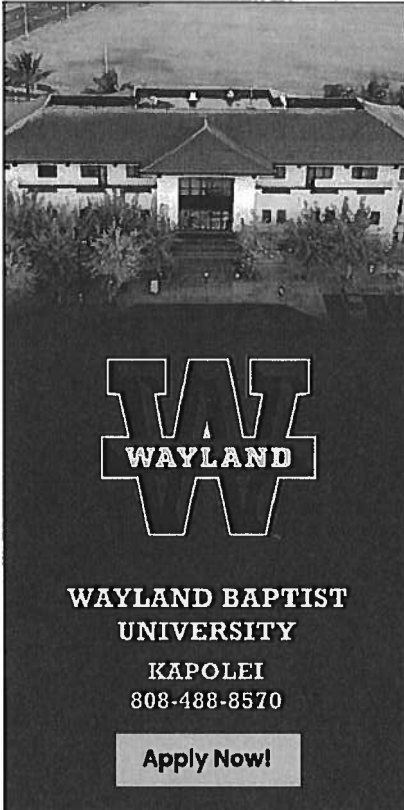
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Court documents reveal horrific allegations against adoptive parents charged with murdering girl

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Court documents released Friday reveal horrific new allegations against the adoptive parents charged with murdering 6-year-old Isabella "Ariel" Kalua.

By HNN Staff

Published: Nov. 12, 2021 at 8:45 AM HST | Updated: Nov. 12, 2021 at 7:10 PM HST



HONOLULU (HawaiiNewsNow) - Court documents released Friday reveal horrific new allegations against the adoptive parents charged with murdering 6-year-old Isabella "Ariel" Kalua, including that they kept her in a dog cage in the bathroom with duct tape on her mouth and refused to feed her.

The graphic new details were included in a complaint made public Friday, the same day Isaac and Lehua Kalua made their first appearance in court for the missing girl's murder.

The two appeared via a livestream from Oahu Community Correctional Center, and allowed their attorney to submit not guilty pleas of their behalf. They didn't say a word as the state argued that they continue to be held without bail because the crimes they're charged with carry an extended sentence of life behind bars without the possibility of parole.

Deputy prosecuting attorney Tiffany Kaeo also argued that the Kaluas could be a flight risk.

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- [For months, Isabella's family wanted to know what happened. Now they're struggling with why.](#)
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"Isaac Kalua has ties to the continental United States. He does have prior convictions for assaultive behavior," said Kaeo.

The judge agreed, which means the two will remain in jail at least until their next scheduled court appearance Nov. 26.

Meanwhile, investigators were back at the Kaluas' home Friday as they continued a search of the property. Isabella's remains have not yet been found.

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The two were denied bail after submitting not guilty pleas.

Outside of the home in Waimanalo on Friday, Isabella's biological family also gathered to mourn and to promise that they would fight for custody of the little girl's siblings.

"Everyone's very disgusted and hurt. I personally, I am all cried out," said Alena Kaeo, Isabella's biological aunt. "And this has definitely given me more of a boost to fight for the girls to bring them home safely, where they belong with us as biological family members."

In the court documents made public Friday, police say an older sibling of Isabella's told investigators earlier this month the Kaluas had asked her to "keep a secret" — that Isabella was kept in a dog cage in the bathroom with duct tape over her nose and mouth and that she "didn't wake up."

That sibling was then allegedly forced to help carry her sister's lifeless body to their bedroom. The biological family said the sibling was just 12. But the court documents make clear that she was crucial in helping police piece together the timeline of events surrounding Isabella's death.

Police said Isabella was last seen on surveillance cameras at the home on Aug. 18, according to the documents. It was on or around that date that the 6-year-old is believed to have been killed.

The couple, however, didn't report the little girl missing until about a month later — in mid-September.

In an interview Nov. 5 with police, the older sibling said about 3:30 a.m. on the day she last saw Isabella in the home the Kaluas went to check on the girl in the bathroom and she was lifeless.

"(The sibling) knows (Isabella) is dead because she was there. (The sibling) stated she was there because her parents woke her up," the complaint said.

"After being woken up, she went into the bathroom and saw that (Isabella) had duct tape on her nose and mouth and was not breathing. Lehua then filled the bathtub with water and put (Isabella) in it to see if she would wake up, but it did not work.

"(The sibling) then had to help carry (Isabella) to their bedroom."

The sibling didn't know where the couple subsequently put Isabella's body, the documents said.

According to the complaint, Isabella's older sibling also told police that the Kaluas worked to get "rid of the stuff ... evidence" by coming up with a ruse that allowed Isaac Kalua to take weeks off work.

As part of a series of lies, Isaac Kalua claimed to have COVID and even sought medical attention.

