

NEIL ABERCROMBIE
GOVERNOR



STATE OF HAWAII
HAWAII PAROLING AUTHORITY
1177 ALAKEA STREET, GROUND FLOOR
Honolulu, Hawaii 96813

BERT Y. MATSUOKA
CHAIR

JOYCE K. MATSUMORI-HOSHIJO
MEMBER

MICHAEL A. TOWN
MEMBER

TOMMY JOHNSON
ADMINISTRATOR

No. _____

LATE TESTIMONY

TESTIMONY ON HOUSE BILL 2255
RELATING TO PUBLIC SAFETY

AMENDED

BY

HAWAII PAROLING AUTHORITY
Bert Y. Matsuoka, Chairman

House Committee on Public Safety and Military Affairs
Representative Henry J. C. Aquino, Chair
Representative Ty Cullen, Vice Chair

Thursday, February 2, 2012; 9:00 a.m.
State Capitol, Conference Room 309

Chair Aquino, Vice Chair Cullen and Members of the Committee:

The Hawaii Paroling Authority (HPA) supports the intent of HB 2255 and appreciates the legislature's interest in the compassionate release of offenders from custody that do not pose a risk to public safety and expanding the HPA's discretionary authority in this important humanitarian area.

The HPA respectfully requests the following minor amendments to HB 2255:

1. **Page 2 (Line 22)** – After “licensed physician” add “**designated by the department**”.....
2. **Page 3 (Line 14)** – After “licensed physician” add “**designated by the department**”.....
3. **Page 4 (Line 16)** – Add in a new #3 to read “Does not have a detainer in place from another jurisdiction and/or does not have any remaining or consecutive sentence(s) to be served in another jurisdiction.”

4. Page 5 (Line 3) - After "treatment program" add "**and after care**".....
5. Page 7 (Line 4) - After "criteria for release" add "**consideration**".....
6. Page 7 (Line 19) - Change "thirty days" to "forty-five".....
7. Page 8 (Line 22) - Amend the sentence to read "In making the determination, the paroling authority shall consider the assessment completed by the Department of Public Safety regarding the risk for violence and rate of recidivism."
8. Page 8 (Line 15) - After "condition" add, "**as determined by competent medical authority that warrants reconsideration.**"
9. Page 9 (Line 10) - Delete "reasonable times at"
10. Page 10 (Line 1) - Delete "with credit given only for the duration of the inmate's medical release served in compliance with all reasonable conditions set forth pursuant to subsection (a)."

The HPA believes the recommended amendments to this measure addresses needed technical changes while simultaneously clarifies the affected areas.

Thank you for this opportunity to provide testimony on this matter.

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2. **Page 3 (Line 14)** – After “licensed physician” add “**designated by the department**”.....
3. **Page 4 (Line 11)** – After “contrary and” add “/or whether an inmate was previously granted parole and parole was subsequently revoked”.....

4. **Page 4 (Line 16)** – Add in a new #3 to read “Does not have a detainer in place from another jurisdiction and/or does not have any remaining or consecutive sentence(s) to be served in another jurisdiction.
5. **Page 5 (Line 3)** - After "treatment program" add "**and after care**".....
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LATE TESTIMONY



DAAPHNE E. BARBEE

ATTORNEY AT LAW

1188 BISHOP STREET, SUITE 1909, HONOLULU, HAWAII 96813
TELEPHONE (808) 533-0275

TESTIMONY IN OPPOSITION TO HB. 2255

COMMITTEE ON PUBLIC SAFETY & MILITARY AFFAIRS:

Rep. Henry Aquino, Chair

Rep. Ty Cullen, Vice Chair

Thursday Feb. 2, 2012

9:00 am.

Room 309

Dear Chair Aquino and Vice Chair Cullen:

My name is Daphne Barbee-Wooten and I am an attorney in private practice in Hawaii.

I very much support compassionate release of inmates who are disabled, permanently infirmed and have a debilitating illness or disease. However, as this bill is written, I oppose it as being too restrictive, creating a layer of unnecessary bearurocracy, and unchecked discretion to the Hawaii Paroling Authority, inability to appeal and to obtain an independent medical exam .

