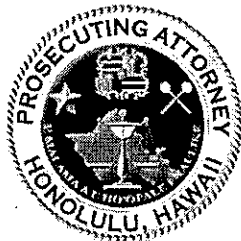


DEPARTMENT OF THE PROSECUTING ATTORNEY
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LATE TESTIMONY

**THE HONORABLE WILL ESPERO, CHAIR
SENATE COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPERATIONS,
AND MILITARY AFFAIRS**

**THE HONORABLE JOSH GREEN, M.D., CHAIR
SENATE COMMITTEE ON HEALTH**

**Twenty-sixth State Legislature
Regular Session of 2011
State of Hawai'i**

February 8, 2011

RE: S.B. 175; RELATING TO HEALTH.

Chair Espero, Vice-Chair Kidani, Chair Green, Chair Nishihara, members of the Senate Committee on Public Safety, Government Operations, and Military Affairs, and members of the Senate Committee on Health, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in opposition to S.B. 175.

The purpose of this bill is to transfer jurisdiction over the medical marijuana laws from the Department of Public Safety to the Department of Health.

At this time, marijuana continues to be a Schedule I controlled substance (both State and Federal), such that possession of any amount is illegal, except by qualifying patients registered to use medical marijuana (and their caregivers). Due to ongoing demand for illegal marijuana—by prohibited individuals and/or in illegal quantities—law enforcement agencies have been working closely with the Department of Public Safety, to maintain strict regulation and monitoring of this substance. Given the significant potential for abuse and/or violation of the medical marijuana laws, the Department strongly believes that the Department of Public Safety is better equipped to handle the management of medical marijuana laws than the Department of Health.

For this reason, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes S.B. 175. Thank you for this opportunity to testify.

LATE TESTIMONY

NEIL ABERCROMBIE
GOVERNOR



SUNSHINE P. W. TOPPING
INTERIM DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
235 S. BERETANIA STREET
HONOLULU, HAWAII 96813-2437

February 7, 2011

AMENDED

TESTIMONY TO THE
COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPERATIONS AND
MILITARY AFFAIRS

AND

COMMITTEE ON HEALTH
For Hearing on Tuesday, February 8, 2011
2:45 p.m., Conference Room 224

BY

SUNSHINE P.W. TOPPING
INTERIM DIRECTOR

**Senate Bill No. 0175
Relating to Health**

WRITTEN TESTIMONY ONLY

TO CHAIRPERSONS WILL ESPERO, JOSH GREEN MD, AND COMMITTEE
MEMBERS

The purpose of S.B. 0175 is to transfer jurisdiction over the medical marijuana laws from the Department of Public Safety to the Department of Health.

The Department of Human Resources Development has **comments** on the proposed transfer. To protect the rights and benefits of the employees to be transferred, we prefer the following proposed transfer language be used in place of the second, third and fourth paragraphs of Section 3 of the bill:

"All employees who occupy civil service positions and whose functions are transferred to the Department of Health by this Act shall retain their civil service status (permanent or temporary). Employees shall be transferred without loss of salary, seniority, retention points, prior service credit, any vacation and sick leave credits previously earned, and other rights, benefits, and privileges, in accordance with state personnel laws and this Act, provided that the employees possess the minimum qualifications and public employment requirements for the class and/or position to which transferred or appointed, as applicable, provided further that subsequent changes in status may be made pursuant to applicable civil service and compensation laws.

Any employee who, prior to this Act, is exempt from civil service and is transferred as a consequence of this Act, may continue to retain the employee's exempt status, but shall not be appointed to a civil service position because of this Act. An exempt employee who is transferred by this Act shall not suffer any loss of prior service credit, any vacation and sick leave credits previously earned, or other employee benefits or privileges as a consequence of this Act, provided that the employees possess legal and public employment requirements for the position to which transferred or appointed, as applicable; provided that subsequent changes in status may be made pursuant to applicable employment and compensation laws. The director of department of health may prescribe the duties and qualifications of such employees and fix their salaries without regard to chapter 76, Hawaii Revised Statutes."