He told police he was off Aug. 20 and "woke up feeling ill" on Aug. 21, went to an ER for treatment and was seen for possible COVID symptoms. He subsequently took about two weeks off work.

Experts outline challenges prosecutors could face in murder case against adoptive parents

That series of events is important because it was about that time investigators believe the couple disposed of Isabella's body.

"Isaac went to Kaiser to 'pretend that he was COVID,'" the sibling told police, according to the court documents. "(The sibling) stated that she knew Isaac was pretending because she knows that he took off work to 'help mom.' When asked why Isaac would need to help mom, (the sibling) stated 'to get rid

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of the stuff ... evidence.”

In another disturbing allegation, the sibling told police Lehua Kalua bought the dog cage on the internet even though the family didn't have a dog at the time. The sibling said Kalua got the cage because the 6-year-old would "sneak around at night and want to eat because she was hungry."

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- [6-year-old reported missing in September, but likely murdered a month before, police say](#)
- [Police continue search of property for 6-year-old's remains after arrests of adoptive parents](#)
- [Missing girl had serious injuries investigated by state in past 2 years](#)

The girl was hungry, the sibling said, because she was not being fed.

"So Lehua bought the cage to keep (Isabella) inside of it at night," the complaint said. The sibling added that "she believes the duct tape came from Isaac's job."

The Kaluas reported Isabella missing Sept. 13, setting off a massive multi-agency search that also included hundreds of community members and the girl's biological family.

The adoptive parents claimed they had last seen the girl the evening before. Lehua Kalua told officers the family had had dinner together and that the girl had gone to bed.

The adoptive mother also told police that the 6-year-old had been going outside "every day or every other day and that she would say that she's waiting for her mom to come and get her."

According to police, those were all lies.

In addition to the ongoing police investigation, Isabella's death is certain to raise questions about the state's actions in placing her with the Kaluas. [Hawaii News Now has reported that Kalua twice had serious injuries in the past two years that were reported to Child Welfare Services.](#)

The incidents were investigated and a panel determined there was no maltreatment.

This story will be updated.

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Foster care expert says missing 6-year-old's adoptive placement raises red flags

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A foster care expert says there are several red flags in 6-year-old Isabella "Ariel" Kalua's disappearance — and adoptive family placement.

By Allyson Blair

Published: Sep. 16, 2021 at 4:38 PM HST | Updated: Sep. 16, 2021 at 5:27 PM HST



HONOLULU (HawaiiNewsNow) - A foster care expert says there are several red flags in 6-year-old Isabella "Ariel" Kalua's disappearance — and adoptive family placement.

Steve Lane, the principal investigator in several high-profile child abuse cases in Hawaii, is even questioning whether the state should have placed the Waimanalo 6-year-old and her siblings with their adoptive family to begin with.

"I'd ask who the social worker was, who approved this family," he said. "And on what basis."

[Honolulu police say they haven't ruled out foul play in 6-year-old's disappearance](#)

His concerns stem from her adoptive father's criminal history.

According to court records Isaac Kalua III was convicted on three counts of terroristic threatening and assault 20 years ago and sentenced to five years probation.

"The broad outlines of what's required of the Department of Human services in licensing a foster parent giving them wide opportunity to deny a license," Lane said.

"It's inconceivable to me that anybody with that kind of criminal record and convictions of physical violence would be licensed as a foster family."

Lane says another red flag is that the 6-year-old wasn't going to school in person.

The state Department of Education confirms Isabella attended kindergarten at Waimanalo Elementary last school year via distance learning. In June, however, her adoptive parents filed paperwork to withdraw the child and home-school her.

Lane says that's been used in the past to hide evidence of abuse.

"There's virtually nothing that you have to do to warrant your application for home schooling to be approved," said Lane. "Nor is there any supervision provided for children once they are placed in home school."

On Tuesday, volunteers were told to stay away from the Puha Street home where the little girl disappeared. The girl's biological aunt said it was because they were asked not to go there.

When asked why, Jamie Kumai said, "It's just for the respect and boundaries of those parties."

Lehua and Isaac Kalua haven't publicly participated in any search efforts. HNN has also learned through multiple sources that they've asked for an attorney.

On Thursday, HNN did get in touch with someone over the phone at the Kalua residence to give them a chance to tell their side of the story.

A man said HPD detectives instructed them not to speak to the press. HNN asked HPD officials if that was true, and has not received a response.

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Family of 9-year-old Big Island girl who starved to death is suing the state for wrongful death

Posted: Jun 13, 2018 / 04:23 AM HST
Updated: Jun 13, 2018 / 04:23 AM HST

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The family of a 9-year-old Big Island girl who starved to death is suing the state of Hawaii as well as her parents and grandmother for wrongful death.