I am familiar with inmates who are suffering serious debilitating illnesses requiring dialysis and chemotherapy who are at Halawa Correctional Facility. I also know of inmates from Hawaii who are suffering serious illnesses such as cancer at Saguaro Correctional Facility. I also am aware of inmates who are elderly . Inmates are disabled in wheelchairs, bedridden and unable to care for themselves without medications, injections of insulin, and other forms of life sustain medical needs.

I oppose this bill as it defines geriatric as 65 or older. Generally, AARP defines elderly as people over 50. Most often, elderly is 55 years or older. The 65 year definition is arbitrarily chosen. When most of the prison population is 20-35 year old, a 50 year old is referred to as "old man". People age differently. Some 30 year olds have the body of a 60 year old. I suggest the term geriatric not be limited to 65 years old.

The bill does not allow for an appeal in the event the Hawaii Paroling Authority denies compassionate release.

There are no checks and balances, as it leaves the decision to persons who may not have medical knowledge about an inmates illness and how debilitating it is on the inmate. For example, how many lay persons know the affect dialysis or chemotherapy has on the body. Doctors specialize in various medical conditions. There is nothing in this bill that states a doctor who specializes in the specific disease or medical condition should be consulted for their opinion. Medical records and consents are also an issue. An inmate should be able to select a physician of their choosing as an Independent Medical Examiner if the DPS Doctor opines that the medical condition is not debilitating enough for compassionate release.

The arbitrary 6 months left to live as a terminal illness should be changed as this requires a Doctor to speculate about a person's life span. Many patients who are considered terminal live beyond 6 months. At one time persons with AIDS were not expected to live 6 months. Placing a numeric value on months to live as "terminal" is neither scientific nor realistic.

The medical release plan requires a course of treatment and eligibility for insurance before parole. It is not clear who decides the course of treatment plan - a personal physician, DPS physician or the parole officer? There should be consultation with a medical doctor who specializes in the field and is in good standing. In these days when many doctors refuse Medicare and Medicaid patients, does this mean only those who can afford insurance will get compassionate release?

Please amend and make necessary changes to this Bill. Most importantly, please provide for an independent medical exam and appeal process for inmates who apply for compassionate release.

I am attaching for your consideration articles about compassion release programs which have been successful in other jurisdictions.

Sincerely,



Daphne Barbee-Wooten
Attorney at Law

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The Case for Compassionate Release

By: *Geri L. Elder*

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Although it is the subject of heated arguments by [criminal defense](#) attorneys, emotional pleas and tearful courtroom testimony, petitions for compassionate medical parole for terminally ill patients are seldom successful.

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In a recent California case, Susan Atkins, a member of the Manson family who is dying from recently denied compassionate release. According to a report by CNN, Atkins is said to be an paralyzed on one side and doctors say she only has months to live.

Atkins confessed to killing actress Sharon Tate, who was 8 months pregnant at the time and begged for her life and for Atkins to spare her unborn child. Atkins stabbed her repeatedly and "Pig" on the door of the home that Tate shared with director Roman Polanski.

Atkins also took part in the killings of other people during the 1969 Manson family killing spree and was originally sentenced to death. Her sentence was commuted to life in prison in 1972, when the [U.S. Supreme Court](#) struck down the death penalty laws as they were written at the time.

Those who argued for Atkins' compassionate release cited that the state of California has spent more than \$1.4 million on her medical care and guards since March. However, the families of the victims noted that no dollar amount can be placed on the value of their loved ones.

The parole board unanimously voted against compassionate release for Atkins, effectively ending her bid for medical parole. She will, in all likelihood, die while incarcerated.

Many states have laws regarding medical paroles or compassionate release, but these laws are very narrow and seldom used. The Capital Times recently reported a rare case in which a Madison man who was sentenced to 10 years in prison in 2004 for a drunken driving homicide has been granted compassionate release because he has terminal cancer.