Thank you for opportunity to offer comments on this measure.

LATE TESTIMONY

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 07, 2011 5:18 PM
To: PGM Testimony
Cc: paulminar@mac.com
Subject: Testimony for SB175 on 2/8/2011 2:45:00 PM

Testimony for PGM/HTH 2/8/2011 2:45:00 PM SB175

Conference room: 224
Testifier position: support
Testifier will be present: Yes
Submitted by: Paul Minar
Organization: Oahu ASA
Address: 333 Aoloa St #414 HI
Phone: 808 294-6098
E-mail: paulminar@mac.com
Submitted on: 2/7/2011

Comments:

From: Pam-and-or-Mike [randomskypie@yahoo.com]
Sent: Tuesday, February 08, 2011 2:26 PM
To: PGM Testimony
Subject: support of bill SB 175

I am in support of letting the Dept of Health take over the medical marijuana program, instead of the DPS. We are not criminals, but people who use the cannabis as medicine. There is much new discoveries about the positive uses for the cannabis plant. I just watched a documentary called "What if Cannabis cured Cancer". It was a very well informed presentation by medical Doctors about the properties of the herb. There is more research done in Europe about the healing effects on the body with cannabis receptors. It only makes sense to let the Health Dept. work with this program.

LATE TESTIMONY

Richard S. Miller
Professor of Law, Emeritus

E-mail: rmiller@aya.yale.edu
Phone: 808-254-1796

To: Committee on Public Safety, Government Operations, and Military Affairs and
Committee on Health

RE: SB 175 Relating to Health

Hearing: Tuesday, February 8, 2010, 2:45 p.m., Room 224

Position: Strong Support

Chairs Espero and Green and Distinguished Committee Members:

I am writing in strong support of SB 58 which amends various sections of the current medical marijuana law to make it work effectively and humanely for patients with disabling conditions.

The Hawaii Legislature deserves great praise for being the first state legislature to adopt a compassionate medical marijuana program to address the needs of Hawaii patients suffering from a "debilitating medical condition." The wisdom of the Legislature's action is well illustrated in the information provided by the non-profit and neutral organization, PROCON.ORG, which is readily accessible on the Internet. It reports that of 69 peer-reviewed medical studies of medical benefits from Cannabis and Cannabis Extracts from 1990-2010, 32 were pro, 23 were not clearly pro or con, and only 14 were con.

Unfortunately, however, the medical marijuana law, as it was adopted, contained a number of gaps or omissions the overall effect of which defeated its compassionate objective in a number of situations. This problem was exacerbated by the fact that the agency named to implement the law was the Law Enforcement Division of the Department of Public Safety. Both in adopting regulations and making decision relating to the law, LED tended to put the most constrictive interpretation on the law. There is every evidence that the Department of Public Safety has deemed their administration as more of a law enforcement effort than a program to support the needs of patients who suffer from debilitating conditions.

This approach by LED has led to situations where the compassionate purpose of the law was defeated; where patients who indeed satisfy the debilitating condition requirement of the law are denied the therapeutic and pain-reducing benefits of medical marijuana in situations where the law failed to resolve the problem or was unclear. It is these unfortunate situations which adoption of SB58 will remedy:

- Under current law the caregiver, who is authorized to grow plants and act for the benefit of the patient with the debilitating condition, can only serve one patient. Because there may not be enough caregivers to provide one to each patient, some qualified patients who are incapable of growing and handling marijuana for therapeutic purposes, which is not an easy task, will be unable to acquire marijuana legally. SB 58 will remedy this problem by increasing the caregiver to patient ratio from 1:1 to 1:4.

