

NEIL ABERCROMBIE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY

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No. _____

TESTIMONY ON HOUSE BILL 255
A BILL FOR AN ACT RELATING TO PUBLIC SAFETY

By

Ted Sakai, Interim Director
Department of Public Safety

House Committee on Public Safety
Representative Henry J.C. Aquino, Chair
Representative Kaniela Ing, Vice Chair

Thursday, January 31, 2013, 9:00 a.m.
State Capitol, Room 309

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

The Department of Public Safety (PSD) supports the intent of this bill, which will broaden the criteria that the Hawaii Paroling Authority (HPA) follows to provide medical releases for inmate/patients recommended by the Director.

The Department would like to request the Committee to provide a trial period in which recommendations from the inmates, or their representatives be considered. This will enable the Department to determine the additional administrative workload this recommendation process would generate. It is the Department's concern that its already scarce Physician resources will be bogged down in administrative medical release determinations versus attending to direct patient care.

The Department is also requesting to amend page 4, line 11 by deleting the words "costly or".

Thank you for the opportunity to testify on this bill.

HAWAII
STATE
COMMISSION
ON THE
STATUS
OF
WOMEN



Chair
LESLIE WILKINS

COMMISSIONERS:

ELENA CABATU
ADRIENNE KING
CARMILLE LIM
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January 31, 2013

Testimony in Support of HB 255

To: Representative Henry Aquino, Chair
Representative Kaniela Ing, Vice Chair
House Committee on Public Safety

From: Hawaii State Commission on the Status of Women

Re: Support for HB 255, Relating to Public Safety

The Commission supports HB 255, Relating to Public Safety.

HBB 255 requires the Department of Public Safety to assess and refer inmates to the Hawaii Paroling Authority (HPA) for possible medical release.

According to Human Rights Watch, life in prison is particularly challenging for people who are sick or aging. Prisons in Hawai'i, and the United States as a whole, contain a growing number of aging women who have physical challenges. Between 1995 and 2010, the number of state and federal prisoners age 55 or older nearly quadrupled, while the number of all prisoners grew by less than half.¹ Hawai'i's prisons, and those with whom we contract, are not equipped to handle this aging or ill population. By 2030, incarcerated people over the age of 55 will constitute a third of the overall population of incarcerated people nationwide.²

This bill would create an efficient and streamlined process for terminally ill and aging incarcerated individuals to apply for compassionate release into the community. Once released, these individuals would be on supervised parole and pose little to no safety risk to the general population. By age 50, people are far less likely to commit serious crimes, with arrest rates dropping to 2 percent and become almost zero by the age of 65.³ Additionally, the ACLU projects that taxpayers save \$66,000 a year, on average, for each inmate over 50 that is released.⁴

Allowing for compassionate release is not only humane, it is fiscally responsible.

Thank you for this opportunity to testify.

¹ Bureau of Justice Statistics. PRISONER SERIES, 1995-2010.

² Ridgeway, J. THE OTHER DEATH SENTENCE, Mother Jones Magazine (2012). Available at <http://www.motherjones.com/politics/2012/09/massachusetts-elderly-prisoners-cost-compassionate-release>, last accessed on January 29, 2013.

³ Id.

⁴ Id.

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COMMITTEE ON PUBLIC SAFETY

Rep. Henry Aquino, Chair

Rep. Kaniela Ing, Vice Chair

Thursday, January 21, 2013

9:00 a.m.

Room 309

STRONG SUPPORT FOR HB 255 - COMPASSIONATE RELEASE

Aloha Chair Aquino, Vice Chair Ing and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies for more than a decade. This testimony is respectfully offered on behalf of the 5,800 Hawai'i individuals living behind bars, always mindful that approximately 1,500 Hawai'i individuals are serving their sentences abroad, thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, far from their ancestral lands.

HB 255 requires the department of public safety to assess and refer inmates to the Hawaii paroling authority (HPA) for possible medical release. Allows an inmate to be considered for medical release at the request of the director, the inmate, or the inmate's representative, if the inmate meets specified criteria. Requires the HPA to grant or deny the request after a hearing, to set reasonable conditions on an inmate's medical release, and to promptly order an inmate returned to custody to await a revocation hearing if the HPA receives credible information that an inmate has failed to comply with any reasonable conditions of medical release.

Community Alliance on Prisons is in strong support of compassionate release as is the medical community, research organizations, community organizations, and the Bureau of Justice.