Their attorney says the state, including the Department of Human Services, Child Protective Services, Child Welfare Services and the Department of Education dropped the ball by returning the girl to her parents and grandmother.

On June 28, 2016, emergency responders found Shaelynn Lehano-Stone unconscious in her home.

The girl, who was diagnosed autistic, was taken to the hospital. She died hours later.

The death certificate noted:

“She was denied food by her caregivers.”

Parents Kevin Lehano, Tiffany Stone, and grandmother Henrietta Stone were charged with murder, and the two other siblings were put in foster care.

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“It’s a gut wrencher, no question about it,” said Randall Rosenberg.

The Oahu-based attorney is assisting Big Island attorney Robert Marx in the case.

Despite multiple reports of abuse and neglect, Rosenberg says state workers returned the child to the grandmother.

“She was noted to be undernourished by state workers on several different occasions, yet they continued to return her to the home. I’ve seen this pattern in other cases I’ve been involved in. I don’t understand it, frankly.”

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Now, just two weeks shy of the wrongful death statute running out, Rosenberg says they're suing the state for unspecified damages for the estate of Shaelynn as well as her 13-year-old brother and 11-year-old sister. The children are in foster care on the Big Island.

"It took some doing to get this done because of course the foster children are young and don't know anything about the legal system. The state is not going to step in and advise these children they have a right to sue because the state is one of the primary perpetrators in my mind, in this case," explained Rosenberg.

Rosenberg says he and Marx got involved after the maternal sister of Tiffany Stone, based in Florida, reached out with concerns to protect the future of the two siblings.

"I understand they're having a lot of difficulties, primarily emotional. I don't know whether it's based on the death of their sister or the way they've been treated. One of my goals is to have them be fully evaluated by healthcare professionals to figure out what can be done to fix these problems," said Rosenberg.

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When asked for comment, a spokeswoman with the Department of Human Services says, “We have not yet reviewed the complaint. Generally in situations like these, we’re unable to provide information about pending litigation.”

[Click here to read the full complaint](#)

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Big Island child who starved to death was repeatedly returned to alleged abusers, records show



By Lynn Kawano

Updated: Jan. 13, 2020 at 7:52 PM HST

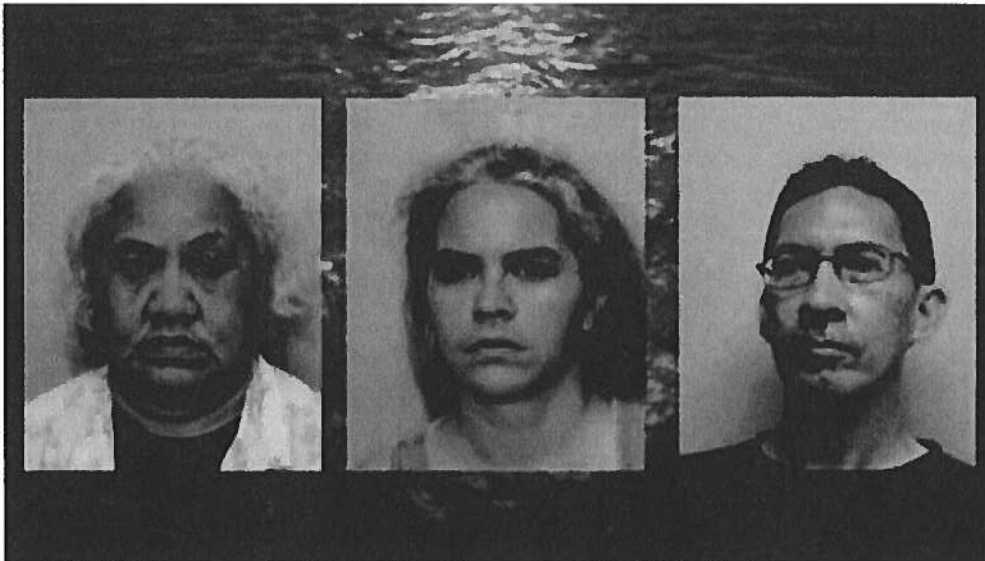


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HONOLULU, Hawaii (HawaiiNewsNow) - A 9-year-old Hilo girl who died of starvation in 2016 -- weighing just 45 pounds -- was repeatedly removed from her home only to be returned despite concerns for her safety, according to state records provided to Hawaii News Now.

The Department of Human Services' Child Welfare branch admits in a detailed summary of the investigation into Shaelynn Lehano-Stone's death that there were safety concerns throughout the girl's short life.

