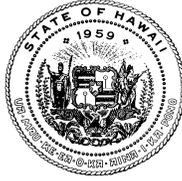


JOSH GREEN, M.D.
GOVERNOR OF HAWAII
KE KIA'ĀINA O KA MOKU'ĀINA 'O HAWAII



KENNETH S. FINK, M.D., M.G.A, M.P.H
DIRECTOR OF HEALTH
KA LUNA HŌOKELE

STATE OF HAWAII
DEPARTMENT OF HEALTH
KA 'OIHANA OLAKINO
P. O. Box 3378
Honolulu, HI 96801-3378
doh.testimony@doh.hawaii.gov

Testimony in SUPPORT of SB228 SD1 HD1
RELATING TO EXCITED DELIRIUM

REPRESENTATIVE DAVID TARNAS, CHAIR
HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

Hearing Date/Time: March 25, 2025; 2:00 PM

Room Number: 325

- 1 **Department Testimony:** The Department of Health (DOH) supports SB228 SD1 HD1, placing the
- 2 prohibition of excited delirium in chapter 327C, Hawaii Revised Statutes (HRS), relating to
- 3 death. DOH's function in registering deaths is ministerial, meaning the department only
- 4 documents and preserves the recorded cause of death in DOH's Electronic Death 10 Registration
- 5 System (EDRS).
- 6 Thank you for the opportunity to testify on this measure.



The Judiciary, State of Hawai'i

Testimony to the Thirty-Third State Legislature, 2025 Session

House Committee on Judiciary & Hawaiian Affairs

Representative David A. Tarnas, Chair

Representative Mahina Poepoe, Vice Chair

Tuesday, March 25, 2025, 2:00 P.M.

State Capitol, Conference Room 325

by

Catherine H. Remigio, Chair

Hawai'i Supreme Court Standing Committee On the Hawai'i Rules of Evidence

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 228, S.D. 1, H.D.1, Relating to Excited Delirium.

Purpose: Prohibits excited delirium from being recognized as a valid medical diagnosis or cause of death in the State. Prohibits a medical examiner, coroner, or health care provider from stating on a certificate of death or in any report that the cause of death was excited delirium. Prohibits law enforcement officers from using the term excited delirium to describe an individual in an incident report. Establishes a new Hawai'i Rule of Evidence that deems evidence that a person experienced or suffered an excited delirium inadmissible in a civil action. Effective 7/1/3000. (HD1)

Judiciary's Position:

The Hawai'i Supreme Court Standing Committee on the Hawai'i Rules of Evidence ("Committee") respectfully offers the following comments on Senate Bill No. 228, S.D. 1, H.D. 1.

The Committee understands that "excited delirium" is a subject of debate in the medical and legal community. The Committee does not take a position as to the validity of "excited delirium" as a diagnosis or cause of death. We acknowledge that advocates of Senate Bill No. 228 question the quality and veracity of experts that have testified on the existence of "excited



delirium” and therefore propose a total ban on those experts’ opinions and to legislatively erase the term from all medical and incident reports. This is concerning for several reasons.

1. The Hawai‘i Rules of Evidence and the need for Judicial Discretion

Hawai‘i courts already have a mechanism to exclude unreliable scientific evidence under existing rules of evidence. For example, Hawai‘i Rules of Evidence (“HRE”) Rule 702 provides:

*Rule 702. Testimony by Experts. If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise. **In determining the issue of assistance to the trier of fact, the court may consider the trustworthiness and validity of the scientific technique or mode of analysis employed by the proffered expert.** (Emphasis added).*

HRE Rule 402 provides “Evidence which is not relevant is not admissible.” HRE Rule 403 provides:

*Rule 403. Exclusion of relevant evidence on grounds of prejudice, confusion, or waste of time. Although relevant, evidence may be excluded if its probative value is substantially outweighed by the **danger of unfair prejudice, confusion of the issues, or misleading the jury**, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. (Emphasis added).*

The Hawai‘i Rules of Evidence was designed to allow judges to assess, on a case-by-case basis, whether evidence should be admitted, subject to limited admissibility, or prohibited. Rather than imposing a categorical ban in every civil case, judicial discretion should be preserved to determine whether such evidence is admissible pursuant HRE and the specific facts of each case. The role of the courts is not to take sides, but to allow parties to present relevant and credible information to impartial juries who can make informed decisions according to the law.

2. Implications for Fair Trials and Due Process

Senate Bill No. 228, S.D. 1, H.D. 1 prevents a party in a civil action from raising “excited delirium” as a defense or a relevant factor in incidents involving law enforcement actions or other legal matters. It effectively limits the ability of individuals being sued for money damages to fully present their case before a jury. Normally, the admissibility of evidence (including medical expert testimony and law enforcement testimony) would be determined by a judge prior to trial and in accordance with the HRE. Both sides would have the opportunity to argue in support of, and against, such proposed testimony and evidence. A wholesale preemptive



prohibition on even the mention of “excited delirium” undermines the adversarial system and constitutional due process.

Conclusion

Rather than impose an outright prohibition on the use of the term “excited delirium” in medical and law enforcement reports, the Committee recommends that the legislature allow the courts to assess the admissibility of such evidence on a case-by-case basis, with each side having the opportunity to argue their position. The rules of evidence and judicial discretion should guide the handling of these matters in court. Toward that end, we respectfully request that the legislature delete language from this measure that would prohibit evidence that a person experienced excited delirium to be admissible in any civil action

Thank you for the opportunity to provide comments on Senate Bill No. 228, S.D. 1, H.D. 1.

JON N. IKENAGA
STATE PUBLIC DEFENDER

DEFENDER COUNCIL
1130 NORTH NIMITZ HIGHWAY
SUITE A-254
HONOLULU, HAWAII 96817

HONOLULU OFFICE
1130 NORTH NIMITZ HIGHWAY
SUITE A-254
HONOLULU, HAWAII 96817

APPELLATE DIVISION
TEL. NO. (808) 586-2080

DISTRICT COURT DIVISION
TEL. NO. (808) 586-2100

FAMILY COURT DIVISION
TEL. NO. (808) 586-2300

FELONY DIVISION
TEL. NO. (808) 586-2200

FACSIMILE
(808) 586-2222



STATE OF HAWAII
OFFICE OF THE PUBLIC DEFENDER

HAYLEY Y.C. CHENG
ASSISTANT PUBLIC DEFENDER

HILO OFFICE
275 PONAHAHAWAI STREET
SUITE 201
HILO, HAWAII 96720
TEL. NO. (808) 974-4571
FAX NO. (808) 974-4574

KONA OFFICE
75-1000 HENRY STREET
SUITE #209
KAILUA-KONA HI 96740
TEL. NO. (808) 327-4650
FAX NO. (808) 327-4651

KAUAI OFFICE
3060 EIWA STREET
SUITE 206
LIHUE, HAWAII 96766
TEL. NO. (808) 241-7128
FAX NO. (808) 274-3422

MAUI OFFICE
81 N. MARKET STREET
WAILUKU, HAWAII 96793
TEL. NO. (808) 984-5018
FAX NO. (808) 984-5022

March 24, 2025

Committee on Judiciary & Hawaiian Affairs
Rep. David Tarnas, Chair
Rep. Mahina Poepoe, Vice Chair
415 South Beretania Street, Conf. Rm. 329
State Capital
Honolulu, HI 96813

Re: Testimony in Support of Senate Bill No. 228
Hearing: March 25, 2025, 2:00 PM

Dear Chair Tarnas, Vice Chair Poepoe and Committee members:

The Office of the Public Defender is in support of Senate Bill No. 228, relating to “excited delirium,” which prohibits excited delirium to be recognized, testified to, documented or used as a medical diagnosis, cause of death or contributing cause of death, used by a law enforcement officer in an incident report and/or admitted in any civil action.

Senate Bill No. 228 adopts the fact that “excited delirium,” including so-called excited delirium syndrome, is not a valid medical diagnosis. This conclusion is correct and appropriate. As Senate Bill No. 228 reflects, excited delirium is not a recognized diagnosis in the current Diagnostic and Statistical Manual of Mental Disorders (“DSM-5”), which is the primary diagnostic tool for mental health providers in the United States. Excited delirium is also not recognized as a valid diagnosis by most medical professional organizations, including the American Medical Association and the World Health Organization.

Senate Bill No. 228 also appears to correctly distinguish between description of the observations of a police officer or trial witness and that officer or witness’s attempt to give a medical diagnosis such as excited delirium. Senate Bill No. 228 would allow, for

instance, an officer or witness to report that an individual was yelling or running or committing any other observed act. Senate Bill No. 228 simply precludes officer or witnesses from going beyond their observations by drawing unfounded medical conclusions which they are unqualified to make. This distinction is sound.

The lack of genuine scientific or medical basis for use of excited delirium as a diagnosis should, on its own, be sufficient to preclude its use by government agents, as is established in Senate Bill No. 228. However, it should not be overlooked that excited delirium diagnoses are, by and large, made in the context of deceased or otherwise injured people, usually minorities, and are used to justify often severe levels of force used against them, usually by government agents. Thus, the harms in allowing unwarranted and unqualified diagnosis of a made-up disorder go beyond simply truth and dishonesty.

The complexities underlying police power, government, race, and violence are politically fraught and have been the subject of heavy reporting and debate in recent years. In considering Senate Bill No. 228, however, the Office of the Public Defender urges legislators to remember that, regardless of their individual opinions on those issues, this bill does not claim to do anything more than ensure adherence to accepted medical standards. There should be no serious opposition to the idea that medical diagnoses be limited to medically and scientifically accepted practices, regardless of politics.

Thank you for your consideration.

SB-228-HD-1

Submitted on: 3/21/2025 6:32:25 PM

Testimony for JHA on 3/25/2025 2:00:00 PM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------------------|---------------------------|----------------|
| Louis Erteschik | Hawaii Disability Rights Center | Support | In Person |

Comments:

We believe this bill has a lot of merit and we very much support it. The concept of excited delirium has been sadly used in several cases to justify or excuse or certainly negate liability for police misconduct in cases involving death. We have seen instances where individuals who had a mental illness were confronted by police officers who did not exercise proper de—escalation techniques and used excessive force. In civil trials which sought to achieve some measure of justice and compensation the defense of excited delirium was presented to “explain” the cause of death. Our understanding is that this concept has been medically debunked and yet it has confused juries who then rendered verdicts in favor of the police department or the municipality.

We greatly appreciate that the prior Committee realized that SB 228 is narrower in scope than the version of the companion measure HB 36 that this Committee previously passed forward. We were very pleased believe the Health Committee inserted the contents of HB 36 into this measure. We believe the House position is far better than the Senate one and we would urge this Committee to maintain that now as well as when this bill moves to a Conference Committee.



Dedicated to safe, responsible, humane and effective drug policies since 1993

TESTIMONY IN SUPPORT OF SB 228, SD 1, HD 1

TO: Chair Tarnas, Vice Chair Poepoe, and JHA Committee Members

FROM: Nikos Leverenz, Board President

DATE: March 25, 2025 (2:00 PM)

Drug Policy Forum of Hawai'i (DPFH) ***strongly supports*** SB 228, SD1, HD1, which prohibits “excited delirium” from recognition as a valid medical diagnosis or cause of death, prohibits law enforcement officers from using the term “excited delirium” to describe an individual in an incident report, and establishes an evidentiary rule that deems evidence that a person experienced or suffered “excited delirium” as inadmissible in a civil action.

The term “excited delirium” is now disavowed by major medical organizations, including the American Medical Association, the American Psychiatric Association, the American Academy of Emergency Medicine, the National Association of Medical Examiners, the American College of Medical Toxicology, and the American College of Emergency Physicians.

In 1985, researchers used the phrase “excited delirium” [to describe symptoms like intense paranoia, unexpected strength, and hyperthermia that could indicate potentially fatal cocaine intoxication](#), which should “prompt immediate transport of the victim to a medical facility.” Since then, law enforcement across the country, including Hawaii, employed the term to justify the use of intermediate and even lethal force upon individuals in crisis and subsequently elude accountability in the courts. [As noted in a recent article in KFF Health News](#), it was “cited as a legal defense in the 2020 deaths of George Floyd in Minneapolis; Daniel Prude in Rochester, New York; and Angelo Quinto in Antioch, California, among others.”