The Annals of Internal Medicine¹

"Compassionate release consists of two entwined but distinct elements: eligibility (based on medical evidence) and approval (based on legal and correctional evidence) (4). We argue that the medical eligibility criteria of many compassionate-release guidelines are clinically flawed because of their reliance on the inexact science of prognostication, and additional procedural barriers may further limit rational application. Given that early release is politically and socially charged and that eligibility is

¹ Balancing Punishment and Compassion for Seriously Ill Prisoners. Brie A. Williams, MD; Rebecca L. Sudore, MD; Robert Greifinger, MD; and R. Sean Morrison, MD
<http://www.annals.org/content/early/2011/05/31/0003-4819-155-2-201107190-00348.full>

based largely on medical evidence, it is critical that such medical evaluation be based upon the best possible scientific evidence and that the medical profession help minimize medical-related procedural barriers.”

Human Rights Watch²

“Life in prison can challenge anyone, but it can be particularly hard for people whose bodies and minds are being whittled away by age. Prisons in the United States contain an ever growing number of aging men and women who cannot readily climb stairs, haul themselves to the top bunk, or walk long distances to meals or the pill line; whose old bones suffer from thin mattresses and winter’s cold; who need wheelchairs, walkers, canes, portable oxygen, and hearing aids; who cannot get dressed, go to the bathroom, or bathe without help; and who are incontinent, forgetful, suffering chronic illnesses, extremely ill, and dying.”

Bureau of Justice Statistics³

The Bureau of Justice Statistics reports found that between 1995 and 2010, the number of state and federal prisoners age 55 or older nearly quadrupled (increasing 282 percent), while the number of all prisoners grew by less than half (increasing 42 percent). There are now 124,400 prisoners age 55 or older.

Our prisons and those with whom we contract are not equipped to handle this aging or ill population. We know of cases where inmates have been denied wheelchairs and have had to crawl to receive medication. This is absolutely inhumane and should be intolerable.

The California prison system recently opened a prison hospice in Vacaville because of the number of aging and chronically ill incarcerated individuals serving sentences. This is part of the reason that their prison health care system was under consent decree from the federal government.

National Public Radio⁴

A January 30, 2012 public radio story reported in a story entitled, “End To California Prison Healthcare Receivership In Works”

“SACRAMENTO, Calif. (AP) – The court-appointed receiver overseeing California's prison health care system said Friday the state must keep its promise to spend more than \$2 billion for new medical facilities before the federal courts can end an oversight role that has lasted six years. California has committed to spending \$750 million to upgrade existing medical facilities, building a new medical center and converting juvenile lockups. So far, only the new medical center in Stockton is being built. ...”

On January 8, 2013, Governor Brown issued a statement saying, “California's prison health care system is now a model for the nation,” A recent statement from the court-appointed receiver, however, has asked

² OLD BEHIND BARS The Aging Prison Population in the United States, January 2012, http://www.hrw.org/sites/default/files/reports/usprisons0112webwcover_0.pdf

³ Bureau of Justice Statistics, Prisoner Series, 1995-2010. Based on number of sentenced prisoners under jurisdiction of federal and state correctional authorities with sentences of more than one year.

⁴ “End To California Prison Healthcare Receivership In Works”

<http://www.cpradio.org/articles/2012/01/30/end-to-california-prison-healthcare-receivership-in-works>

the federal government to maintain their oversight because he does not feel confident that the state is ready to be released.

2013 LA Times

A January 25, 2013 story in the LA Times⁵ reports:

"The overseer of California's prison healthcare said Friday that Gov. Jerry Brown's claim he supports California's contention that prison crowding no longer is a problem is untrue, and "distorts" and "misrepresents" his true position.

J. Clark Kelso's lengthy status report, filed Friday before a federal judge in San Francisco, gives California credit for continued improvements to its troubled prison system. However, Kelso concludes with a sharp rebuke to Brown's declaration earlier in the month that California is ready to shed federal oversight.

"The State attempts to cite our recognition of the State's prior compliance with Court orders and our silence regarding particular problems caused by overcrowding as an endorsement of the State's position that further compliance with the overcrowding order is unnecessary," Kelso wrote. "That distorts the content of our reports and misrepresents the Receiver's position."