From the time of her birth in September 2006, the records show, she was taken from her parents -- Kevin Lehano and Tiffany Stone -- and placed in foster care.



Mugshots of Henrietta Stone, Tiffany Stone, Kevin Lehano (None)

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"One reason might be that her brother was already in foster care for abuse and neglect," said Steve Lane, a child advocate.

In May 2008, Lehano-Stone was returned to her parents.

Just a few months later, in August, the state agency received reports of physical abuse, neglect and threats from the child's mother, Tiffany Stone, but CWS writes that workers weren't able to confirm those reports so the investigation was closed.

In January 2009, concern rose again because the child lost weight over two years and the state confirmed a "failure to thrive." She was again placed in foster custody.

In August 2009, another confirmed threat of abuse by the mother kept the girl in foster care until 2011 when, the document says, she was reunited with her parents.

"Bending over backwards to try and get this kid back in the house and it's insane," says Randall Rosenberg, the attorney for the girl's estate.

A month after she was reunited, the mother said she could not care for the child and arranged for her mother, Henrietta Stone, to care for her via power of attorney.

However, the grandmother was assessed as "minimally safe and appropriate" so a safety plan was put into place. The safety plan included parenting services and stress management.

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In August 2014, CWS received a report of concern about all three adults but the intake was assessed at a "moderate level of risk and referred for Voluntary Case Management (not for investigation)."

A face-to-face assessment was done with the girl's mother and father, but not the grandmother.

In November 2015, the grandmother filled out the one-page required document to home school the girl. The Department of Education's form does not provide a way to reject a home school request and it's been widely known that DOE and child services do not exchange information about abused children.

"What we've seen in other cases is that parents who are abusing their kids will often apply to home school because that way nobody notices the signs of abuse," said [Rosenberg who has filed a wrongful death lawsuit](#) on behalf of the girl's estate, which is represented by other family members.

The suit accuses both the DOE and DHS workers of being negligent.

On June 28, 2016, emergency crews were summoned to the apartment on Kinoole Street in Hilo where Shaelynn Lehano-Stone was unconscious.

At 9 years old, she weighed only 45 pounds. [She died hours later.](#)

The investigation by CWS cited physical neglect, medical neglect, failure to thrive, psychological abuse, psychological neglect and physical abuse by her mother, father and maternal grandmother.

And that's not all, the report also shows the adults threatened neglect of the girl's maternal cousin.

All three adults were charged with second degree murder. Tiffany Stone, the mother, has the first scheduled trial set for March.

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Woman arrested in connection with toddler's death in foster care

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Woman arrested in connection with toddler's death in foster care

By HNN Staff

Published: Aug. 16, 2018 at 4:22 PM HST | Updated: Aug. 16, 2018 at 5:39 PM HST



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Fabian Garcia was 3 when he died in foster care. His mother suspects he was abused. (Image: Family)

HILO, BIG ISLAND (HawaiiNewsNow) - More than a year after a 3-year-old Big Island boy died in foster care, police have arrested a woman in connection with his death.

Chasity Alcosiba, 44, of Honokaa, was arrested on second-degree murder charges Wednesday.

She was subsequently released without being charged.

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Big Island police said two forensic pathologists determined little Fabian Garcia died last year from non-accidental head trauma.

"Due to these results, a murder investigation was initiated," police said, in a news release.

Garcia was placed in foster care in 2016, and his mother said it wasn't long before she spotted signs of mistreatment.

She told Hawaii News Now earlier this year that the last time she visited her son, he screamed when it was time to say goodbye.

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By Gray Media

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In a statement released by attorney Jeffrey Foster, parents Sherri-Ann Garrett and Juben Garcia said the arrest confirmed "our suspicions and worst fears."

"There are no words that can describe the way we feel today," the parents said. "We are hopeful that criminal charges against Fabian's killer will be filed promptly and pursued vigorously by the prosecutor's office."

The statement adds:

"We also hope that Fabian's murder will result in long-overdue changes to the way the state of Hawaii responds to complaints of child abuse against children in the state's custody. We do not want any other family to have to endure the daily nightmare that we will be living through for the rest of our lives."

The state Department of Human Services did not answer a series of questions from Hawaii News Now about the case.

But in a statement, DHS said that Alcosiba has not been caring for foster youth since July 2017, when Garcia died.

The department also said it "intervenes in cases where children's safety and well-being are at risk or threatened" and that if a caregiver is ever accused of abuse, the state investigates.

"At the time of the allegation and throughout the investigation, we remove any children still in their care and place them with another resource caregiver," the department said, in its statement.

"Generally, we cannot provide any confirmation of a family's involvement in CWS (Child Welfare Services). ... We also do not want to impede on any ongoing criminal investigation. We will continue to provide information to the public as we are able. For now, we want to assure the public that the above outlined policies were followed."