A [2021 editorial in STAT News](#) relayed how the syndrome has been used in fatalities where aggressive forms of police restraint were employed: “The [most extensive review](#) of all cases of excited delirium to date, published in 2020, found that the ‘syndrome’ was most often fatal in the presence of aggressive forms of police restraint, including manhandling and hog- or hobble-ties. The authors concluded that ‘excited delirium is not a unique cause of death in the absence of restraint.’ They discounted acute stimulant intoxication as a direct cause of death, given typically

sublethal drug levels found on autopsy. Instead, they concluded that the association between stimulant use and death is likely secondary to the use of aggressive police maneuvers.”

In 2019, Elijah McClain of Aurora, Colorado, was forcibly injected with ketamine by [paramedics who made a determination of “excited delirium”](#) and subsequently died of cardiac arrest. In 2023, those paramedics were found [guilty of criminally negligent homicide](#).

Sheldon Haleck, a local veteran with a history of mental health issues, including anxiety, depression, and PTSD, passed in March 2015 the day after multiple Taser bursts and prodigious use of pepper spray were employed to take him into custody, the City & County of Honolulu successfully argued in civil court that [the cause of death was “excited delirium” instead of excessive use of force](#). The medical examiner found that Haleck [“died from a combination of factors stemming from his altercation \[and\] his heightened state of physical and mental agitation from methamphetamine.”](#)

To bolster its case the City & County of Honolulu employed expert witnesses with ties to Axon Enterprises, Inc., which has a pecuniary interest in shielding itself and government actors who use its products. As such, it is critical for policymakers to inoculate Hawaii’s criminal legal system from this kind of untoward corporate influence, especially that which runs afoul of the consensus of the medical community, in its pursuit of the impartial administration of justice.

The death of Sheldon Halek and that of [Brandan Maroney](#), who was shot to death last year with many officers on the scene, should also prompt policymakers at the state and county levels to initiate reforms that curb the potentially lethal criminalization of behavioral health problems, particularly among Native Hawaiian and Pasifika communities who are subject to higher rates of surveillance and contact.

[As noted in a 2020 article in *The New England Journal of Medicine* on structural racism and racial health inequities](#), “The notion that police reform alone will solve police violence is incomplete and misleading....For effective change, we must determine which sectors (such as mental health and social services) should be involved in equitably addressing public safety without necessarily requiring a police response.”

For example, persons experiencing an acute mental health episode could first be met with non-coercive engagement by social workers and mental health professionals to de-escalate the situation and ascertain the immediate care options.

The Legislature should expeditiously revisit statutory statewide standards of force for law enforcement to provide clearer parameters that are in accord with current best practices.

Mahalo for the opportunity to provide testimony.

March 22, 2025

Chair David A. Tarnas and Committee Members
Hawai'i House Judiciary & Hawaiian Affairs Committee

Re: SB228 SD1 HD1, Excited Delirium

Dear Chair Tarnas and Committee Members,

Mahalo for scheduling a hearing on this important legislation, and for having moved HB36 HD2 on Excited Delirium forward from your committee. HB36 HD2 passed the House with zero “No” votes, and had no opposition from the medical or law enforcement communities. HB36 HD2 would have been an extremely effective bill; but it died in the Senate, as the joint committees to which it was referred declined to give it a hearing. The current version of the Senate bill on excited delirium, SB228 SD1 HD1, renews the language of HB36 HD2, and cures several omissions in the earlier version of the Senate bill (SB228 SD1). I strongly support SB228 SD1 HD1.

This bill is based on California’s excited delirium law, AB 360, for which I provided amendments and advocacy. I have been a civil rights lawyer for 30 years and have worked to debunk excited delirium for two decades. I co-authored the Physicians for Human Rights (PHR) report on excited delirium, entitled *Excited Delirium and Deaths in Police Custody: The Deadly Impact of a Baseless Diagnosis* (March 2022)(<https://phr.org/our-work/resources/excited-delirium/>). The PHR report includes information I gathered over many years concerning the junk science nature of the excited delirium theory, its racist and sexist roots, and the bankrolling and promotion of the theory by TASER International (now known as Axon Enterprise) and its lawyer and paid defense experts. The PHR report also includes my physician co-authors’ review of the medical literature concerning excited delirium, and conclusion that the theory of excited delirium has no medical basis.

AB 360 passed the California legislature with only one “No” vote in the entire legislature (113 to 1), and was signed into law in October 2023. California’s 39.4 million residents are now free of excited delirium. The residents of your great State deserve no less.

In written testimony concerning the bill, your Department of Health noted that excited delirium was listed as an immediate cause of death in Hawai'i nine times since 2006. That is roughly every other year. In addition, excited delirium still comes up as a defense in restraint or Taser death cases even when it is not listed as an immediate cause of death, which is what happened in Sheldon Haleck’s case. Excited delirium has arisen as a defense in every one of my restraint death cases, whether or not a Taser was involved, for the over 20 years I have been handling such cases.

SB228 SD1 did not prohibit testimony about excited delirium by anyone other than Department of Health employees. Additionally, SB228 SD1 omitted alternate names for excited delirium that have been used by the theory’s proponents for years, and did not prohibit excited delirium from being admitted into evidence in civil cases. Last week, the House Health Committee amended SB228 SD1 to match HB36 HD2, curing the deficiencies in the bill.

Five committees of the Hawai'i legislature have found that excited delirium lacks a valid medical foundation and has been used for years to justify excessive force by law enforcement. The Senate Joint Committees on Health and Human Services and Public Safety and Military Affairs have reported:

Your Committees find that “excited delirium,” or “excited delirium syndrome” is not a real medical diagnosis, has no basis in medicine, and has no consistent or diagnostic criteria. Your Committees further find that for decades, “excited delirium” has been invoked to justify law enforcement violence, especially against people of color and those experiencing mental health crises.

(Senate HHS and PSM Joint Committee Report on SB228 SD1, p. 2).

Similarly, the Senate Judiciary Committee has reported:

Your Committee finds that the majority of major national and international medical organizations do not classify “excited delirium” as a medical diagnosis. Your Committee further finds that historically, excited delirium has been often utilized and weaponized to shield law enforcement from accountability when negative outcomes occur from police-civilian interactions.

(Senate JDC Committee Report on SB228 SD1).

The House Health Committee has reported with respect to HB36 HD1:

Your Committee finds that “excited delirium” is a term with no medical basis that is used to justify the use of excessive force by some law enforcement officers against individuals experiencing a mental health crisis. Your Committee further finds that “excited delirium” has no consistent definition or diagnostic criteria and is not currently included in the DSM-5, the authoritative classification system for mental health disorders used by medical professionals in the United States. Your Committee believes that the interests of justice and public health and safety dictate that “excited delirium” should not be recognized as a valid cause of death, used in incident reports, or admissible in civil cases in the State.

(House HLT Committee Report).

Your Committee has reported with respect to HB36 HD2:

Your Committee finds that the term “excited delirium” has been widely discredited by medical and scientific organizations and has been improperly used to justify deaths occurring in law enforcement custody. This unrecognized diagnosis has contributed to legal outcomes that obscure the true causes of death, preventing accountability and justice for affected individuals and their families. This measure ensures that law enforcement and medical determinations are based on scientifically valid and evidence-based practices by prohibiting the use of the term “excited delirium” as a medical diagnosis, cause of death, or legal defense.

(House JHA Committee Report).

The World Health Organization, the American Medical Association, the American Psychiatric Association, the American Psychological Association, and now the National Association of Medical Examiners all recognize that excited delirium is not a valid medical diagnosis or cause of death. Excited Delirium has never appeared in any version of the Diagnostic & Statistical Manual of Mental Disorders (DSM), which is now in its fifth revised edition. There has never been any International Classification of Diseases (ICD) 9 or 10 code for excited delirium, which means it cannot legitimately be included in a death certificate for statistical reporting of causes of death. Despite this, due to extensive promotion of the theory discussed below, excited delirium still appears on autopsy reports and in death certificates.

Additionally, even when excited delirium does not appear as a cause of death on an autopsy report or in a death certificate, there is a cottage industry of defense experts, the majority of whom have ties to the manufacturer of Tasers, who testify that a person who was killed by law enforcement really died of excited delirium. This happened to Oahu's own Kama'aina, Sheldon Haleck, as I will discuss below.

Like SB228 SD1 HD1, California's AB 360 was inspired by the completely preventable death of a military veteran of color. Angelo Quinto was a Filipino-American Navy veteran in a behavioral health crisis. His family called for medical assistance, and two police officers forced him prone and put their weight on him for 5 minutes, while he told them at least twice "please don't kill me," until he died. Sheldon Haleck was a Native Hawaiian and Samoan military veteran. The vast majority of victims of the excited delirium theory are men of color in a behavioral health crisis, like Angelo and Sheldon. As set forth in the Physicians for Human Rights (PHR) report on excited delirium cited above, a study revealed that 56% of the people who are asserted to have been in excited delirium were Black or Latino men.

As discussed in the PHR Report, excited delirium was debunked in Miami in the 1980's but the theory's founder, Charles Wetli, MD, continued to promote the theory nationally. BBC Radio recently released an excellent 30-minute program concerning the history of excited delirium, which you can find wherever you get your podcasts. It is the BBC Radio program by Jon Ronson entitled "The Most Mysterious Deaths," from his "Things Fell Apart" program, Season 2, Episode 1 (<https://www.bbc.com/audio/play/m001v3dw>).

Following Dr. Wetli's lead, TASER International (now called Axon Enterprise) then promoted excited delirium as an alternate cause of death when people died after being Tased, and the company spent a lot of money promoting the theory in law enforcement training and among forensic pathologists. TASER International's in-house lawyer, Michael Brave, and its longtime in-house trainer and defense expert, John Peters, started a company they called the Institute for the Prevention of In-Custody Death (IPICD). IPICD then organized conferences aimed at making "law enforcement, medical, and legal history" to promote excited delirium and publish propaganda endorsing excited delirium "in leading medical, legal, and law enforcement journals." (**Exhibit A**, pp. 3-4, Press Release for IPICD 2008 Las Vegas Conference).

In 2023, the American College of Emergency Physicians (ACEP) -- which has longtime defense experts and TASER/Axon-affiliated experts among its more prominent members -- finally withdrew its

endorsement of excited delirium as a diagnosis, and rescinded its 2009 White Paper endorsing the theory. I attach my letter to ACEP's leadership explaining that the 2009 White Paper actually came out of a 2008 propaganda conference organized and hosted by the IPICD, which was founded by TASER's lawyer, Mr. Brave, and TASER's trainer and defense expert, Mr. Peters. **(Exhibit A)**.

Sheldon Haleck was a combat veteran from a law enforcement family. Sheldon's father, William -- a lifetime career law enforcement officer in American Samoa and Hawai'i -- was trained by the Honolulu Police Academy. Sheldon's mother, Verdell, worked for the Hawai'i Attorney General for 17 years. Upon Sheldon's graduation from Kaiser High School in Hawai'i Kai on Oahu, he joined the military. He served in the Hawai'i Air National Guard for 12 years until his honorable discharge. Sheldon had combat deployments to Afghanistan and Iraq, as well as numerous humanitarian deployments, including to Thailand after the 2004 tsunami. Sheldon's service to our country left him with PTSD.

On March 16, 2015, Honolulu Police officers stopped Sheldon for jaywalking in front of 'Iolani Palace. He was unarmed and non-threatening. Officers Tased Sheldon, pepper sprayed him, forced him into a prone position with officers on his back, put him in leg shackles, and an officer put his knee on Sheldon's neck, until Sheldon became unresponsive and was later pronounced deceased. Sheldon left a wife, a 2-year-old son and 13-year-old stepson, parents, and an extended 'ohana who loved him deeply. Sheldon's family brought a federal lawsuit arising out of his death, but lost at trial because the jury believed the Honolulu Police Department's junk science defense of "excited delirium." The defense experts in the Halecks' trial included Mark Kroll, who served on TASER/Axon's Board of Directors for 20 years until his resignation last year; Stacey Hail, MD, a longtime TASER/Axon defense expert; and John Peters, the TASER/Axon trainer and defense expert who co-founded the IPICD with TASER's lawyer to spread propaganda promoting excited delirium. The jury believed their assertion that Sheldon died of excited delirium.