Mother Jones

A compelling story in Mother Jones⁶ magazine reports:

...Keeping thousands of old men locked away might make sense to die-hards seeking maximum retribution or politicians seeking political cover, but it has little effect on public safety. By age 50, people are far less likely to commit serious crimes. "Arrest rates drop to 2 percent," explains Hood, the retired federal warden. "They are almost nil at the age of 65." The arrest rate for 16-to-19-year-olds, by contrast, runs around 12 percent. ...

A joint report⁷ by Human Rights Watch and Families Against Mandatory Minimums

This 128-page report is the first comprehensive examination of how compassionate release in the federal system works. Congress authorized compassionate release because it realized that changed circumstances could make continued imprisonment senseless and inhumane, Human Rights Watch and FAMM said.

⁵ **Federal receiver says California prison claim "distorts" his position**, Los Angeles Times, Paige St. John, January 25, 2013. <http://latimesblogs.latimes.com/california-politics/2013/01/federal-receiver-says-california-prison-claim-distorts-his-position-ff-.html>

⁶ **The Other Death Sentence** *More than 100,000 Americans are destined to spend their final years in prison. Can we afford it?*, by James Ridgeway.

<http://www.motherjones.com/politics/2012/09/massachusetts-elderly-prisoners-cost-compassionate-release>

⁷ **The Answer is No: Too Little Compassionate Release in US Federal Prisons**, November 30, 2012.

<http://www.hrw.org/reports/2012/11/30/answer-no>

<http://www.hrw.org/sites/default/files/reports/us1112ForUploadSm.pdf>

To satisfy human rights requirements, prisoners should have access to judicial review or review by a similarly independent, objective tribunal that applies basic due process requirements to decisions regarding the lawfulness of their ongoing detention.

United Nations Basic Principles for the Treatment of Prisoners⁸

1. *All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.*

Department of Public Safety Compassionate Release Statistics 2009-2011⁹

37 Compassionate Releases Recommended

22 Compassionate Releases Approved

14 Actual Compassionate Releases

We are not talking about a thousand sick and elderly individuals. We are talking about those who have the legitimate medical documentation to be considered for compassionate release.

Community Alliance on Prisons sees compassionate release for chronically ill or geriatric individuals as something that should happen before they are on life-support. We have heard many heart-breaking stories about the treatment some terminally ill individuals have received in our prison infirmaries.

We have also been told that there are some elderly inmates in one of our prisons who have been paroled yet are still incarcerated because they have nowhere else to go since their families are all deceased and there are no community facilities willing to take them.

Community Alliance on Prisons respectfully asks the committee to pass SB 72. Elderly, sick and dying incarcerated people present little to no risk to the public. They will be on supervised parole.

Let's not end up like California. Hawai'i needs to fix its health care system without federal oversight because it is the right, humane, and compassionate thing to do!

Mahalo for this opportunity to testify.

"Love and compassion are necessities, not luxuries.

Without them humanity cannot survive."

His Holiness the Dalai Lama

⁸ UN Basic Principles for the Treatment of Prisoners <http://www.un.org/documents/ga/res/45/a45r111.htm>

⁹ Department of Public Safety 2009 -2011 Compassionate Release Statistics



Committee: Committee on Public Safety
Hearing Date/Time: Thursday, January 31, 2013, 9:00 a.m.
Place: Conference Room 309
Re: Testimony of the ACLU of Hawaii in Support of H.B. 255, Relating to Public Safety and Compassionate Release

Dear Chair Aquino and Members of the Committee on Public Safety:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in support of H.B. 255, which seeks to implement guidelines to better utilize the compassionate release program.

“[Y]ou actually create victims by not letting [elderly prisoners] go and us[ing] your resources on rehabilitation for the ones that are going to get out When I came here and saw the elderly population, I said, ‘God, well, why are they here? Our name is Corrections to correct deviant behavior [but] there’s nothing to correct in these guys; they’re harmless’”
—Burl Cain, Warden of Louisiana State Penitentiary at Angola¹

The United States is the largest incarcerator in the world, with 2.3 million people behind bars. Prisoners across the country are also getting older and experiencing all the same ailments that afflict those of the same age who are not behind bars. Our extreme sentencing policies and a growing number of life sentences have effectively turned many of our correctional facilities into veritable nursing homes—and taxpayers are paying for it.