The same judge who sentenced Michael Yurowski to 10 years behind bars and 25 years of extended supervision ruled that Yurowski could be released from prison so that he may spend the time he has left to live in a hospice facility. The judge, Daniel Moeser, said that he could not remember another case in which he invoked the provisions of the Wisconsin law that allows for the compassionate release of inmates who are suffering from a terminal illness.

On July 8, 2003, Yurowski was intoxicated while driving a van. The van slammed into the back of a GMC Jimmy that was stopped at a traffic light and Yurowski and his passenger, Cherena Miles, suffered head injuries when they hit the windshield. Miles later died from her injuries and Yurowski was convicted of homicide by intoxicated use of a motor vehicle.

At the time of his arrest, Yurowski had a blood alcohol content of .30 percent and had been previously convicted of DUI three times. Miles had a blood alcohol content of .40 percent. Both were reportedly homeless alcoholics and were only casual acquaintances. Yurowski has expressed great remorse for the accident and guilt for Miles' death.

Earlier this year, Yurowski began to experience numbness in his legs and hands. He was taken from jail to the hospital where it was discovered that he had a cancerous brain tumor. Only part of the malignant tumor could be removed and Yurowski's lawyers say that he suffers from Glioblastoma Multiforme. In June, doctors said that he had only six months to live. Secondary medical problems have led to Yurowski requiring constant care as he has lost the use of his arms and legs.

Under a seldom used state law, Yurowski's family petitioned the court for his release. The law says that if two doctors state that a prisoner is terminally ill and that the Program Review Committee in the prison and the sentencing judge agree, than a prisoner may receive a compassionate release. The Program Review Committee unanimously agreed with the doctors that Yurowski should receive medical parole. Moeser also

AMERICA: Land of the Free, Home of the Incarcerated

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Lake Co. convict wins California's first medical parole

15 Jun

[Marisa Lagos, Chronicle Staff Writer](#)

A man sentenced to a 68-year prison sentence for a 2006 home-invasion robbery has become the first person in [California](#) granted parole under a new law authorizing the release of medically incapacitated inmates to save the state millions of dollars.

Craig Lemke, 48, poses no threat to public safety due to his [medical condition](#), a two-member panel of the state Board of Parole Hearings found today during a hearing at the [Pleasant Valley State Prison in Coalinga](#). The Lake County convict's medical condition was not disclosed for privacy reasons.


He was the second inmate to be considered for [medical parole](#) under a law authored by Sen. Mark Leno, D-San Francisco, that went into effect this year. The law states that inmates who are "permanently medically incapacitated with a medical condition" that makes them "unable to perform activities of basic daily living" may be released if they do not pose a threat to public safety.

A spokeswoman for the court-appointed medical receiver in charge of California's prison health care praised the board's decision, saying it will save the state up to \$750,000 a year in guarding costs, and an untold amount on Lemke's [medical care](#).

"We're pleased the board found he met the criteria," Nancy Kincaid said. "We are continuing to look for more individuals that could meet the criteria... There are a total of 40 (inmates) on the list, and we are always working to identify more."

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States using early release of prisoners to save money

MONDAY, 01 MARCH 2010 20:15

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BY JOHN GRAMLICH

STATELINE.ORG

For Floyd Prozanski, it makes perfect sense to give some prisoners a chance to reduce their time behind bars, provided they complete educational or vocational programs and behave while they are incarcerated.

"You and I on the outside, we have a chance of getting a raise or promotion," says Prozanski, a Democratic state senator from Eugene, Ore. "What better way to teach (prisoners) that there are incentives for them to do well inside the walls?"

Prozanski, chair of the Senate Judiciary Committee, last year helped craft a law that lets some Oregon inmates trim as much as 30 percent from their sentences through expanded "earned-time credits," which are awarded to prisoners who finish coursework, gain work experience or otherwise work to improve their lives behind bars. Created to save the state money in extremely lean fiscal times, the law has moved up release dates for about 3,500 prisoners, including about 950 who have already been released from prison an average of 55 days ahead of schedule.