The proponents of excited delirium have had 40 years to prove it is scientific and has a medical basis. They cannot do so, because it is junk science promoted to excuse deaths in law enforcement custody. The proposal to give judges discretion to admit excited delirium into evidence, and to decide that the junk science theory should be permitted in medical and law enforcement reports on a case-by-case basis, will result in perpetuation of this junk science despite all evidence of its invalidity. In addition, such a rule would create inconsistent legal outcomes, as some judges will recognize the junk science nature of excited delirium and exclude it from evidence, and other judges may decide to admit it into evidence regardless of its demonstrated lack of scientific or medical basis.

A rule of evidence precluding testimony that excited delirium is a valid medical diagnosis or cause of death, as SB228 SD1 HD1 provides, is not revolutionary. For example, the Hawai'i Rules of Evidence already have many provisions precluding the admission of certain kinds of evidence:

- Rule 407 precludes the admission of evidence of subsequent remedial measures to prove negligence or culpable conduct;
- Rule 408 precludes the admission of evidence of settlement offers to prove liability or the invalidity or amount of a claim, as well as statements made during settlement negotiations;
- Rule 409 precludes the admission of evidence of offers to pay medical or hospital expenses to prove liability;

- Rule 410 precludes the admission of pleas, plea discussions, or statements made during the course of plea discussions;
- Rule 411 precludes the admission of evidence concerning insurance upon the issue of whether a person acted negligently or wrongfully;
- Rule 412 precludes the admission in a sexual misconduct criminal case of evidence of a victim's past sexual behavior to show the victim's character or conduct in conformity with that character;
- Rule 610 precludes the admission of evidence of the religious beliefs of a witness to show their credibility is impaired or enhanced.

In addition, HB711 HD1 SD1, which has been on the books for six years, prohibits evidence that a criminal defendant was in an anti-gay or trans panic at the time he was alleged to have committed the crime of which he is accused.

Giving judges discretion to decide on a case-by-case basis that excited delirium is a valid medical diagnosis or cause of death and should be admitted into evidence, is akin to allowing a judge to admit evidence that a Defendant in a civil case has \$25 million in insurance or offered to pay for the Plaintiff's medical expenses so should be held liable at trial; a Defendant offered to settle the case during mediation and so should be held liable at trial; a rape victim behaved in what the court views as a sexually promiscuous manner in the past, and therefore was not really raped during the incident in question; a criminal Defendant offered to plea to a lesser included offense, and therefore is criminally culpable and should be held guilty; or a witness is more (or less) credible because he or she is a born-again Christian or is Buddhist, Catholic, Hindu, Jewish, or Muslim.

In addition, it is not practical to give judges "case-by-case" discretion to decide that excited delirium should be included in a medical record or police report. Such a rule would broadly expand the role of the judiciary far beyond its current role, and would create the need for extensive unnecessary litigation requiring judges to review police reports and medical records to decide whether they think excited delirium appropriately applies in a particular situation.

As for the inclusion of "hyperactive delirium, agitated delirium, and exhaustive mania" in the definition of "excited delirium" in SB228 SD1 HD1, those alternate names for excited delirium are in California's law, and are necessary in any excited delirium legislation, because proponents of the theory use those other terms interchangeably. They say a person was in excited delirium, or had Excited Delirium Syndrome, or was in agitated delirium, hyperactive delirium, or exhaustive mania. So, if you just prohibit the use of the term "excited delirium," they can still use the junk science defense by calling it agitated delirium, hyperactive delirium, or exhaustive mania, as they have done for years.

For example, I deposed Dr. Charles Wetli, who invented the theory of excited delirium, in one of my restraint asphyxia cases. Dr. Wetli testified under oath:

"Question: Well, you never used the words excited delirium anywhere in your report, did you, Doctor?"

Answer: I think I did. I think I may have called it agitated delirium. It's the same thing."

“Question: I have looked at your CV, and sometimes you call it excited delirium and sometimes you call it agitated delirium. Which do you prefer?”

Answer: Either one. It depends on the day of the week, I guess. I don't know. It's the same thing.”

(**Exhibit B**, Excerpts of the deposition of Charles v. Wetli, M.D. in *Martin Harrison, Deceased, et al. v. County of Alameda, et al.*, N.D. Cal. Case No. C11-2868 JST, 1/15/14, pp. 68:24-69:5, 184:16-22).

Finally, proponents of excited delirium have used the theory to promote racist tropes for decades. For example, Dr. Wetli stated in 1990 that seventy percent of people who die of excited delirium were Black men and “it may be genetic.” (Russ Rymer, “Murder Without a Trace,” *In Health*, May/June, 1990). Proponents of excited delirium claim that a person in excited delirium is “impervious to pain” and has “superhuman strength,” racist stereotypes used against not only African-Americans, but also Native Hawaiians and Samoans. As stated previously, Sheldon Haleck was Native Hawaiian and Samoan. The people of Hawai'i deserve to be free of this junk science.

Last Monday was the 10th anniversary of Sheldon's death. Sheldon's parents have no recourse in their own case, but now advocate for the passage of excited delirium legislation, to protect other families. I very respectfully ask you to honor Sheldon and give him and his 'ohana the respect they deserve, by moving SB228 SD1 HD1 forward. Mahalo nui loa for your time.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Julia Sherwin', with a long horizontal flourish extending to the right.

Julia Sherwin

EXHIBIT A

October 2, 2023

American College of Emergency Physicians (ACEP)

Re: Excited Delirium/Hyperactive Delirium

Dear ACEP Members:

I am writing to request that you rescind your endorsement of Excited Delirium, a/k/a Hyperactive Delirium, and withdraw your 2009 White Paper on “excited delirium” at your upcoming meeting this weekend. I am a longtime civil rights lawyer handling wrongful death cases involving law enforcement, and have worked to debunk “excited delirium” for two decades. I co-authored the report from Physicians for Human Rights (PHR) on excited delirium, entitled *Excited Delirium and Deaths in Police Custody: The Deadly Impact of a Baseless Diagnosis* (March 2022). The report includes information I gathered over many years concerning the junk science nature of the “excited delirium” theory, its racist and sexist roots, and the bankrolling and promotion of the theory by TASER International (now known as Axon Enterprise) and its lawyer and paid defense experts. My PHR physician co-authors also include a review of the medical literature concerning the junk science theory.

I have spoken at conferences concerning law enforcement contacts with the mentally ill, including the International Congress on Law and Mental Health, as well as an international Death in Custody medical conference that had 197 participants from 27 countries in attendance. I have also provided *pro bono* consultation and advice to Minnesota Attorney General Keith Ellison and his lead special prosecutor, Steve Schleicher, to assist them in prosecuting the Minneapolis police officers who killed George Floyd, and to help them rebut the “excited delirium” defense when it arose in their case.

I have handled many cases involving restraint asphyxial deaths in police custody during the last two decades. I currently represent Mario Gonzalez, Deceased, and his seven-year-old son. Mario was killed on April 19, 2021, by Alameda, California, police officers who restrained him in a prone position, with three officers putting their weight on him, for over five minutes. For nearly four of those minutes, the officers had already handcuffed Mario behind his back. Defense forensic pathologist Judy Melinek has tried to insert “excited delirium” into her defense testimony in the case. I have repeatedly encountered the junk science theory of “excited delirium” as a defense in cases such as the Gonzalez case.

ACEP’s 2009 “White Paper” endorsing the existence of “excited delirium” was the result of a 2008 conference in Las Vegas organized by the Institute for the Prevention of In-Custody Deaths, Inc. (IPICD), a corporation founded by TASER International’s in-house lawyer, Michael Brave, along with longtime TASER defense expert and trainer, John Peters. The IPICD advertised its conference as “the first consensus conference that focuses upon excited delirium,” and promised “attendees will help make law enforcement, medical, and legal history through topic-specific breakout groups focused on arriving at a ‘consensus’ about excited delirium.” (**Attachment A**, Press Release for IPICD Conference). The IPICD promised, “The findings from this seminal event will then be published in leading medical, legal, and law enforcement journals.”

The IPICD conference was a propaganda conference organized by defense experts in TASER and restraint death cases. I have highlighted on the attached press release the speakers at the conference

ACEP

October 2, 2023

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whom I know to be longtime defense experts in TASER and/or restraint asphyxia death cases. ACEP's 2009 "White Paper" was the result of the 2008 IPICD propaganda conference. Many of its authors are longtime defense experts in TASER and/or restraint death cases, including especially Drs. Chan, Ho, Mash, and Vilke.

ACEP -- which has longtime defense experts and TASER/Axon-affiliated experts among its more prominent members -- has so far doubled down on "excited delirium." In response to our PHR report, ACEP simply substituted "hyperactive" for "excited." ACEP continues to promote the defense, now calling it "hyperactive delirium" instead of "excited delirium."

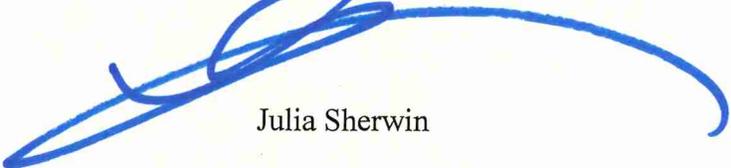
I just deposed ACEP member Gary Vilke last week for the third time, in my restraint asphyxia case *Mario Gonzalez, Deceased, v. City of Alameda*. Dr. Vilke admitted he has been a defense expert in at least 50 to 75 restraint asphyxia cases, and possibly even more than 100 cases. He admitted that by the time of trial next month in the *Gonzalez* case, he will make over \$50,000 as a defense expert from that case alone. He has already made over \$41,000 for his work as a defense expert in the case. In the last four years, he has testified as an expert in court or depositions 78 times. He admitted that, in every single case involving law enforcement, he always testifies that the officer did not cause or contribute to the person's death. Dr. Vilke and his colleagues have repeatedly relied on the ACEP White Paper to bolster their defense testimony. He admitted in deposition that he does not tell medical journals, nor the University of California San Diego's conflict-of-interest officials, that he is a longtime, paid defense expert in TASER and restraint death cases.

Charles Wetli, the forensic pathologist who was the first proponent of the "excited delirium" theory in the 1980's, said in 1990 that seventy percent of people who die from excited delirium are Black men, and "it may be genetic." (Russ Rymer, "Murder Without a Trace," *In Health*, May/June 1990). The PHR report contains further information from my two decades of research into the origins and junk science nature of the theory.

California AB 360, banning the junk science theory of "excited delirium," has been passed by the California legislature, 77 to 0 in the Assembly and 36 to 1 in the Senate. With this new legislation, California will lead the way nationally toward freedom from the racist theory of "excited/hyperactive delirium."

I was very disappointed that, after the PHR report debunking "excited delirium" was published, ACEP simply changed the name from "excited" to "hyperactive," and continues to promote the junk science theory. It is time for the American College of Emergency Physicians to stand up to its prominent members who are making a fortune as defense experts relying on the junk science theory, and rescind its 2009 White Paper and continued embrace of excited/hyperactive delirium. Thank you very much for your time and attention.

Sincerely,



Julia Sherwin



Police Products > Police Training

PRESS RELEASE

IPICD 3rd Annual Sudden Death, Excited Delirium & In-Custody Death Conference—LAS VEGAS

Aug 15, 2008

Henderson, NV—The 3rd Annual Sudden Death, Excited Delirium & In-Custody Death Conference focusing upon the latest medical research findings, theories, and legal issues about excited delirium, sudden death, electronic control devices, and mental illness, which are of great concern for law enforcement agencies around the world, will be held on October 29-31, 2008 at The Orelans Hotel, Las Vegas, Nevada. The three-day Conference is sponsored by the Institute for the Prevention of In-Custody Deaths, Inc. (IPLICD), Henderson, Nevada.

The 2008 IPICD Conference will be the first consensus conference that focuses upon excited delirium and response protocols. Attendees will help make law enforcement, medical, and legal history through topic-specific breakout groups focused on arriving at a “consensus” about excited delirium, key law enforcement, emergency medical provider, and emergency department responses to and training issues about one of the most pressing issues of the day. The findings from this seminal event will then be published in leading medical, legal, and law enforcement journals.

Scheduled speakers include, but are not limited to such internationally-renown researchers, scientists, pathologists, and trial lawyers as Deborah Mash, Ph.D., University of Miami Brain Endowment Bank; Charles Wetli, M.D. and David Fishbain, M.D., the two doctors to identify “excited delirium” in the cocaine-wild 1980s; Vincent

DiMaio, M.D. and his wife, Theresa, authors of one of the most definitive texts on excited delirium; Steven Karch, M.D., pathologist and author of several texts on drugs and cocaine; Theodore Chan, M.D. and Gary Vilke, M.D., both from the University of California—San Diego; Judy Melinek, M.D., Assistant Medical Examiner, San Francisco.