From 1980 to 2010, the United States prison population grew over 11 times faster than the general population. During this time, the general population increased by 36%, while the state and federal prison population increased by over 400%. The number of elderly people in our prisons is growing even faster. The graying prison population has become a national epidemic afflicting states around the country—including Hawaii — further burdening already strained state budgets. According to the National Institute of Corrections, prisoners age 50 and older are considered “elderly” or “aging” due to unhealthy conditions prior to and during incarceration.

The United States keeps elderly men and women locked up despite an abundance of evidence demonstrating that recidivism drops dramatically with age. For example, in New York, only 7% of prisoners released from prison at ages 50-64 returned to prison for new convictions within

¹ Parole for the Elderly (ACLU 2012), available at <http://www.aclu.org/prisoners-rights/parole-elderly>.

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three years. That number drops to 4% for prisoners age 65 and older. In contrast, this number is 16% for prisoners released at age 49 and younger. Further, most aging prisoners are not incarcerated for murder, but are in prison for low-level crimes. For example, in Texas, 65% of prisoners age 50 and older are incarcerated for nonviolent drug, property, and other nonviolent crimes.

This increasing warehousing of aging prisoners for low-level crimes and longer sentences is a nefarious outgrowth of the “tough on crime” and “war on drugs” policies of the 1980s and 1990s. Hawaii’s current overincarceration epidemic and persistent economic crisis should encourage lawmakers to consider implementing parole reforms to release those elderly prisoners who no longer pose sufficient safety threats to justify their continued incarceration.

State and federal governments spend approximately \$77 billion annually to run our penal system. Over the last 25 years, state corrections spending grew by 674%, substantially outpacing the growth of other government spending, and becoming the fourth-largest category of state spending. These corrections costs are mainly spent on incarceration, and incarcerating aging prisoners costs far more than younger ones. We found that it costs \$34,135 per year to house an average prisoner, but it costs \$68,270 per year to house a prisoner age 50 and older. To put that number into context, the average American household makes about \$40,000 a year in income.

Hawaii can implement mechanisms to determine which aging prisoners pose little safety risk and can be released. Releasing many of these individuals will ease the burden on taxpayers and reunite prisoners with their families to care for them.

While some of these prisoners may turn to the government for their healthcare or other needs, government expenditures on released aging prisoners will be far cheaper than the costs of incarcerating them. Based on statistical analyses of available data, we estimate that releasing an aging prisoner will save states, on average, \$66,294 per year per prisoner, including healthcare, other public benefits, parole, and any housing costs or tax revenue. Even on the low end, states will save at least \$28,362 per year per released aging prisoner.

The current fiscal crisis should force us to rethink our incarceration policies as our massive spending on incarceration is unsustainable and unnecessary to protect public safety. Public opinion is also starting to shift. A recent survey by the Pew Center on the States found that 73% of Americans who have not experienced violent crime think that too many people are behind bars; they are joined in that opinion by 70% of violent crime victims.

As detailed in the ACLU's 2011 *Smart Reform is Possible* report, several states have enacted cost-saving, effective reforms to respond to crimes, rather than using incarceration as a one-size-fits-all solution. Some states, like Louisiana, have enacted laws that would allow for the release of many aging prisoners. This type of conditional release program gives prisoners of a certain age the right to request a parole hearing. At the hearing, the parole board can use a risk assessment instrument to decide whether the prisoner can be safely released. Such laws allow states to safely depopulate their prisons of the elderly and save on incarceration costs, while simultaneously not forcing aging prisoners into homelessness by ensuring prisoners must elect to apply for parole.

In Hawaii, eligibility is currently limited to prisoners who have a "terminal illness," defined as an "illness that by its nature, can be expected to cause a patient to die within 1 year."² Medical parole programs should be open to non-terminal patients over age 50 with health conditions that render them unlikely to pose substantial public safety risks. Because of unnecessarily complicated application and review processes,³ barely half of all prisoners approved for release from 2009 to 2012 were actually granted release.⁴ A streamlined process will ensure that those who should be released are not stymied by bureaucratic stumbling blocks.

The ACLU of Hawaii supports H.B. 255 as it will bring much-needed attention to the epidemic of aging prisoners and is a practical and feasible reform for Hawaii.

² *Haw. Dep't of Public Safety, Pol. No. Cor.10.1G.11*, Corrections Administration Policy and Procedures: Compassionate Release for the Terminally Ill (2011), available at <http://hawaii.gov/psd/policies-and-procedures/P-3-COR/CORR%20%20P-P%20FINAL/CHAPTER%2010/COR.10.1G.11.pdf>.