This story will be updated.

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Hawaii v. Parental Rights

Hawaii Sent At Least 10 Foster Children To An Abusive Home At The Center Of A Drug Ring

Hawaii Child Welfare Services may have had no reason not to approve Yvonne and Paul Caitano as foster parents. But when did it find out that things had gone wrong?



20

By John Hill    / November 22, 2022

 Reading time: 9 minutes.



At least a decade ago, Hawaii Child Welfare Services starting sending foster children to live in the Hilo home of Yvonne and Paul Caitano. The Caitanos eventually adopted five of them, which allowed them to take in five more foster children, according to one of the adopted kids.

The Caitanos were known in their community for what seemed to be a compassionate willingness to care for other people’s children.

One woman, new to fostering children herself, met Yvonne Caitano around 2015.

“Yvonne was very supportive and very knowledgeable of services and she helped me answer questions that even cws workers would not,” the woman later wrote to a federal judge, referring to the state’s Child Welfare Services.



Cory Lum/Civil Beat/2019

Child Welfare Services, part of the state Department of Human Services, placed at least 10 foster children in a home that turned out to be abusive.

But in 2018, the idyllic picture was shattered by accusations of abuse, raising questions about when state social workers got wind that something was amiss in a household taking in so many foster children. This account is based on federal and state court documents in cases involving the Caitanos, media accounts and an interview with one of the Caitanos' adoptive children, who Civil Beat is not naming because she is a victim of alleged sexual abuse.

First, one of the children, after being returned to her biological parents, reported that Paul Caitano had sexually assaulted her. The 10 children were removed from the house and placed with other families or facilities. In April of this year, Paul Caitano was charged with 23 felony counts of sexually assaulting two girls in the household.

Eight months after the children were removed, Yvonne Caitano and four others were indicted by a federal grand jury, accused of illegally getting pharmacies to provide large amounts of opioids and powerful narcotics and illegally distributing them for profit.

The defendants included Dr. Ernest Bade, 80 years old at the time and later found to be incompetent to stand trial because of dementia, and four women who worked at his medical clinic — Caitano, her then-80-year-old mother, her adult daughter and an unrelated woman. A federal judge, finding that office manager Caitano was at the heart of the operation, sentenced her in 2020 to five years in prison.

One aggravating factor was that one of the children living with the Caitanos, 14 years old at the time, was forced to take part in the drug operation. The girl was told to count out pills and put them in envelope for customers who drove to the house to buy them. If she miscounted the pills or the money, the girl reported, she'd get berated — or beaten.

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One of the children who lived in the Caitano household told Civil Beat that physical and mental abuse was common. The children were forced to stand facing a corner for a perceived infraction, sometimes all day or all night, she said.

“We’d get hit with belts or slippers or anything in reach — phone chargers,” she said.

The Bade drug ring garnered widespread media attention. But the Caitanos’ connection to the state’s foster care system has gone unexamined.

Civil Beat asked the Department of Human Services, the parent of CWS, how long the Caitanos had been fostering and adopting children, how much they were paid by the state over the years, whether the state got other reports of abuse or neglect before the February 2018 removal of the children and how often CWS visited the foster children to check on their welfare.

The department would not respond to most questions, citing a provision of Hawaii law that keeps the identity of foster parents confidential. Specifically, the department would not say when it first got reports of abuse in the Caitano household.

Some 1,000 children a year enter foster care in Hawaii. The National Coalition for Child Protection Reform in Virginia, using federal data, ranks the states by the number of children going into foster care as a percentage of those living in poverty, since the overwhelming majority of families caught up in the child welfare system are poor. By that measure, Hawaii’s foster care rate is about 43% higher than the national average, ranking it 20th among the states.

Hawaii Police Department

Foster and adoptive children were

The department said that it requires monthly visits to children in foster care.

removed when one of the children reported being sexually molested by Paul Caitano.

But Hawaii has struggled over the years

to meet a national standard of visiting 95% of children in foster care at least once a month to see how they're doing. The most recent data shows the state making monthly visits in 84% of cases, somewhat higher than in previous years but still well short of the goal.

Many national studies have shown that foster care, even with exemplary foster parents, can cause lasting trauma to children. Researchers and legal scholars have argued that those consequences should be balanced against the dangers of leaving children with potentially abusive or neglectful parents.

Sometimes, the trauma goes well beyond being torn away from everything familiar — not only parents, but friends and schools and siblings — when foster and adoptive parents abuse or neglect children themselves. In six cases in 2020, the perpetrators of abuse and neglect in Hawaii were foster parents who were supposed to provide a refuge, according to federal statistics.