Office of the Medical Examiner; Ellis Amdur, M.A., psychologist; Lt. Walter Bailey, Texas Sheriff's Department Mental Health Unit; Sgt. Edward Flosi, California peace officer; Carrie L. Sandbaken Hill, J.D., defense lawyer; Christine Hall, M.D. Canadian researcher; Bruce Levy, M.D., medical examiner; Andrew Dennis, M.D., trauma doctor and researcher; and Bob Wood, former drug addict.

Conference topics include the latest research on excited delirium and sudden death, mental illness, the role of the medical examiner, restraints and sudden death, legal defense strategies, handling expert witnesses, plus much more. The Conference flyer can be downloaded from the IPICD Web site: www.ipicd.com.

The 2006 & 2007 IPICD Conferences were sold out, so register NOW for this timely and important conference by visiting the Institute for the Prevention of In-Custody Deaths, Inc. Web site at www.ipicd.com . Early registration tuition for the three-day educational conference is only \$595 per person, and includes a workbook, CD-ROM, certificate, lunch on Wednesday and Thursday, and other materials. After September 27, 2008, tuition is \$695 per person.

For more information about the Conference and/or the Institute for the Prevention of In-Custody Deaths, Inc., please visit www.ipicd.com, e-mail staff@ipicd.com, or telephone toll-free: 866.944.4723.

EXHIBIT B

UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 -----x
 M.H., a minor, through his Guardian Ad :
 Litem, Michelle Henshaw, JOSEPH HARRISON, :
 KRYSTLE HARRISON, MARTIN HARRISON, JR., :
 and TIFFANY HARRISON, all Individually :
 and as Co-Successors in Interest of :
 Decedent MARTIN HARRISON, :
 :
 Plaintiffs, :
 :
 vs. :
 :
 COUNTY OF ALAMEDA, a municipal :
 corporation; SHERIFF GREGORY J. AHERN, :
 in his individual and official :
 capacities; DEPUTIES MATTHEW AHLF, :
 ALEJANDRO VALVERDE, JOSHUA SWETNAM, :
 ROBERTO MARTINEZ, ZACHARY LITVINCHUK, :
 RYAN MADIGAN, MICHAEL BARENO, FERNANDO :
 ROJAS-CASTANEDA, SHAWN SOBRERO, SOLOMON :
 UNUBUN; MEGAN HAST, A.S.W.; CORIZON :
 HEALTH, INC., a Delaware corporation; :
 HAROLD ORR, M.D.; ZELDA SANCHO, L.V.N.; :
 and DOES 5-20, individually, jointly :
 and severally, :
 :
 Defendants. :
 :
 -----x
 VIDEOCONFERENCE and TELEPHONIC DEPOSITION of
 CHARLES V. WETLI, M.D., taken by Plaintiffs at the
 offices of Fink & Carney Reporting, 39 West 37th
 Street, New York, New York, on Wednesday, January 15,
 2014, commencing at 1:09 p.m., before Leah Allbee, a
 Registered Professional Reporter and Notary Public
 within and for the State of New York.

1 C. Wetli, M.D.
 2 CHARLES V. WETLI, M.D.,
 3 called as a witness, having been first
 4 duly sworn by Leah Allbee, a Notary
 5 Public within and for the State of New
 6 York, was examined and testified as
 7 follows:
 8 EXAMINATION
 9 BY MS. SHERWIN:
 10 Q Doctor, we met briefly off the
 11 record. My name is Julia Sherwin, and I'm one
 12 of the attorneys who represents the adult
 13 children of Martin Harrison in this case.
 14 I take it you have been deposed
 15 many times before, right?
 16 A Correct.
 17 Q So is it fair to say I don't need
 18 to go over the rules with you?
 19 A That's correct.
 20 Q Okay. Now, the Deposition Notice
 21 asked you to bring your complete file, and I
 22 understand from you off the record that you have
 23 done that, correct?
 24 A Correct.
 25 MR. ANDRADA: Madam

1
 2 APPEARANCES:
 3 HADDAD & SHERWIN
 Attorneys for Plaintiffs
 4 505 Seventeenth Street
 Oakland, California 94612
 5
 BY: JULIA SHERWIN, ESQ.
 6 - and -
 GENEVIEVE K. GUERTIN, ESQ.
 7 (Via videoconference)
 8
 ANDRADA & ASSOCIATES
 9 Attorneys for Defendants
 County of Alameda, Sheriff Gregory J.
 10 Ahern, Deputies Matthew Ahlf,
 Alejandro Valverde, Joshua Swetnam,
 11 Roberto Martinez, Zachary Litvinchuk,
 Ryan Madigan, Michael Bareno, Fernando
 12 Rojas-Castaneda, Shawn Sobrero,
 Solomon Unubun and Megan Hast, A.S.W.
 13 180 Grand Avenue, Suite 225
 Oakland, California 94612
 14
 BY: J. RANDALL ANDRADA, ESQ.
 15 VALERIE LY, ESQ.
 (Via Videoconference)
 16
 LAW OFFICES OF NANCY E. HUDGINS
 17 Attorneys for Defendants Corizon
 Health, Inc. and Harold Orr, M.D.
 18 711 Van Ness Avenue, Suite 450
 San Francisco, California 94102
 19 BY: NANCY E. HUDGINS, ESQ.
 20 (Via Videoconference)
 21
 WILLIAMS & ASSOCIATES
 22 Attorneys for Defendant
 Zelda Sancho, L.V.N.
 23 1250 Sutterville Road, Suite 290
 Sacramento, California 95822
 24
 BY: KATHLEEN J. WILLIAMS, ESQ.
 25 (Via Telephone)

1 C. Wetli, M.D.
 2 Reporter, the record should reflect
 3 that Nancy Hudgins has just come
 4 into the room.
 5 MS. HUDGINS: Hi, everyone.
 6 MS. SHERWIN: Hi, Nancy.
 7 Q I will just go through your
 8 report. And I would like to mark a few of the
 9 items in your report but not the whole report,
 10 okay?
 11 A Fine.
 12 Q You have a CD in here in which you
 13 have put my business card in the front. But
 14 what did the CD contain?
 15 A There are two CDs there actually.
 16 One CD is of the autopsy photographs and the
 17 other CD are photographs predominantly of the
 18 scene and Mr. Harrison in the hospital.
 19 Q Okay. In your report or in your
 20 file, you have -- are you able to see the items
 21 as I list them from here?
 22 A Sure.
 23 Q You have your report dated
 24 October 22, 2013. And then I will just pull out
 25 from your report the documents that I would like

1 C. Wetli, M.D.
2 MS. SHERWIN: Kathleen, can
3 you hear him now?
4 THE WITNESS: Did we lose
5 Kathleen?
6 MS. SHERWIN: When I moved
7 the phone, did it disconnect her?
8 Yes, it must have. Let's take a
9 quick break.
10 We are just going to go off
11 the record for a second.
12 (Discussion off the record.)
13 (Whereupon, at 2:20 p.m., a
14 recess was taken to 2:28 p.m.)
15 (The deposition resumed with
16 all parties present.)
17 CHARLES WETLI, M.D., resumed and
18 testified further as follows:
19 MS. SHERWIN: Could you read
20 back the last question and answer?
21 (The record was read.)
22 BY MS. SHERWIN:
23 Q Doctor, can you point me to any
24 peer-reviewed medical literature that would
25 support your testimony that Martin Harrison had

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1 C. Wetli, M.D.
2 excited delirium?
3 A Basically, yes. He's got -- there
4 are a number of articles written on excited
5 delirium and its various causes, and he exhibits
6 all of the characteristic ones, starting with
7 descriptions of it going back to 1840 basically.
8 Q Can you point me to any specific
9 peer-reviewed medical journal articles that I
10 could go look up?
11 A The one I wrote in the
12 Encyclopedia of Forensic and Legal Medicine on
13 excited delirium.
14 Q When was that?
15 A It's in my CV. It would be -- I
16 think the publication is like around No. 113 or
17 something like that.
18 Q Okay. Anything else?
19 A Well, in there you will see a
20 bunch of references otherwise to excited
21 delirium, the characteristics of it.
22 Q Now, Mr. Harrison's presentation,
23 regardless of whether you call it excited
24 delirium, is completely consistent with delirium
25 tremens as a result of alcohol withdrawal,

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1 C. Wetli, M.D.
2 correct?
3 A Well, let's put it this way:
4 Excited delirium never -- is never a diagnosis
5 by itself. It's always due to something. In
6 this case we would say that excited delirium is
7 due to alcohol withdrawal. Whether you choose
8 to call it a variant of excited -- of delirium
9 tremens or not I think is getting into
10 semantics.
11 He has all of the signs and
12 symptoms of excited delirium. The cause for it
13 happens to be alcohol withdrawal. And the usual
14 alcohol withdrawal syndrome that are seen with
15 people hallucinating and so forth is called
16 delirium tremens.
17 It's not the only alcohol
18 withdrawal syndrome, but it's the one with
19 hallucinations that we call delirium tremens.
20 Q Are you aware that Dr. DiMaio
21 classifies death when a person -- when he views
22 someone as having died while they had excited
23 delirium during restraint as homicides?
24 A Yes, I am aware of that. I also
25 don't agree with him.

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1 C. Wetli, M.D.
2 Q But if, in fact, Martin Harrison
3 had excited delirium and died in connection with
4 his restraint, Dr. DiMaio would say that's a
5 homicide, right?
6 A I understand that. My
7 classification is different. I basically call
8 the manner of death dependent upon the cause of
9 the excited delirium.
10 In other words, if the cause of
11 the excited delirium is bipolar disorder or
12 schizophrenia, it's a natural death.
13 Q Well, if Mr. Harrison -- we agree,
14 don't we, Doctor, that if Mr. Harrison had just
15 had delirium tremens and was left alone in his
16 cell, he more likely than not would not have
17 died, right?
18 A Unless it is the excited delirium
19 variety of it, in which case then there is a
20 higher chance of him dying. I think to lump
21 this as excited delirium due to alcohol
22 withdrawal as the usual case of delirium tremens
23 is confusing the issue.
24 Q Well, you never used the words
25 excited delirium anywhere in your report, did

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1 C. Wetli, M.D.
2 you, Doctor?
3 A I think I did. I think I may have
4 called it agitated delirium. It's the same
5 thing.
6 Q You said on occasion the victim of
7 delirium tremens can become agitated and
8 violent, which is what appears to have occurred
9 with Mr. Harrison, right?
10 A I'm sorry. Repeat that. I was
11 looking --
12 Q You said, quote, "On occasion the
13 victim of delirium tremens can become agitated
14 and violent, which is what appears to have
15 occurred with Mr. Harrison," end quote, correct?
16 A Correct. But in the final
17 paragraph of my letter, if I may quote, "It is
18 therefore my opinion to a reasonable degree of
19 medical certainty that Mr. Martin Harrison died
20 from the metabolic complications of agitated
21 delirium due to delirium tremens that was a
22 consequence of his alcoholism."
23 Q So he had delirium tremens that
24 manifested with agitation, right?
25 A Exactly.

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1 C. Wetli, M.D.
2 Q And that's what killed him, right?
3 A Exactly.
4 Q You are aware that TASER warns
5 police officers against the prolonged or
6 repeated application of the taser, right?
7 A Yes.
8 Q It also warns officers against
9 using the taser on a metabolically compromised
10 person, right?
11 A I believe that's correct, yes.
12 Q And a person who is in delirium
13 tremens with agitation is metabolically
14 compromised; is that right?
15 A Correct.
16 Q Is a person who is in tachycardia
17 at an increased risk of going into cardiac
18 arrest?
19 A In and of itself, no.
20 Q Does a person who is in
21 tachycardia have an increased need for oxygen?
22 MR. ANDRADA: Objection.
23 Vague and ambiguous, overly broad.
24 A It would depend upon the degree of
25 tachycardia.