But a recent backlash over Oregon's law serves as a reminder of the political pitfalls that can accompany changes in criminal justice policy, particularly when those changes open prison doors earlier for some inmates. California, Colorado, Illinois, Kentucky, Michigan and Wisconsin are among the other states that have recently accelerated prisoner releases or are considering doing so.

Victims' advocates groups have attacked Oregon's law as a threat to public safety, airing a statewide radio ad that paints an ominous picture about the releases' effect on crime rates. Prosecutors and the Democratic state attorney general say the law goes too far and that inmates should be able to shave no more than 15 percent off their sentences through credits, the same percentage the federal government allows. Generating even more opposition is a loophole that lawmakers acknowledge should never have found its way into the law, making some serious criminals eligible for accelerated releases.

"This has been extremely hurtful, and extremely traumatic for crime victims," Steve Doell, president of the group Crime Victims United of Oregon, said during testimony about the law earlier this month.

As to whether accelerated-release programs lead to more crime by those who are released,

research shows otherwise. A review by the National Council on Crime and Delinquency of at least 12 studies, for example, found unchanged or lower recidivism rates among prisoners who benefited from accelerated-release programs in states including Illinois, Wisconsin and Florida.

Amid mounting public pressure, Oregon lawmakers last week suspended the earned-time program until 2011 while the state evaluates it. They also made changes to ensure that serious criminals no longer will be eligible for 30 percent sentence reductions when the program resumes. Democratic Governor Ted Kulongoski signed the revisions into law over the objections of Republicans, who wanted to repeal the program altogether.

Budget-driven efforts to speed prisoner releases and save states money have touched off political debates elsewhere this year, a major election year in which lawmakers in 46 states face reelection and no candidate wants to be labeled "soft on crime." The debates have raged even in places where inmates have been released just days earlier than they ordinarily would have been.

Illinois Governor Pat Quinn nearly lost a Democratic primary this month against the state comptroller, Dan Hynes, who repeatedly attacked him over a program that allowed about 1,700 inmates to get out of prison an average of 37 days early. The initiative came under fire because the state awarded "good-time credits" — which are based on behavior behind bars, rather than participation in programs — to prisoners who had spent most of their sentences in county jails, without being sufficiently monitored by the state. Quinn has called the program a "mistake," and lawmakers have hastily approved changes that would prevent similar releases from happening again.

In California, lawmakers last year approved an expansion of good-time credits that, since the law took effect in January, has allowed at least 2,000 inmates to leave prison ahead of schedule. But the law has sown confusion at the local level over whether it applies to jail inmates as well as state prisoners. Some counties have released hundreds of prisoners early, while law enforcement agencies elsewhere have sued to block the releases, which could become an issue in a governor's race expected to feature Democratic Attorney General Jerry Brown.

In Michigan, Republicans are attacking a proposal by Democratic Governor Jennifer Granholm to reinstate good-time credits, which lawmakers have phased out, and grant earlier releases to about 7,500 prisoners in an effort to save up to \$130 million in the coming fiscal year. "We reject the idea that you can solve the budget problem by depopulating the prisons," Republican Senate Majority Leader Mike Bishop told the Detroit Free Press, calling Granholm's proposal "insanely shortsighted."

Granholm pushed back in an interview with *StateLine.org* last week, referring to the fact that Michigan is one of only a handful of states — along with Georgia, Hawaii, Idaho, Montana and Utah, according to a 2008 survey — that have no good-time credits whatsoever. She rejected the assertion that doing what most other states already do will result in a public safety threat.

"If we don't address that issue, then we're going to continue to plow taxpayer dollars into a corrections system when the states around us that have fewer prisoners and shorter lengths of stay don't have higher crime rates," Granholm, a former prosecutor and state attorney general, said.

Indeed, often lost in the debate over accelerated prison releases is that they are relatively common. Besides the 44 states that allow inmates to earn good-time credits, at least 31 also provide some form of earned-time credits for those who enroll in educational or other programs, according to a study last year by the National Conference of State Legislatures. Nevada, for example, allows some inmates to reduce their time by 60, 90 or 120 days if they complete a certificate, diploma or degree while behind bars. In many other states, correctional authorities can grant "compassionate releases" to sick or dying inmates.