One high-profile case involved Isabella Kalua, a 6-year-old girl whose disappearance caused widespread community outrage when her adoptive parents were accused of second-degree murder. Prosecutors alleged that Isaac and Lehua Kalua kept Isabella, whose birth name was Ariel Sellers, in a dog cage with duct tape over her mouth and refused to feed her.

The Kaluas took her in, along with some siblings, as foster children, despite Isaac's felony convictions for terroristic threatening and assault. Lehua Kalua had an old felony drug arrest. These records could have been grounds for the state rejecting them as foster parents, though the

Honolulu Police Department

offenses did not automatically disqualify them.

A search of eCourt Kookua, Hawaii's online court records system, does not show criminal cases against the Caitanos other than traffic infractions before 2018. So the state may have had no reason to doubt that the Caitanos would be good parents.

Isabella Kalua's adoptive parents are accused of second degree murder.

But with 10 or more children enduring an allegedly abusive home, were there no warning signs until 2018?

The teenage girl who spoke to Civil Beat said that she did not report the abuse, which she said began about five or six months after she was placed there.

"We were certain if we opened our mouths, we'd get hit even more," she said. She believes that CWS social workers "always go back and tell the caregivers everything that's said."

Once, she said, she was brushing the hair of a younger girl in the house when Paul Caitano became enraged that they had not gone to bed. She said he threw her against a wall and punched her in the eye, blackening it.

"If I told anyone, he'd do it to the other side," she said. So when a teacher asked about the black eye, she insisted she had merely fallen down.

But she believes other children in the household reported what was going on, even before five of them were adopted.

She said the Caitanos were receiving a lot of money from the state for fostering and adopting the children, both because of the number of children and also because some of them were classified as requiring extra care. The state's monthly payments for children in foster care or who have been adopted ranges from \$649 to \$776, depending on the age, but those figures do not account for extra payments for children with exceptional needs.

A federal judge in Yvonne Caitano's case at one point raised the possibility that the state had paid the Caitanos \$120,000 even after removing the children from their home. Yvonne Caitano's lawyer, at her sentencing, said that the concerns over fraud had been cleared up. DHS would not disclose what it learned about the payments.

In any case, the amount in question gives a sense of how much the Caitanos were getting from the state for their role as foster or adoptive parents of 10 children.

Court documents lay out how one of the children was used as a runner in the drug scheme.

Hawaii News Now reported in 2018 on the federal drug charges against Yvonne Caitano, Dr. Ernest Bade and others .

Caitano, at work at the Bade clinic, would call her mother, Marie Benevides, at her house to say that someone was coming by to purchase pills. Benevides would tell the girl to put a certain number of pills in an envelope, take it to the customer's car and collect the money. If the pill counts or cash totals were wrong, according to the criminal complaint, Caitano's adult daughter, Sheena Strong, would verbally or physically abuse the girl.

She told investigators that "the money they got from selling the pills was used to buy random stuff to store in containers in the garage or pay off credit cards and bills," according to the complaint.

Clearly, the Caitanos' role as foster parents was well-known in their community, as evidenced by letters written to the federal court judge

pleading for leniency for Yvonne Caitano.

“Through the years, I have witnessed Yvonne conduct herself in a loving and nurturing manner – from fostering five children to later adopting them and giving them the loving home” that they lacked, one wrote. “In addition to her five children, Yvonne has always been there for many other less fortunate children.”

The teenager who spoke to Civil Beat took a different view. When her adoptive parents got into trouble, she said, “I was happy. It was a start to them getting what they gave us all those years.”

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**CAPTA: SUCCESSES AND FAILURES AT
PREVENTING CHILD ABUSE AND NEGLECT**

HEARING
BEFORE THE
SUBCOMMITTEE ON SELECT EDUCATION
OF THE
**COMMITTEE ON EDUCATION AND
THE WORKFORCE**
HOUSE OF REPRESENTATIVES
ONE HUNDRED SEVENTH CONGRESS
FIRST SESSION

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**CAPTA RE-AUTHORIZATION ISSUE:
REQUIRING "OPEN COURTS" IN
JUVENILE DEPENDENCY HEARINGS**

Kimberly Randall, JFC Law Student Extern
and Randy Burton, Justice for Children

Justice for Children (JFC) believes that a policy of "open courts" in child dependency proceedings is crucial to reforming and improving the delivery of services to children under the care of the state, and to the formulation of decisions regarding these children's futures. The Child Abuse, Prevention and Treatment Act (CAPTA) is currently silent on the issue of open courts. JFC proposes that amendments to CAPTA include provisions supporting the opening of dependency proceedings in states receiving funds under CAPTA.