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1 C. Wetli, M.D.
2 Q So let's say if the person had
3 tachycardia with a heart rate over 120 beats per
4 minute, would that person have an increased need
5 for oxygen?
6 A I would --
7 MR. ANDRADA: Objection.
8 Vague and ambiguous, overly broad.
9 A I would presume that is correct,
10 but there are better people to answer that
11 question for you, like a pulmonologist,
12 cardiologist or exercise physiologist.
13 But I know myself when I have a
14 heart rate of 120 on a treadmill that I have an
15 increased need of oxygen, yes.
16 Q Rhabdomyolysis, is that how it's
17 pronounced?
18 A Rhabdomyolysis, correct.
19 Q That's breakdown of skeletal
20 muscle, right?
21 A That's correct.
22 Q And you saw evidence of that
23 somewhere in your review in this case, correct?
24 A Correct.
25 Q Where did you see evidence of it?

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1 C. Wetli, M.D.
2 A It's in the medical records and
3 manifested by -- in the progress notes, they
4 talk about it and the complications, patient
5 complications. It's noted there. And also
6 the -- certain enzyme elevations are very high,
7 typical for rhabdomyolysis.
8 Q Which enzyme elevations?
9 A Creatine phosphokinase, CPK.
10 Q Can you --
11 A Or creatine kinase.
12 Q Creatine --
13 A Creatine kinase.
14 Q Rhabdomyolysis can be caused by
15 muscle trauma, right?
16 A It can be, yes.
17 Q It can also be caused by physical
18 torture?
19 A It depends on --
20 MR. ANDRADA: Objection.
21 Vague and ambiguous as to what you
22 mean by torture.
23 A It depends on the type of torture.
24 Q Torture that causes any muscle
25 damage can cause rhabdomyolysis, right?

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1 C. Wetli, M.D.
2 her and Dr. Davis reclassified that autopsy as a
3 homicide, right?
4 A He reclassified a lot of them,
5 including skeletal remains, as homicide by
6 undetermined means.
7 Q Dr. Davis said in some cases the
8 women had been clearly asphyxiated and he said,
9 quote, "you could stand 10 feet away, it's that
10 clear," end quote; isn't that right?
11 A That's what he said. It's not
12 true, but that's what he said.
13 Q You disagree with Dr. Davis'
14 decision?
15 A Oh, yes.
16 Q Is Dr. Davis still alive?
17 A No. He died about a year ago.
18 MS. SHERWIN: So let's just
19 take a quick break. I might be
20 done. I'm just trying to get into
21 my notes here on my computer.
22 (Whereupon, at 4:41 p.m., a
23 recess was taken to 4:48 p.m.)
24 (The deposition resumed with
25 all parties present.)

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1 C. Wetli, M.D.
2 CHARLES V. WETLI, M.D.,
3 resumed and testified further as follows:
4 MS. SHERWIN: I have no
5 further questions. Thank you,
6 Doctor.
7 EXAMINATION
8 BY MS. HUDGINS:
9 Q Hi, Doctor.
10 A Hi.
11 Q I'm Nancy Hudgins. I represent
12 the medical folks at the jail except for Nurse
13 Sancho.
14 Can you hear me?
15 A Yes.
16 Q Let me bring this a little closer.
17 Is that a little bit better?
18 A Good. Thank you.
19 Q Thank you. So I was curious about
20 the number of cases you have looked at where
21 lawyers have asked you to review a case and in
22 which you have opined that the cause of death
23 was excited delirium?
24 A Okay. I'm not sure what your
25 question is.

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1 C. Wetli, M.D.
2 Q So how many cases have you
3 actually looked at in a medical-legal context
4 where a lawyer has retained you and you have had
5 the opinion that the cause of death was excited
6 delirium?
7 A Quite a few. I never really
8 counted them, but it would be quite a few of
9 them. A hundred would not surprise me.
10 Q How many of those cases were
11 referred to you by plaintiffs' lawyers?
12 A I really can't think of any --
13 offhand, I can't think of any that were referred
14 by plaintiffs' lawyers. There may have been one
15 or two along the lines, but usually it's going
16 to be a defense counsel.
17 Q Okay. For the hundred or so cases
18 that you looked at, how many involved alcohol as
19 opposed to other stimulants?
20 A Well, alcohol is not a stimulant,
21 but --
22 Q So noted. Sorry. I will withdraw
23 it and let me ask you a better question maybe.
24 A Okay.
25 Q Of the hundred or so cases that

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1 C. Wetli, M.D.
2 you have reviewed for lawyers in which you have
3 determined that the cause of death was excited
4 delirium, how many of them involved alcohol?
5 A I think only one that I can think
6 of offhand.
7 Q What case was that?
8 A I can't remember offhand.
9 Q When did you have that opinion?
10 A You know, I can't remember. I
11 remember I had one other case where it was
12 alcohol withdrawal and resulting in excited
13 delirium, and I can't remember where or when it
14 was or anything like that. I just remember I
15 had one and that was it. It was very unusual.
16 Q I have looked at your CV, and
17 sometimes you call it excited delirium and
18 sometimes you call it agitated delirium. Which
19 do you prefer?
20 A Either one. It depends on the day
21 of the week, I guess. I don't know. It's the
22 same thing.
23 Q How many times have you testified
24 in federal court regarding excited delirium?
25 A Again, I have that on my Rule 26,

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TESTIMONY IN SUPPORT OF SB 228, SD 1, HD 1

Aloha Chair Tarnas and JHA Committee Members,

The Reimagining Public Safety in Hawai'i Coalition, in partnership with the Drug Policy Forum of Hawai'i, strongly supports SB 228, SD1, HD1, which prohibits "excited delirium" from recognition as a valid medical diagnosis or cause of death, prohibits law enforcement officers from using the term "excited delirium" to describe an individual in an incident report, and establishes an evidentiary rule that deems evidence that a person experienced or suffered "excited delirium" as inadmissible in a civil action.

The term "excited delirium" is now disavowed by major medical organizations, including the American Medical Association, the American Psychiatric Association, the American Academy of Emergency Medicine, the National Association of Medical Examiners, the American College of Medical Toxicology, and the American College of Emergency Physicians.

In 1985, researchers used the phrase "excited delirium" to describe symptoms like intense paranoia, unexpected strength, and hyperthermia that could indicate potentially fatal cocaine intoxication, which should "prompt immediate transport of the victim to a medical facility."

Since then, law enforcement across the country, including Hawaii, employed the term to justify the use of intermediate and even lethal force upon individuals in crisis and subsequently elude accountability in the courts. As noted in a recent article in KFF Health News, it was "cited as a legal defense in the 2020 deaths of George Floyd in Minneapolis; Daniel Prude in Rochester, New York; and Angelo Quinto in Antioch, California, among others."

A 2021 editorial in STAT News relayed how the syndrome has been used in fatalities where aggressive forms of police restraint were employed: "The most extensive review of all cases of excited delirium to date, published in 2020, found that the 'syndrome' was most often fatal in the presence of aggressive forms of police restraint, including manhandling and hog- or hobble-ties. The authors concluded that 'excited delirium is not a unique cause of death in the absence of restraint.' They discounted acute stimulant intoxication as a direct cause of death, given typically sublethal drug levels found on autopsy. Instead, they concluded that the association between stimulant use and death is likely secondary to the use of aggressive police maneuvers."

In 2019, Elijah McClain of Aurora, Colorado, was forcibly injected with ketamine by paramedics who made a determination of “excited delirium” and subsequently died of cardiac arrest. In 2023, those paramedics were found guilty of criminally negligent homicide.

Sheldon Haleck, a local veteran with a history of mental health issues, including anxiety, depression, and PTSD, passed in March 2015 the day after multiple Taser bursts and prodigious use of pepper spray were employed to take him into custody, the City & County of Honolulu successfully argued in civil court that the cause of death was “excited delirium” instead of excessive use of force. The medical examiner found that Haleck “died from a combination of factors stemming from his altercation [and] his heightened state of physical and mental agitation from methamphetamine.”

To bolster its case the City & County of Honolulu employed expert witnesses with ties to Axon Enterprises, Inc., which has a pecuniary interest in shielding itself and government actors who use its products. As such, it is critical for policymakers to inoculate Hawaii’s criminal legal system from this kind of untoward corporate influence, especially that which runs afoul of the consensus of the medical community, in its pursuit of the impartial administration of justice.

The death of Sheldon Halek and that of Brandan Maroney, who was shot to death last year with many officers on the scene, should also prompt policymakers at the state and county levels to initiate reforms that curb the potentially lethal criminalization of behavioral health problems, particularly among Native Hawaiian and Pasifika communities who are subject to higher rates of surveillance and contact.

As noted in a 2020 article in The New England Journal of Medicine on structural racism and racial health inequities, “The notion that police reform alone will solve police violence is incomplete and misleading....For effective change, we must determine which sectors (such as mental health and social services) should be involved in equitably addressing public safety without necessarily requiring a police response.”

For example, persons experiencing an acute mental health episode could first be met with non-coercive engagement by social workers and mental health professionals to de-escalate the situation and ascertain the immediate care options.

The Legislature should expeditiously revisit statutory statewide standards of force for law enforcement to provide clearer parameters that are in accord with current best practices. Mahalo for the opportunity to provide testimony.

Mahalo,

Liam Chinn
Facilitator, Reimagining Public Safety in Hawai’i Coalition

SB-228-HD-1

Submitted on: 3/24/2025 5:34:34 AM

Testimony for JHA on 3/25/2025 2:00:00 PM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|-------------------------|---------------------------|----------------|
| Ilima DeCosta | Hui Malama Pono Hawai'i | Support | In Person |

Comments:

Mahalo for the opportunity to testify in strong support of SB228 SD1, HD1, which calls for a prohibition on the use of the phrase "excited delirium" - or any variation - by any county or state officials, on any government report or documents.

The phrase "excited delirium" is not rooted in science and has been advanced by Taser International as a means of evading liability for their product; "excited delirium" is "junk science" and has no place in our system of law.

If passed, SB228, SD1, HD1 would also prohibit the use of junk science - like "excited delirium", or any variation of the phrase - in the rules of evidence.

While it comes too late for native Hawaiian veteran Sheldon Haleck - who died while in police custody as a result of a jaywalking during a mental health crisis - the passage of SB228 SD1, HD1 has potentially life saving implications.

If passed, the legislature is urged to call for expanded Crisis Intervention Training for ALL law enforcement - starting with the Governor and Attorney Generals offices - as a "top down" approach to trauma informed community policing.

The legislature is also urged to refer to the bill as 'Sheldon's Law', in honor of all veterans who have honorably served their country and returned home suffering with PTSD.

Please pass SB228 SD1, HD1 out of committee and allow a full house vote on this life saving legislation. Mahalo piha.



SUPPORT FOR SB 228– A Bill That Will Prohibit the Use of Excited Delirium
Written Testimony-National Police Accountability Project, Lauren Bonds, Executive
Director
Hawaii House Judiciary Committee – Wednesday, March 25, 2025

Dear Members of the Judiciary Committee,

On behalf of the National Police Accountability Project (“NPAP”), we write to urge you to support SB 228, a bill that will would prohibit: (1) excited delirium from being recognized as a valid cause of death; (2) peace officers from using the term “excited delirium” when describing an individual in an incident report; and (3) using the term excited delirium to describe a person as part of an affirmative defense in a civil wrongful death action. SB 228 will help reduce the use of the unscientific, racist theory excited delirium to justify law enforcement violence and hinder accountability.

NPAP is a nonprofit organization dedicated to holding law enforcement and corrections officers accountable to constitutional and professional standards. We have hundreds of members across the country, including members in Hawaii, who regularly represent the loved ones of people who have been killed in police or prison custody. In many of our clients’ cases, officers and their legal defense teams claim that their loved ones died due to “excited delirium” rather than the obvious consequences of excessive force. Moreover, many officers attempt to justify their continued use of deadly force because our clients’ loved ones were in a “state of excited delirium.” For instance, the officers that killed George Floyd cited excited delirium as a defense in his criminal case and his colleagues referenced it at the scene of the crime.¹ Similarly, the City of Aurora cited excited delirium to justify the use of a prolonged stranglehold against Elijah McClain.²

¹ Steve Karnowski, *EXPLAINER: Why ‘excited delirium’ came up in at Chauvin trial?* Associated Press, Apr. 19, 2021, <https://apnews.com/article/health-death-of-george-floyd-trials-george-floyd-3b60b3930023a2668e7fc63f903fc3aa>.