- Current law contains no provision allowing qualified patients or their caregivers to purchase or otherwise acquire medical marijuana from unauthorized sellers or growers. Under SB 58 this will not change, but the availability of lawful marijuana will increase because a registered patient or caregiver may provide usable cannabis to any other registered qualifying patients or any other registered caregivers, provided no consideration is paid and that the recipient does not exceed the adequate supply.
- The current amount of marijuana which a patient or caregiver may possess is all too often inadequate to provide the therapeutic effects the certifying physician is hoping to achieve. SB 58 increases adequate supply and removes the mature/immature distinction of plants to 10 plants and five ounces of usable cannabis at any given time, an amount which will be sufficient in most instances.
- SB 58 prevents the department charged with implementation of the medical marijuana law from requiring that the authorizing physician be the patient's primary care physician. Because physicians may be intimidated by the implementing agency, such as the Law Enforcement Division, and therefore avoid certifying patients with debilitating conditions or because of other reasons, such as fear engendered by the refusal of the federal government or Congress to remove Marijuana from Schedule I, patients should be able to seek certification from and be examined by other physicians who are not their primary care physicians. However, if the issuing physician is not the qualifying patient's primary care physician, the issuing physician shall send a copy of the certification to the primary care physician.
- SB 58 provides that the form required of the patient or the caregiver may request the address of the location where the cannabis is grown, but the information shall be confidential and shall not appear on the registry card. It is important to protect the patient and caregiver from negligent disclosure of such information which could lead to theft of medical marijuana or other illegal actions which could threaten the patient's or caregiver's security.
- SB 58 provides that the information that the physician provides to the directing agency shall attest that the patient has one of the qualifying conditions, but shall not name or describe the particular condition. This provision is both consistent with important governmental privacy concerns and serves to protect the patient against the kind of negligent disclosure that occurred when, in June 2008, the Department of Public Safety negligently released the entire list of the then 4,000 patients, their addresses, the location of their marijuana plants, license information, and the names of their physicians to Peter Sur, reporter for the Hawaii Tribune-Herald.
- Under existing law regulating medical marijuana there is a tendency of the governing agency, the Law Enforcement Division, to seek or invent administrative regulations which require the patients, primary caregivers and particularly physicians, who are required by the letter of the medical marijuana law to perform only examination and certification activities which do not involve them in unlawful activities, to provide information or take actions which are not required by the Medical Marijuana law and which may involve them unnecessarily in activities which might threaten or subject them to claim of unlawful activity. SB 58 deals with this problem by providing that the governing department in their administrative rules shall only require

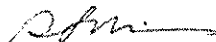
information from the applicant, primary caregiver, and certifying physician as specifically required or permitted by the Medical Marijuana chapter of the Hawaii Revised Statutes.

I also recommend that the bill be amended, first, to expand the last prohibition to include administrative rules that require physicians to perform acts, other than those reasonably required by the Medical Marijuana laws, which may subject them to charges of unlawful behavior under State or Federal laws pertaining to marijuana. Under the law as written the certifying physician is not required to do anything other than examine the patient and certify his or her condition as provided in the Act. No other possibly unlawful activities should be required of the certifying physician.

Secondly, I strongly recommend that the bill be amended to make clear that certified medical marijuana patients or their caregivers traveling with them who are traveling among the Hawaiian islands or traveling to any other State or destination that has similar protection for medical marijuana be immune from arrest for possession of marijuana under Hawaii law so long as they have complied with the medical marijuana requirements in this law.

It has been shameful that a bill written years ago for compassionate purposes to help patients deal with debilitating conditions still contains loopholes and unreasonable limitations or requirements which in effect, have defeated the bills' compassionate objectives. This bill is designed to and will serve to fill those unfortunate loopholes. However, I also recommend that supervision of the program be removed from the Department of Public Safety and its Law Enforcement Division, which has never sought to fix the bill to help fulfill its humane objectives, and be turned over to the Department of Health, where the health and well-being of patients will guide the administration of the law.

Thank you for considering my personal views, which are not necessarily those of the U.H. or its Law School.

A handwritten signature in cursive script, appearing to read "R. M. ...", is located at the end of the letter.