In 2003, lawmakers in Washington state passed a law giving some nonviolent drug and property offenders the chance to reduce their sentences by as much as 50 percent in one of the nation's most aggressive expansions of earned-time credits. A 2009 study by the



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independent Washington State Institute for Public Policy found that the program has resulted in lower recidivism rates among those who have been released ahead of schedule. But it also found an increase in property crimes after the change went into effect.

The institute's finding on recidivism has made Washington a model for lawmakers in other states that have sought accelerated prisoner releases, and is frequently mentioned by criminologists.

"Length of stay has nothing to do with the recidivism rate," Todd Clear, the incoming dean of the School of Criminal Justice at Rutgers University in New Jersey, says. "If I let someone out (early), I'm not increasing the chances of them committing a crime. I'm just changing the date."

Despite the studies, politicians and corrections officials are keenly aware that a single, well-publicized crime by an inmate who has been granted accelerated release can call entire programs into question, virtually overnight. In California, for instance, outrage over the state's good-time credits has been exacerbated by the early release of a Sacramento County inmate who was arrested in connection with an attempted rape less than 24 hours after walking free.

For that reason, Clear believes, early-release initiatives are a recipe for political disaster. "The minute you let a bunch of people out early, you own everything they do," he says — a point acknowledged by Granholm.

"I think any changes in the corrections system can certainly be exploited by political gain by those who want to do so," Granholm says. "And it's true in every state in the country."

— *StateLine.org* staff writer Melissa Maynard contributed to this report.

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Comments (19)

my family in prison bc he went to beach for vacation with the family

19. Saturday, 05 November 2011 09:06

(mystery4all)

well it all started a yr ago they came in our house and searched 2 times i thought that was wrong but they didnt find anything . we just live work take care of our children. 2nd time they came bck in our house he had a lil bit of marijuana i think it was oz or 2 but we where not bothern no one if anything they are bothern us no crime made . so they lock him up and they try to lock me up too just more money for them its all not fair or just. so we pay money to get us both out. they charged both of us with intent to sell and maintaining and dwelling. i have no record never ben in trouble other then speeding or seat belt . my boyfriend has a record only mistrmrs. Anyway we hired a lawyer to so call help us since i got charges for sayn the cops there needed to help my friend that was about to pass out in the chair outside in heat and just found out he had sugar probs nd hadnt got meds rite yet for it .so i said yall cant do this its not rite he gonna sit there and pass out one officer told me if i did not shut my mouth i was glong to catch a charge too. so i said something again and that same officer said dats it u gotta charge now . anyway lawyer to get my charge dismissed he says my boyfriend has to take a charge so he plead to what the lawyer said i mean you think they are here to help us . so he gets put on probation and my stuff dismissed. well you think everything is ok but really i just recently i started reading laws and i found out that the lawyers first duties is to the court and 2nd to the public and 3rd not to the client legal encyclopedia, volume , section4. so therefor we pay theses lawyers all this money and the courts for them not to help us. so hes on probation now paying \$140 mth and he had to pay taxes on what they took wich ended up being another \$400 and im thinking wheres all this money go to ? ok he was the only working at this time he was working like 70 hrs a week so he went all over to work even near the beach so he figured he wud stop and see his family got a ticket so that put him there but he was wrking didnt matter to them. so they want to put a gps on his body i mean what i thought we lived in the land of the free and we have our rights so he didnt want to put gps on him so they violated him locked him up again more money to get out . the judge had told him the

PBMtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 01, 2012 8:21 PM
To: PBMtestimony
Cc: shaglund@hotmail.com
Subject: Testimony for HB2255 on 2/2/2012 9:00:00 AM

Testimony for PBM 2/2/2012 9:00:00 AM HB2255

Conference room: 309
Testifier position: Oppose
Testifier will be present: No
Submitted by: Sue Haglund
Organization: Individual
E-mail: shaglund@hotmail.com
Submitted on: 2/1/2012

Comments:

I oppose HB2255 because it is a step backwards in compassionate release.

I kindly ask that the committee HOLD the measure. Thank You.