² *Id.*

“Excited delirium” is a condition that lacks clear diagnostic criteria and is almost exclusively cited as a cause of death in cases where a person was killed by law enforcement officers.³ There is no consensus about the definition of excited delirium in medical literature or surveyed clinicians.⁴ Even the shrinking community of proponents of excited delirium concede that it is a “diagnosis of exclusion,” or a potential explanation for deaths “when there are no other explanations.”⁵ Unsurprisingly, a recent report by Harvard University and University of Michigan doctors found that the syndrome is “scientifically meaningless,” not a proper medical diagnosis, and should not be cited as a cause of death.⁶

Courts across the country have also raised doubts about excited delirium in law enforcement death cases questioning the syndrome’s scientific validity and an officer’s ability to determine whether a person was in a state of excited delirium.⁷ Accordingly, the restrictions proposed by SB 228 would be consistent with how many courts already treat cause of death findings of excited delirium and officer statements claiming a person was suffering from the syndrome.

In addition to the problems of scientific validity, excited delirium is rooted in racial stereotypes and has been disproportionately applied in deaths of Black men. The most commonly cited symptoms of people experiencing “excited delirium” are imperviousness to pain and superhuman strength, characteristics that have been baselessly attributed to Black people to justify abuse and mistreatment dating back

³ *Excited Delirium and Deaths in Police Custody: The Deadly Impact of a Baseless Diagnosis*, Physicians for Human Rights, March 2, 2022, https://phr.org/our-work/resources/excited-delirium/?CID=701f40000018pCHAAY&ms=FY20_SEM_GoogleAd&gclid=CjwKCAiAg6yRBhBNEiwAeVyL0MLe0cfsU9OOQ2h3yxBloHm8vQxxSa5IeE5YWqTx6rS4avOGK2F0UhoCtpwQAvD_BwE.

⁴ *Id.*

⁵ Eric Dexheimer and Jeremy Schwartz, *In fatal struggles with police, a controversial killer is often blamed*, Austin American-Statesman, May 27, 2017, <https://www.statesman.com/news/20170527/in-fatal-struggles-with-policecontroversial-killer-is-often-blamed>.

⁶ *Supra.*, Note 3

⁷ *Lombardo v. St. Louis City*, 141 U.S. 2239 (2021); *Morad v. City of Long Beach*, 2017 WL 5187826 (C.D. Cal. 2017); *Estate of Berger v. Spokane County*, 2017 WL 5639939 (W.D. Wash.); *Pedro v. Town of West Warwick ex rel. Moore*, 889 F.Supp.2d 292 (D.R.I. 2012).



to slavery.⁸ Additionally, Black people were overrepresented in a study of in-custody deaths where excited delirium was cited as a cause of death.⁹

SB 228 would place meaningful restrictions on law enforcement's ability to avoid accountability and perpetuate racist stereotypes about victims of police violence. We strongly urge you to pass this bill. If you have any questions, please do not hesitate to contact Lauren Bonds at legal.npap@nlg.org or (620) 664-8584.

Sincerely,

Lauren Bonds
National Police Accountability Project

⁸ *Examining the Myth of the 'Superhuman' Black Person*, NPR, Nov. 30, 2014, <https://www.npr.org/2014/11/30/367600003/examining-the-myth-of-the-superhuman-black-person>.

⁹ Julia Jones, *Authorities claimed these Black men had excited delirium just before they died*. CNN, March 12, 2022, <https://www.cnn.com/2022/03/12/us/excited-delirium-police-deaths-study/index.html>.



Committee: House Committee on Judiciary & Hawaiian Affairs
Hearing Date/Time: Tuesday, March 25, 2025 at 2:00 pm
Place: Conference Room 325 & Via Videoconference
Re: Testimony of the ACLU of Hawai'i in SUPPORT of SB228 SD1 HD1 Relating to Excited Delirium

Dear Chair Tarnas, Vice Chair Poepoe, and Members of the Committee:

The ACLU of Hawai'i **supports SB228 SD1 HD1**, which (1) prohibits recognizing “excited delirium” as a medical diagnosis or cause of death, (2) prohibits law enforcement from using the term in an incident report, and (3) makes evidence of “excited delirium” inadmissible in civil cases.

“Excited delirium” (or “excited delirium syndrome”) is not a real medical diagnosis. Yet for too long, it has been invoked to justify law enforcement violence—especially against people of color and those experiencing mental health crises.

Sheldon Haleck.¹ George Floyd.² Elijah McClain.³ Daniel Prude.⁴ Tyre Nichols.⁵ Angelo Quinto.⁶ Adam Trammell.⁷ All were killed by police.

To justify tasing, choking, asphyxiating, pinning, kneeling on, crushing, handcuffing, pepper-spraying, drugging, clubbing, baton-striking, beating, punching, or kicking these individuals, officers gave the same excuse: “*I thought he had excited delirium.*”

¹ Nick Grube, *Autopsy: Honolulu Man Dies After ‘Violent Physical Struggle’ With Cops*, Honolulu Civil Beat (July 14, 2015), <https://www.civilbeat.org/2015/07/autopsy-honolulu-man-dies-after-violent-physical-struggle-with-cops>.

² Julia Jones, *Authorities claimed these Black men had excited delirium just before they died. But the diagnosis itself is a problem and should be abandoned, a new study says.* CNN (Mar. 12, 2022), <https://www.cnn.com/2022/03/12/us/excited-delirium-police-deaths-study/index.html>.

³ Colleen Slevin, *Paramedics told investigators that Elijah McClain had ‘excited delirium,’ a disputed condition*, Associated Press (Dec. 6, 2023), <https://apnews.com/article/elijah-mcclain-paramedics-trial-excited-delirium-cb42ae9846ab9e4fc07eff970872143a>.

⁴ Chris Gelardi, *What Killed Daniel Prude? The Cops and New York AG Said a Diagnosis That’s Since Been Debunked.* The Intercept (Dec. 21, 2024), <https://theintercept.com/2024/12/21/new-york-police-daniel-prude-excited-delirium-debunked>.

⁵ Adrian Sainz, *Former supervisor: ‘No need’ for officers to beat Tyre Nichols*, The Philadelphia Tribune (Sept. 20, 2024), https://www.phillytrib.com/news/across_america/former-supervisor-no-need-for-officers-to-beat-tyre-nichols/article_efbb2309-0e63-50ff-ae59-462b48db07d2.html.

⁶ Daniela Pardo & Jackson Ellison, *Antioch family led the effort to ban excited delirium diagnosis in California*, Spectrum News 1 (Dec. 15, 2023), <https://spectrumnews1.com/ca/southern-california/inside-the-issues/2023/12/15/antioch-family-led-the-effort-to-ban-excited-delirium-diagnosis-in-california>.

⁷ Gina Barton, *A mentally ill man died after being hit 18 times with a Taser in his home. The police officers weren’t charged.* Milwaukee Journal Sentinel (Apr. 27, 2018), <https://www.jsonline.com/story/news/local/milwaukee/2018/04/27/no-charges-against-west-milwaukee-officers-death-mentally-ill-man-hit-18-times-taser/552071002>.

But “excited delirium” has no basis in medicine. It has no consistent definition or diagnostic criteria.⁸ The American Medical Association states, “current evidence does not support ‘excited delirium’ or ‘excited delirium syndrome’ as a medical diagnosis.”⁹ The World Health Organization’s International Classification of Diseases 10th Revision (the official global standard for diagnosing diseases) and the DSM-5 (the authoritative classification system for mental health disorders used by medical professionals in the United States) both exclude it.¹⁰ And major U.S. medical organizations—including the American Psychiatric Association¹¹, the National Association of Medical Examiners¹², the American College of Emergency Physicians¹³, and the American College of Medical Toxicology¹⁴—explicitly reject it.

Its roots expose why: it is a racist and scientifically baseless theory, weaponized to shield law enforcement from accountability. In the 1980s, at the height of the crack cocaine epidemic, Dr. Charles Wetli, a medical examiner, began attributing to “excited delirium” the sudden deaths of cocaine users in police custody, as well as a group of Black women sex workers in Miami who had used cocaine.¹⁵ A serial killer had actually murdered these women, yet Dr. Wetli insisted genetics explained why Black people were more prone to dying from “excited delirium.”¹⁶ Decades later, researchers and litigation defense experts funded by TASER International (now

⁸ Gonin et al., *Excited Delirium: A Systematic Review*, *Academic Emergency Medicine*, Oct. 9, 2017), <https://onlinelibrary.wiley.com/doi/full/10.1111/acem.13330> (“The overall quality of studies was poor. A universally recognized definition is lacking, remaining mostly . . . based on clinical subjective criteria.”).

⁹ American Medical Association, *Policy H-130.932: Pharmacological Intervention for Agitated Individuals in the Out-of-Hospital Setting* (2021), <https://policysearch.ama-assn.org/policyfinder/detail/excited%20delirium?uri=%2FAMADoc%2FHOD.xml-H-130.932.xml>.

¹⁰ Kevin Fiscella, MD, MPH, et al., ‘Excited Delirium’: *Dehumanizing and Unscientific*, National Commission on Correctional Health Care (Sept. 21, 2022), <https://www.ncchc.org/excited-delirium-dehumanizing-and-unscientific> (“[E]xcited delirium is not recognized by DSM-5 or by any single ICD-10 code.”).

¹¹ American Psychiatric Association, *Position Statement on Concerns About Use of the Term ‘Excited Delirium’ and Appropriate Medical Management in Out-of-Hospital Contexts* (Dec. 2020), <https://www.psychiatry.org/getattachment/7769e617-ee6a-4a89-829f-4fc71d831ce0/Position-Use-of-Term-Excited-Delirium.pdf> (“The term ‘excited delirium’ (ExDs) is too non-specific to meaningfully describe and convey information a person. ‘Excited delirium’ should not be used until a clear set of diagnostic criteria are validated.”).

¹² National Association of Medical Examiners, *Excited Delirium Statement* (Mar. 2023), <https://name.memberclicks.net/assets/docs/Excited%20Delirium%20Statement%203%20-%202023.pdf> (“[T]he terms ‘Excited Delirium’ or ‘Excited Delirium Syndrome’ . . . are not endorsed by NAME . . .”).

¹³ Carmen Lee, MD, MAS, *ACEP Rejects ‘Excited Delirium’*, *ACEP Now* (Apr. 5, 2024), <https://www.acepnow.com/article/acep-rejects-excited-delirium/?singlepage=1> (“[E]xcited delirium should not be used among the wider medical and public health community, law enforcement organizations, and ACEP members acting as expert witnesses testifying in relevant civil or criminal litigation.”).

¹⁴ Andrew I. Stolbach, MD, MPH, FACMT, et al., *ACMT Position Statement: End the Use of the Term ‘Excited Delirium’*, *American College of Medical Toxicology* (May 1, 2023), https://www.acmt.net/wp-content/uploads/2023/05/PS_230501_End-the-Use-of-the-Term-Excited-Delirium.pdf.

¹⁵ Brianna da Silva Bhatia, MD, et al., ‘Excited Delirium’ and Deaths in Police Custody: *The Deadly Impact of a Baseless Diagnosis*, *Physicians for Human Rights* (Mar. 2022), <https://pfr.org/our-work/resources/excited-delirium>.

¹⁶ *Id.*

Axon Enterprises) published and distributed materials to police chiefs and medical examiners nationwide to broaden the term’s use and acceptance.¹⁷

Hawai‘i is not immune to this dangerous, psuedoscientific excuse for police violence. On March 16, 2015, Sheldon Haleck—a U.S. Air National Guard veteran—was experiencing a mental health crisis outside Iolani Palace. He was unarmed, non-violent, and not committing a crime. Yet three Honolulu police officers tased him 3 times and pepper-sprayed him 12 times in under 5 minutes.¹⁸ Sheldon died the next day. The Ninth Circuit ruled Sheldon’s family had enough evidence to take their Fourth Amendment excessive force case to trial.¹⁹ Still, they lost. Why? HPD hired three serial Taser/Axon defense experts—Stacey Hail, John G. Peters, and Mark Kroll²⁰—who convinced the jury that he died from “excited delirium,” not police violence.²¹

Sheldon’s parents, Verdell and William Haleck, fought for years seeking justice, only to see the legal system fail them. Their heartbreak is a stark reminder that, as long as “excited delirium” remains an available defense, families of those killed by police will continue to face insurmountable obstacles to holding officers accountable. Notably, other lawsuits in Hawai‘i involving deaths in police custody have invoked the same defense.²²

As one medical group succinctly puts it, “it is time to discontinue the use of this term.”²³ By preventing law enforcement from relying on the baseless and prejudicial defense of “excited delirium,” this measure ensures that only medically valid, evidence-based explanations are used in official reports and legal proceedings.