JFC provides the following arguments in support of its position:

1. Public Scrutiny Will Enable Parties in the Dependency System to Be Held Accountable for Their Actions, Improve Procedural Regularity in Dependency Proceedings, and Provide Opportunities for Reform.

The juvenile court system, by its very nature, is informal and not subject to the rigorous procedural rules applied in adult courts. Additionally, juvenile court judges have significant powers of discretion in deciding cases. As early as 1967, the U.S. Supreme Court began to recognize such deficiencies with respect to the juvenile courts. It noted the "[f]ailure to observe the fundamental requirements of due process" creates "unfairness to individuals and inadequate or inaccurate findings of facts and unfortunate prescriptions of remedy."¹ Public access would force a greater level of procedural regularity in juvenile courts, permit the public to hold courts accountable for inconsistent application of rules, and reduce flaws in fact finding. New York State took this position in 1997, after the tragic and preventable death of a six-year-old female child under its care; the child had been battered and sexually abused. Extended family members reported serious errors in how caseworkers and the juvenile court handled her case.² The legislature responded by adopting presumptively open courts in dependency proceedings.

Open courts provide an opportunity for members of the public to critique flaws in the system, become educated about the child welfare proceedings, initiate informed research and, ultimately stimulate reform where needed.

2. Open Courts Will Improve the Protection of Children and Can Still Be Sensitive to Important Privacy Issues.

One of the greatest criticisms of open dependency hearings is that public access will violate children's right to privacy and jeopardize their psychological and physical safety. To date there is no empirical evidence indicating that children are traumatized by the presence of an audience while giving testimony.³ Legal scholars and other children's

advocates argue, moreover, that legislation creating "presumptively open" courts can also allow for judicial discretion to close the proceedings if the trial judge finds that publicity may be harmful to the child.⁴

In Globe Newspaper Co. v. Superior Court, 457 U.S. 596 (1982), the U.S. Supreme Court struck down a Massachusetts statute requiring closure of the court during the testimony of minors in sex-offense trials. The Court ruled that minors can only be protected by a case-by-case analysis, and that a blanket closure requirement was unconstitutional.⁵ The Appellate Division of the New York Supreme Court, in In re Katherine B., 189 A.D. 2d. 443 (N.Y. App. Div. 1993), suggested several factors for consideration in weighing a decision to close a proceeding: the nature of the abuse allegations (with sexual abuse allegations weighing heavily against closure); the child's age and maturity level; peer pressure from classmates in school; and the potential for embarrassment.⁶

In sum, "presumptively open" proceedings permitting public access in all cases -- except those with a standardized finding of necessity for closure -- provide one way of ensuring that the child protection system works as effectively as possible in protecting children's interests. To eliminate any concern over potential delays in proceedings, state statutes can provide that motions for closing a hearing be considered as soon as they are made.

3. Open Courts Will Improve the Fairness of Dependency Proceedings to Respondents and Need Not Delay Placement of the Child.

Critics argue that open courts will delay final placement of a child because parents who are subject to public pressures and/or able to garner support from the public will more frequently contest cases. Closed courts, by contrast, often permit the state to exert formidable pressures on parents to make some admissions of guilt before it will allow parents to be reunited with their children. In some cases, in fact, admissions of guilt have been required to obtain social services for reunifying the family.⁷

But if respondents sincerely need or wish to contest the charges against them, open court proceedings will improve the ultimate fairness of the proceedings to the family. Moreover, the unfortunate fact that many parents do not have a genuinely enduring interest in the disposition of their child diminishes the argument that open courts will delay placement of the child. (Parents who, by contrast, have a genuine interest in raising or being involved with their child can request that their case be channeled into alternative dispute resolution procedures that are more private, such as mediation or family conferencing.)

4. Historically, Dependency Hearings Were Open to the Public.

The procedures often employed in state dependency hearings in the U.S. originated in the historical procedures for guardianship found in the English courts of Chancery and Law. In England, the Chancery Courts traditionally acted as dependency courts do today

in the U.S.; they had jurisdiction over displaced, abused or neglected children, administered the provision of a guardian, and otherwise acted to assure the children's safety. These Chancery proceedings were conducted in open court. Moreover, cases involving babies in need of protection, which in the eighteenth century came under the jurisdiction of the English Law Courts, were also heard in public.⁸

The commonly held belief in the U.S., that our juvenile courts since their inception in 1899 have always been closed, is not entirely supported by the facts, either. A survey of American juvenile courts in the 1960's describes a juvenile courtroom "as full of the covert turmoil created by the bustle of staff, witnesses, and guests of the court as any adult court."⁹ In addition, the survey notes, "... the exceptions made in the case of persons or agencies deemed to have a legitimate need to inspect are so numerous as to seem as much the rule as the exception."¹⁰