³ The prisoner must first sign a medical information release form. Then the prisoner's doctor must write a memorandum to the Health Care Division Medical Director recommending compassionate release. The Director then approves or disapproves the doctor's recommendation. That decision, however, heavily relies on a separate report cataloguing the prisoner's "prison behavior, participation in required programs, detention charges, sentences, and prisoner custody status and conviction history." If the Director approves the recommendation, he or she must send it to the Health Care Division Administrator. The recommendation must then go through two more officials who each have discretion to approve or disapprove it before the prisoner can be released. *Id.* Such unnecessarily complicated processes putting a medical decision in the hands of so many corrections officials will undoubtedly hold up the release of ill prisoners.

⁴ A Freedom of Information Act request submitted by the ACLU to the Hawaii Department of Public Safety revealed that from January 2009 to January 2012, of 37 prisoners recommended for compassionate release, 22 cases were approved by the Public Safety Department, but only 14 were granted. Letter from Haw. Dep't of Public Safety, to ACLU of Hawaii (Jan.19, 2012) (on file with authors).

Chair Aquino and PBS Committee Members
January 31, 2013
Page 4 of 4

Thank you for this opportunity to testify.

Sincerely,
Laurie A. Temple
Staff Attorney and Legislative Program Director
ACLU of Hawaii

About the American Civil Liberties Union of Hawaii

The American Civil Liberties Union of Hawaii (“ACLU”) has been the state’s guardian of liberty for 47 years, working daily in the courts, legislatures and communities to defend and preserve the individual rights and liberties equally guaranteed to all by the Constitutions and laws of the United States and Hawaii.

The ACLU works to ensure that the government does not violate our constitutional rights, including, but not limited to, freedom of speech, association and assembly, freedom of the press, freedom of religion, fair and equal treatment, and privacy.

The ACLU network of volunteers and staff works throughout the islands to defend these rights, often advocating on behalf of minority groups that are the target of government discrimination. If the rights of society’s most vulnerable members are denied, everyone’s rights are imperiled.

American Civil Liberties Union of Hawai'i
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January 30, 2013

Representative Henry Aquino, Chair
Representative Kaniela Ing, Vice Chair

Re: HB255 Medical Release Program; Compassionate Release
Hearing on Thursday, January 31, 2013, 9:00 a.m., Room 309

Aloha Chair Aquino, Vice Chair Kaniela and Members of the Committee:

I strongly support HB255. I am one of two governor appointed members of the Native Hawaiian Justice Task Force and wrote my dissertation on incarceration in Hawai'i. As a scholar, I can offer you a long list of experts and publications to support compassionate release. However, I want to take the opportunity to share from a more personal perspective. I have had the privilege of caring for several terminally ill family members, and have even been by their side when they passed. I cannot tell you how meaningful it is for the dying and their loved ones to be together during the end stage.

At the end of my fathers' life, I was able to be with him 24/7 for the last forty-nine days of his life. During that time, we saw rainbows, enjoyed fresh ocean breezes, stared at mountain tops, and had many 3:00 a.m. discussions about everything under the sun. Although we had a very close relationship, there was still room for closure and greater depth in our relationship.

As a way to give back what we received as a family, I am now a hospice volunteer. Death is one of the most important and privileged times in life. It is a time for reflection, restoration and relationship. In my experience as a family caregiver and hospice volunteer, I know the incredible blessing of making the best of each moment.

Drawing from my personal, community and academic experiences, I can only imagine the pain prisoners and their families go through during their final days without reconciliation, relationships and closure. Giving people the opportunity to feel ocean breezes, wiggle their toes in the sand and exhale as they look to the sky can only serve to bring healing and freedom to those families and our communities.

I urge you to pass HB255. If you have questions, please contact me at rbkarasuda@hotmail.com or 429-7166.

Mahalo nui,

RaeDeen Keahiolalo-Karasuda, PhD



Brie Williams, MD, MS
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COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL
AND MILITARY AFFAIRS

Senator Will Espero, Chair
Senator Rosalyn H. Baker, Vice Chair
Tuesday, January 9, 2013
Conference Room 224
2:50 p.m.
SB 72
Strongly Support

Dear Chair Espero, Vice Chair Baker, and Committee Members:

Introduction. My name is Dr. Brie Williams. I am an Associate Professor at the University of California at San Francisco (UCSF) Medical School. My research and academic focus is on assessing and improving the health and functional status of older adults in the criminal justice system. I have studied compassionate release at both the state and federal level and have published on the subject in the *Annals of Internal Medicine*, the journal of the American College of Physicians. I strongly support SB 72.