Other states—including California, Colorado, and Minnesota²⁴—have already taken this step. Hawai‘i should do the same.

¹⁷ Jason Szep, Tim Reid, and Peter Eisler, *Special Report: How Taser inserts itself into investigations involving its weapons*, Reuters (Aug. 24, 2017), <https://www.reuters.com/article/world/special-report-how-taser-inserts-itself-into-investigations-involving-its-weapo-idUSKCN1B417M>.

¹⁸ Chelsea Davis, *Appeals Court: HPD officers used excessive force during deadly tasing near Iolani Palace*, Hawai‘i News Now (July 10, 2018), <https://www.hawaiinewsnow.com/story/38617628/us-court-of-appeals-hpd-officers-used-excessive-force-during-deadly-tasing-near-iolani-palace>.

¹⁹ *Silva v. Chung*, 740 F. App’x 883 (9th Cir. 2018).

²⁰ Yoohyun Jung and Nick Grube, *Who – Or What – Is To Blame For The Death Of Sheldon Haleck?*, Honolulu Civil Beat (May 22, 2019), <https://www.civilbeat.org/2019/05/who-or-what-is-to-blame-for-the-death-of-sheldon-haleck>.

²¹ Yoohyun Jung, *Defense: ‘Excited Delirium,’ Not Excessive Force, Killed Sheldon Haleck*, Honolulu Civil Beat (May 31, 2019), <https://www.civilbeat.org/2019/05/defense-excited-delirium-not-excessive-force-killed-sheldon-haleck>.

²² Jack Truesdale, *‘Excited Delirium’: Dubious Syndrome Often Cited In Killings By Police Is Benched By Examiners*, Honolulu Civil Beat (Apr. 3, 2023), <https://www.civilbeat.org/2023/04/excited-delirium-dubious-syndrome-often-cited-in-killings-by-police-is-benched-by-examiners>.

²³ *Supra* note 14.

²⁴ Andy Mannix, *Minnesota Gov. Walz signs law banning ‘excited delirium’ for police*, Minnesota Star Tribune (June 5, 2024), <https://www.startribune.com/minnesota-gov-walz-signs-law-banning-excited-delirium-for-police/600371297>.

The ACLU of Hawai‘i also emphasizes that Section 3—creating an evidentiary rule prohibiting admission of evidence about “excited delirium”—is an essential component of this measure. The use of junk science in civil cases deprives families of closure and allows law enforcement officers to evade accountability. While the Hawai‘i Rules of Evidence (HRE), HRS Chapter 626-1, includes guidance for courts about the admissibility of medical testimony, that guidance is discretionary. *See, e.g.*, HRE 702 (“[T]he court *may* consider the trustworthiness and validity of the scientific technique or mode of analysis employed by the proffered expert” (emphasis added)); *State v. Vliet*, 95 Haw. 94, 107, 19 P.3d 42, 55 (2001) (“Rule 702 grants the [trial] judge the discretionary authority, reviewable for its abuse, to determine reliability in light of the particular facts and circumstances of the particular case.” (quotation marks and citation omitted)). The reality is, evidence about “excited delirium” *has* been admitted in court, despite the fact that it is not recognized as a valid medical diagnosis. That’s precisely what happened in Mr. Haleck’s case.

For these reasons, the ACLU of Hawai‘i respectfully asks that you move this measure forward.

Sincerely,



Jongwook “Wookie” Kim
Legal Director
ACLU of Hawai‘i
wkim@acluhawaii.org

The mission of the ACLU of Hawai‘i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai‘i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai‘i is a non-partisan and private non-profit organization founded in 1965 that provides its services at no cost to the public and does not accept government funds.

SB-228-HD-1

Submitted on: 3/24/2025 3:59:17 PM

Testimony for JHA on 3/25/2025 2:00:00 PM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------------------------|---------------------------|------------------------|
| Nikos Leverenz | Hawaii Health & Harm Reduction Center | Support | Written Testimony Only |

Comments:

Chair Tarnas, Vice Chair Poepoe, & JHA Committee Members:

Hawai‘i Health & Harm Reduction Center (HHHRC) **supports** SB 228, SD 1, HD 1.

The term “excited delirium” is now disavowed by major medical organizations, including the American Medical Association, the American Psychiatric Association, the American Academy of Emergency Medicine, the National Association of Medical Examiners, the American College of Medical Toxicology, and the American College of Emergency Physicians.

HHHRC’s mission is to reduce harm, promote health, create wellness, and fight stigma in Hawai‘i and the Pacific. We work with many individuals impacted by poverty, housing instability, and other social determinants of health.

Mahalo for the opportunity to provide testimony.

SB-228-HD-1

Submitted on: 3/21/2025 4:04:35 PM

Testimony for JHA on 3/25/2025 2:00:00 PM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|------------------------|
| Robin Lyons | Individual | Support | Written Testimony Only |

Comments:

Support for SB228 SD1,HD1, Relating to Excited Delirium

I strongly support SB228 SD1, HD1, Relating to Excited Delirium. This bill will ban ‘excited delirium’ or any words related to that term from being used in the State of Hawaii. The goal is to ensure that no other family will suffer the heartbreak and disappointment Sheldon Haleck’s family has from being denied justice for their loved one.

I urge the committee to pass SB228 SD1, HD1. I ask that you take this testimony into consideration and I thank you for the opportunity to testify.

SB-228-HD-1

Submitted on: 3/21/2025 4:18:59 PM

Testimony for JHA on 3/25/2025 2:00:00 PM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|---------------------------|
| Lottie Lyons | Individual | Support | Written Testimony Only |

Comments:

Support for SB228 SD1,HD1, Relating to Excited Delirium

I strongly support SB228 SD1, HD1, Relating to Excited Delirium. This bill will ban ‘excited delirium’ or any words related to that term from being used in the State of Hawaii. The goal is to ensure that no other family will suffer the heartbreak and disappointment Sheldon Haleck’s family has from being denied justice for their loved one.

I urge the committee to pass SB228 SD1, HD1. I ask that you take this testimony into consideration and I thank you for the opportunity to testify.

SB-228-HD-1

Submitted on: 3/21/2025 4:53:24 PM

Testimony for JHA on 3/25/2025 2:00:00 PM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|------------------------|
| Mark Meredith | Individual | Support | Written Testimony Only |

Comments:

Support for SB228 SD1,HD1, Relating to Excited Delirium

I strongly support SB228 SD1, HD1, Relating to Excited Delirium. This bill will ban ‘excited delirium’ or any words related to that term from being used in the State of Hawai‘i. The goal is to ensure that no other family will suffer the heartbreak and disappointment Sheldon Haleck’s family has from being denied justice for their loved one.

I urge the committee to pass SB228 SD1, HD1. I ask that you take this testimony into consideration and I thank you for the opportunity to testify

SB-228-HD-1

Submitted on: 3/21/2025 6:42:37 PM

Testimony for JHA on 3/25/2025 2:00:00 PM

| Submitted By | Organization | Testifier Position | Testify |
|--------------------------|---------------------|---------------------------|---------------------------|
| Gulstan Elleighton Silva | Individual | Support | Written Testimony Only |

Comments:

I fully support SB228 SD1 HD1 relating to Excited Delirium, in honor of Sheldon Haleck so that his death was not in vain.

SB-228-HD-1

Submitted on: 3/22/2025 8:03:12 AM

Testimony for JHA on 3/25/2025 2:00:00 PM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|------------------------|
| Verdell B. Haleck | Individual | Support | Written Testimony Only |

Comments:

March 22, 2025

I am Verdell Haleck and I strongly support SB228, SD1, HD1, Relating to Excited Delirium to ban the use of the term 'excited delirium' or any other term relating to it from being used in the State of Hawai'i, based on recently enacted legislation in California.

I previously lived in Honolulu for 26 years before moving to Washington, Utah in 2005. I am writing on behalf of my son, Sheldon Haleck, who was a loving husband, father, son, brother and a veteran who was honorably discharged from the Air National Guard and who wrestled with the aftermath of his past deployments -- PTSD, drugs and other mental health issues. March 17, 2025, marked 10 years since Sheldon died as a result of an encounter with Honolulu police in front of Iolani Palace for jaywalking. He was unarmed, non-aggressive and did not harm anyone or damage any property and he was having a mental health crisis. Sheldon was pepper sprayed 12 times and tased 3 times before he was handcuffed and hogtied with several police officers on his back and a knee to his neck where he became unresponsive and died. The Police Department claimed he died of "Excited Delirium," which is defined as agitation, aggression and acute distress which leads to sudden death, a defense theory that has been debunked in the medical community. In our civil lawsuit, the police defense expert, an ER doctor, testified that Sheldon did not die from multiple pepper sprays, or from being tased multiple times, or from excessive use of force by the police, but he experienced "excited delirium" and that is what caused his death. The jurors believed that it was a real medical diagnosis and found the police not responsible for Sheldon's death. The sudden death symptom of 'excited delirium' is now known to be 'positional asphyxia' or 'respiratory failure' due to the lungs being deprived of oxygen by the body weight of the police officers on the victims back and the knee to the neck while the victim is in a prone position and being handcuffed and hogtied causing the victim to become unresponsive and followed by death. (Like George Floyd) We have no recourse in Sheldon's case, so we now seek changes so that no other family should have to suffer the heartbreak and disappointment in their pursuit of justice for their loved one.

The recent October 2023 vote by the American College of Emergency Physicians (ACEP) disavowed its 2009 position 'white paper' which supported 'excited delirium' as a medical diagnosis that helped undergird court cases across the country, such as ours. This injustice is what spurred the introduction of SB228 SD1, HD1, Relating to Excited Delirium.

In October 2023, California was the first state to pass a law to ban the controversial term 'excited delirium' followed by the States of Colorado, Minnesota and New York. The ban forbids the use of the term 'excited delirium' as a medical diagnosis or cause of death. It also prohibits coroners and medical examiners from listing it as a cause of death on a death certificate or autopsy report. It would bar law enforcement from using the term to describe the condition of someone in an incident report and it would be inadmissible as evidence in civil lawsuits, such as ours. We now seek a ban on the terms "excited delirium, excited delirium syndrome, hyperactive delirium, agitated delirium, and exhaustive mania" from being used in the State of Hawai'i.

My goal is not only for my son Sheldon, but for all those individuals who have unjustly lost their lives while in police custody and for those who might find themselves in the same tragic situation in the future.

I would like to thank you again for your time and I humbly ask for your support to pass SB228 SD1, HD1, Relating to Excited Delirium and I humbly ask If this bill should pass, can it please be called "Sheldon's Law or Act" in honor of my son so that his death was not in vain.

Mahalo nui loa,

Verdell Haleck

SB-228-HD-1

Submitted on: 3/22/2025 8:13:22 AM

Testimony for JHA on 3/25/2025 2:00:00 PM

| Submitted By | Organization | Testifier Position | Testify |
|----------------|--------------|--------------------|------------------------|
| WILLIAM HALECK | Individual | Support | Written Testimony Only |

Comments:

March 22, 2025

I strongly support SB228 SD1, HD1, Relating to Excited Delirium to ban the use of the term 'excited delirium' or any other term relating to it from being use in the State of Hawaii

I am William Haleck and I previously lived in Honolulu for 26 years before moving to Washington, Utah in 2005. I am speaking for my son, Sheldon Haleck, who was a loving husband, father, son, uncle, and a veteran who was honorably discharged from the Air National Guard and who wrestled with the aftermath of his past deployments -- PTSD, drugs and other mental health issues. March 17, 2025, marked 10 years since Sheldon died from an encounter with Honolulu police in front of Iolani Palace for jaywalking. He was unarmed, non-aggressive and did not harm anyone or damage any property and he was having a mental health crisis. Sheldon was pepper sprayed 12 times and tased 3 times before he was handcuffed and hogtied with several police officers on his back and a knee to his neck where he became unresponsive and died. The Police Department claimed he died of "Excited Delirium," which is defined as agitation, aggression and acute distress which leads to sudden death, a defense theory that has been debunked in the medical community. In our civil case, the police defense expert, an ER doctor, testified that Sheldon did not die from being pepper sprayed, or tased, or from the excessive use of force by the police but Sheldon experienced "excited delirium" and that was what caused his death. The jurors in our case believed that it was a real medical diagnosis and found the police not responsible for Sheldon's death. The sudden death symptom of 'excited delirium' is suspected to be 'positional asphyxia' or 'respiratory failure' due to the lungs being deprived of oxygen by the body weight of the police officers on the victims back and the knee to the neck while the victim is in a prone position while being handcuffed and hogtied causing the victim to become unresponsive and followed by death. (Like George Floyd) We have no recourse in Sheldon's case, but we hope that no other family shall suffer the heartbreak and disappointment from being denied justice because of that term "Excited Delirium."