There is an expanding trend toward open hearings.¹¹ Currently, state practice in ten jurisdictions presume courts to be open with judicial discretion to close; the state of Oregon requires open proceedings in all dependency cases.¹² An additional twelve jurisdictions have presumably closed proceedings, but permit judicial discretion to open them.¹³ A California Appellate Court, in considering the press's access to a dependency proceeding, declared in a 1991 ruling its "support of the proposition that the states should remain free to continue their exploration for a system best suited for addressing the problems of our youth."¹⁴ JFC believes CAPTA should be amended to encourage states to open their dependency proceedings as a matter of uniform procedure and accountability.

5. Open Hearings Do Not Necessarily Violate the Record Confidentiality Provisions of CAPTA or Title IV-E of the Social Security Act.

Opponents argue that permitting open hearings will expose members of the public to the contents of children's records, thereby violating the confidentiality requirements under both CAPTA and the Social Security Act. Typically, the contents of records are not read in court and any portions of the records that may need to be included in court discussions may be managed in such a way as to protect the privacy rights of the child. Pertinent portions may be discussed in chambers, the judge may temporarily clear the court room for sensitive testimony relating to these records, and the judge may make special arrangements with members of the press restricting their ability to publish the identities of the parties and witness. Both the Conference of Chief Justices and the Conference of State Court Administrators support open court hearings and recommend that CAPTA be revised to permit the states individually to address the issues of open courts and methods for maintaining record confidentiality.¹⁵

6. The Public Has Fiscal and Civic Interests in Being Able to Attend Dependency Proceedings.

The petitioner in dependency proceedings is typically the local child protective services agency, which works in tandem with the local county counsel. Dependency

courts, the agencies involved in the disposition of children coming into the court system, and related social programs are all funded by state and federal taxpayers. Judges are frequently elected officials. Cumulatively, then the public has a significant interest in knowing how its tax dollars are being used, and has a right to observe and evaluate the performance of its elected officials.

¹ *In re Gault*, 387 U.S. 1, 19-20 (1967).

² *Girl's Death*, N.Y. Times, Nov. 29, 1995, at B8.

³ Debra Whitcomb et al., U.S. Dep't of Justice, *When the Victim is a Child: Issues for Judges and Prosecutors* 46 (1985).

⁴ See Mary McDevitt Gofen, *The Right to Child Custody and Dependency Cases*, 62 U. Chi. L. Rev. 857 (1995); *San Bernardino v. Sun Newspaper*, 232 Cal. App. 3d 188 (Cal. Ct. App. 1991).

⁵ *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 608-609 (1982).

⁶ Emily Bazelon, *Public Access to Juvenile and Family Court: Should the Courtroom Doors be Open or Closed?* 18 Yale L. & Pol'y Rev. 155, 162-63 (1999) (citing *In re Katherine B.*, 189 A.D. 2d 443 (N.Y. App. Div. 1993); See also, *San Bernardino*, 232 Cal. App. 3d 188.

⁷ See, e.g. *In re Jessica B.*, 254 Cal. Rptr. 883 (Cal. Ct. App. 1989) (the court refused to order reunification services until the father admitted abusing his infant daughter).

⁸ Samuel Broderick Sokol, *Trying Dependency Cases in Public: A First Amendment Inquiry*, 45 UCLA L. Rev. 881, 905-908 (1998).

⁹ See Orman W. Ketcham, *The Unfulfilled Promise of the American Juvenile Court*, in *Justice for the Child* 31 (Margaret K. Resenheim ed., 1962)

¹⁰ *Id.* at 29.

¹¹ Sokol, *supra* note 8, at 911.

¹² Kay Farley, *The Washington Review*, 14 *The Court Manager* 39 (1999) (the ten jurisdictions are Florida, Indiana, Iowa, Maryland, Minnesota, Nebraska, New York, North Carolina, Northern Mariana Islands, and Texas). NOTE: We are awaiting final confirmation from Kay Farley that this information is still accurate and that we have correctly interpreted the categories she created.

¹³ *Id.* (The twelve jurisdictions are Alabama, Arizona, Colorado, Connecticut, Maine, Michigan, Missouri, Oklahoma, South Dakota, Tennessee, Virgin Islands and Wisconsin.) NOTE: We are awaiting final confirmation from Kay Farley that this information is still accurate and that we have correctly interpreted the categories she created.

¹⁴ *San Bernardino*, 232 Cal. App. 3d at 343.

¹⁵ Telephone Interview with Kay Farley, Staff Member, National Association for Court Management (June 13, 2001).