The recent October 2023 vote by the American College of Emergency Physicians (ACEP) disavowed its 2009 position 'white paper' which was the backing in support of 'excited delirium' as a medical diagnosis that helped undergird court cases across the country, such as ours. This injustice is what spurred us to ask for change by the introduction of SB228 SD1, HD1, Relating to Excited Delirium.

I call on the Hawaii Legislature to enact the following legislation:

1. Prohibits 'excited delirium' from being recognized as a valid medical diagnosis or cause of death in the State of Hawaii, including prohibiting coroners, medical examiners, physicians, or physician assistants from stating on a death certificate or in any report that a cause of death was 'excited delirium;'
2. Prohibits peace officers from using the term 'excited delirium' to describe an individual in an incident report;
3. Prohibits a party or witness in any legal proceeding from testifying that a person was in 'excited delirium;'
4. Prohibits a state or local government entity, or employee or contractor of a state or local government entity, from documenting, testifying to, or otherwise using in any official capacity or communication 'excited delirium' as a recognized medical diagnosis or cause of death;
5. Defines prohibited 'excited delirium' to include a person's state of agitation, excitability, paranoia, extreme aggression, physical violence, and apparent immunity to pain that is not listed in the most current version of the Diagnostic and Statistical Manual of Mental Disorders, or for which the court finds there is insufficient scientific evidence or diagnostic criteria to be recognized as a medical condition, including 'excited delirium' syndrome, 'excited delirium,' hyperactive delirium, agitated delirium, and exhaustive mania.

My goal is not only for my son Sheldon, but for all those individuals who have unjustly lost their lives while in police custody and for those who might find themselves in the same tragic situation in the future.

I would like to thank you again for your time and I humbly ask for your support to pass SB228 SD1, HD1, Relating to Excited Delirium. I would humbly ask if this bill gets passed, if it could please be called "Sheldon's Law or Act" in honor of my son so that his death was not in vain.

Mahalo nui loa,

William Haleck

SB-228-HD-1

Submitted on: 3/22/2025 11:21:05 AM

Testimony for JHA on 3/25/2025 2:00:00 PM

| Submitted By | Organization | Testifier Position | Testify |
|-------------------------|---------------------|---------------------------|---------------------------|
| Chanelle Taimani Haleck | Individual | Support | Written Testimony Only |

Comments:

I strongly support SB228 SD1, HD1, Relating to Excited Delirium. This bill will ban ‘excited delirium’ or any words related to that term from being used in the State of Hawaii. The goal is to ensure that no other family will suffer the heartbreak and disappointment Sheldon Haleck’s family has from being denied justice for their loved one.

I urge the committee to pass SB228 SD1, HD1. I ask that you take this testimony into consideration and I thank you for the opportunity to testify.

Mahalo,

Chanelle Taimani Haleck

SB-228-HD-1

Submitted on: 3/22/2025 11:59:43 AM

Testimony for JHA on 3/25/2025 2:00:00 PM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|------------------------|
| Peggy Haleck | Individual | Support | Written Testimony Only |

Comments:

Support for SB228 SD1,HD1, Relating to Excited Delirium

I strongly support SB228 SD1, HD1, Relating to Excited Delirium. This bill will ban ‘excited delirium’ or any words related to that term from being used in the State of Hawaii. The goal is to ensure that no other family will suffer the heartbreak and disappointment Sheldon Haleck’s family has from being denied justice for their loved one.

I urge the committee to pass SB228 SD1, HD1. I ask that you take this testimony into consideration and I thank you for the opportunity to testify.

SB-228-HD-1

Submitted on: 3/22/2025 12:01:34 PM

Testimony for JHA on 3/25/2025 2:00:00 PM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|---------------------------|
| Vince Haleck | Individual | Support | Written Testimony Only |

Comments:

Support for SB228 SD1, HD1, Relating to Excited Delirium

I fully support SB228 SD1, HD1 to ban the term ‘excited delirium’ from being used in the State of Hawaii. This bill should be passed in memory of Sheldon Haleck who was denied justice in his civil lawsuit because of that controversial term ‘excited delirium.’

I urge the committee to pass SB228 SD1, HD1. I ask that you take this testimony into consideration and I thank you for the opportunity to testify.

SB-228-HD-1

Submitted on: 3/22/2025 12:07:47 PM

Testimony for JHA on 3/25/2025 2:00:00 PM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|------------------------|
| Krista Haleck | Individual | Support | Written Testimony Only |

Comments:

Support for SB228 SD1,HD1, Relating to Excited Delirium

I strongly support SB228 SD1, HD1, Relating to Excited Delirium. This bill will ban ‘excited delirium’ or any words related to that term from being used in the State of Hawaii. The goal is to ensure that no other family will suffer the heartbreak and disappointment Sheldon Haleck’s family has from being denied justice for their loved one.

I urge the committee to pass SB228 SD1, HD1. I ask that you take this testimony into consideration and I thank you for the opportunity to testify.

SB-228-HD-1

Submitted on: 3/22/2025 2:40:00 PM

Testimony for JHA on 3/25/2025 2:00:00 PM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|---------------------------|
| Nicholas Chagnon | Individual | Support | Written Testimony Only |

Comments:

To the members of the committee,

I am a criminologist at UHWO who has spent over a decade studying police violence and shootings. This law would be an important reform, shedding light on deaths caused by police that often go unacknowledged. The term 'excited delirium' is used to obfuscate cases when a suspect's death has been caused by dangerous forms of police restraint. It allows police to escape responsibility for deaths they have caused and as such should not be considered a legitimate explanation for such deaths.

Thank you for your time and consideration.

Sincerely,

Nicholas J. Chagnon

SB-228-HD-1

Submitted on: 3/22/2025 4:15:27 PM

Testimony for JHA on 3/25/2025 2:00:00 PM

| Submitted By | Organization | Testifier Position | Testify |
|----------------------|---------------------|---------------------------|------------------------|
| Frances Foster Haney | Individual | Support | Written Testimony Only |

Comments:

I fully support SB228 SD1, HD1 to ban the term ‘excited delirium’ from being used in the State of Hawai‘i. This bill should be passed in memory of Sheldon Haleck who was denied justice in his civil lawsuit because of that controversial term ‘excited delirium.’

I urge the committee to pass SB228 SD1, HD1. I ask that you take this testimony into consideration and I thank you for the opportunity to testify.

I fully support SB228

I fully support SB228 SD1, HD1 to ban the term ‘excited delirium’ from being used in the State of Hawai‘i. This bill should be passed in memory of Sheldon Haleck who was denied justice in his civil lawsuit because of that controversial term ‘excited delirium.’

I urge the committee to pass SB228 SD1, HD1. I ask that you take this testimony into consideration and I thank you for the opportunity to testify.

I fully support SB228 relating to "Excited Delirium" in honor of Sheldon Haleck. All Hawai‘i Families that have to go through something like this is so is heartbreaking and devastating to all.

Justice needs to be served for Sheldon, his Parents and his Family and Friends. Thank you for giving me the opportunity to give my testimony.

SB-228-HD-1

Submitted on: 3/23/2025 11:27:29 AM

Testimony for JHA on 3/25/2025 2:00:00 PM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|------------------------|
| Carmael Stagner | Individual | Support | Written Testimony Only |

Comments:

Carmael K Stagner

1065 Kawaiahao Street 1801

Honolulu, HI 96814

(808) 674-0143

Honorable Madames and Sirs:

This testimony is in SUPPORT of SB 228 in its entirety.

We thank the Committee on Judiciary & Hawaiian Affairs for hearing this bill.

Should SB 228 be signed into law, we respectfully ask this measure be known as Sheldon's Law.

Me Ka Ha'aHa'a,

Carmael Kristine Makanaonalani Kamealoha Stagner

SB-228-HD-1

Submitted on: 3/23/2025 12:09:13 PM

Testimony for JHA on 3/25/2025 2:00:00 PM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|------------------------|
| Glenn Hayashi MD | Individual | Support | Written Testimony Only |

Comments:

The diagnosis of Excited Delirium has been used numerous times to justify death of persons in police custody across our Nation despite its invalidity as a legitimate Medical Entity. It has been rejected universally by Medical Associations and has been discredited by qualified Medical Experts. As in the case of Sheldon Haleck, where there was ample reason for his demise by TASER, Pepper Spray and application of excessive restraint force, despite official Medical Opinion(Medical Examiner) to the contrary, Excited Delirium was used to justify his death. As a Medical Professional(Board Certified, Licensed Physician, 37 years of Medical practice in Hawaii), I support striking this term from further use in Hawaii, as has been done in 4 other states, so that accountability can be restored to Law Enforcement in our state, and peace and closure can be allowed to the Haleck Family.

SB-228-HD-1

Submitted on: 3/23/2025 1:28:21 PM

Testimony for JHA on 3/25/2025 2:00:00 PM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|---------------------------|
| Gale Kamitono | Individual | Support | Written Testimony Only |

Comments:

I support Senate Bill No. 228, S.D. 1, H.D. 1, to ban ‘excited delirium’ or any words related to that term from being used in the State of Hawai‘i, in honor of Sheldon Haleck.

I urge the committee to please take this testimony into consideration and pass Senate Bill No. 228, S.D. 1, H.D. 1. Thank you for the opportunity to testify.

SB-228-HD-1

Submitted on: 3/23/2025 4:26:54 PM

Testimony for JHA on 3/25/2025 2:00:00 PM

| Submitted By | Organization | Testifier Position | Testify |
|-----------------------|---------------------|---------------------------|---------------------------|
| Angela Haleck-Roberts | Individual | Support | Written Testimony Only |

Comments:

I fully support SB228 SD1, HD1 to ban the term 'excited delirium' from being used in the State of Hawaii. This bill should be passed in memory of Sheldon Haleck who was denied justice in his civil lawsuit because of that controversial term 'excited delirium.'

SB-228-HD-1

Submitted on: 3/23/2025 4:29:17 PM

Testimony for JHA on 3/25/2025 2:00:00 PM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|---------------------------|
| Angelina Roberts | Individual | Support | Written Testimony Only |

Comments:

I fully support SB228 SD1, HD1 to ban the term ‘excited delirium’ from being used in the State of Hawaii. This bill should be passed in memory of Sheldon Haleck who was denied justice in his civil lawsuit because of that controversial term ‘excited delirium.’

SB-228-HD-1

Submitted on: 3/23/2025 4:31:05 PM

Testimony for JHA on 3/25/2025 2:00:00 PM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|---------------------------|
| Brianna Roberts | Individual | Support | Written Testimony Only |

Comments:

I fully support SB228 SD1, HD1 to ban the term ‘excited delirium’ from being used in the State of Hawaii. This bill should be passed in memory of Sheldon Haleck who was denied justice in his civil lawsuit because of that controversial term ‘excited delirium.’

SB-228-HD-1

Submitted on: 3/23/2025 5:43:55 PM

Testimony for JHA on 3/25/2025 2:00:00 PM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|---------------------------|
| Carolyn Eaton | Individual | Support | Written Testimony Only |

Comments:

Aloha, Chair Tarnas, Vice Chair Poepoe and Members of the Committee,

My name is Carolyn Eaton. My home is in Makiki, and I strongly support this bill. Setting into State law the changed understanding of "Excited delirium" as an unscientific diagnosis is of critical importance. Use of the term must become unacceptable as a "cause of death" in Hawai'i.

Mahalo for your perseverance and attention to bringing Hawaii law into concurrence with the best science.

SB-228-HD-1

Submitted on: 3/24/2025 7:05:34 PM

Testimony for JHA on 3/25/2025 2:00:00 PM

| Submitted By | Organization | Testifier Position | Testify |
|---------------------|---------------------|---------------------------|------------------------|
| Micah Corry | Individual | Support | Written Testimony Only |

Comments:

I strongly support SB228 SD1, HD1, Relating to Excited Delirium. This bill will ban ‘excited delirium’ or any words related to that term from being used in the State of Hawaii. The goal is to ensure that no other family will suffer the heartbreak and disappointment Sheldon Haleck’s family has from being denied justice for their loved one.