My Background. I received my Doctor of Medicine degree and a Masters Degree in Community Medicine from Mount Sinai School of Medicine in New York. After completing my internship and residency in internal medicine at UCSF, I became a Clinician Educator in the Division of Internal Medicine. I subsequently did a fellowship in geriatric medicine at UCSF. In 2008 I received the Brookdale Leadership in Aging Fellowship to study the medical, cognitive, and functional status of geriatric prisoners and to assess predictors of adverse health events in older prisoners. I have served as a consultant on improving healthcare for older prisoners to the Human Rights Division of the United States Department of Justice, the California Department of Corrections and Rehabilitation, the Los Angeles County Disability Legal Rights Center, the Independent Medical Monitor of Michigan, and the San Francisco Elder Abuse Forensic Center. I am also the Founder and Co-Director of a 2-year pilot geriatrics teaching and consultation service at San Quentin Prison. My recent relevant publications include:

- Aging in correctional custody: setting a policy agenda for older prisoner health care. *Am J Public Health*. 2012 Aug; 102(8):1475-81.
- Addressing the aging crisis in U.S. Criminal justice health care. *J Am Geriatr Soc*. 2012 Jun; 60(6):1150-6.
- Balancing punishment and compassion for seriously ill prisoners. *Ann Intern Med*.

2011 Jul 19; 155(2):122-6.

Support of SB 72. I am writing in strong support of SB 72. It is a clear, thoughtful, and practical bill that in my view would efficiently and economically accomplish the fundamental purposes of compassionate release. There are several provisions of the bill that are particularly important:

1. It establishes uniform criterion for compassionate release that would apply to both the Department of Public Safety (DPS) and the Hawaii Paroling Authority. It is my understanding that DPS and the Hawaii Paroling Authority now have very different and inconsistent compassionate release criteria, a situation that can only lead to confusion and inconsistent outcomes.¹

2. The eligibility criteria for compassionate release are reasonable and clearly stated so that those who will have to apply should have no difficulty in doing so.

3. The bill builds on the system that is already in place in which primary responsibility for initiating compassionate release rests with the DPS medical personnel, but allows for what is essentially an appeal process for reconsideration. I believe the appeal process is absolutely essential because mistakes in prognosis are inevitable and an appeal provides a mechanism for correcting them (or affirming the decision of the DPS if no mistake has been made).

4. The bill specifies reasonable time limits for processing requests.

5. The bill makes a clear distinction between *eligibility* for compassionate release and *approval* for release and properly limits the role of the physician to determining eligibility while clarifying that approval decisions are to be made by appropriately designated correctional professionals and the Paroling Authority.

6. The bill incorporates all of the key recommendations that my colleagues and I made in our article on compassionate release (see Balancing punishment and compassion for seriously ill prisoners. *Ann Intern Med.* 2011 Jul 19; 155(2):122-6) including: (a) The Use of evidence-based principles; (b) A transparent application release process; (c) Assignment of an advocate to help incapacitated prisoners navigate the compassionate release process; (d) A fast track procedure for rapidly dying inmates; and (e) A well-described and disseminated application procedure.

I urge you to pass SB 72.

Sincerely,



Dr. Brie Williams

¹ The Department of Public Safety's policy (COR.10.G.11) provides for compassionate release if a prisoner has: (1) An illness that by its nature can be expected to cause a patient to die within 1 year; or (2) A persistent illness or disease causing increasing physical weakness to the extent that the patient's quality of life is compromised and care could better be managed within the community. The Hawaii Paroling Authority's administrative rule on compassionate release (HAR §23-700-23(c)) states that the Paroling Authority may reduce an inmate's minimum term if the inmate has "a seriously debilitating medical condition for which treatment is not available in prison or a terminal disease wherein competent medical authorities indicate death is imminent."



DAPHNE E. BARBEE

ATTORNEY AT LAW

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TESTIMONY IN SUPPORT OF HB 255, MEDICAL RELEASE

COMMITTEE ON PUBLIC SAFETY

Rep. Henry Aquino, Chair

Rep. Kaniela Ing, Vice Chair

Thursday, January 31, 2013

9:00 a.m.

Dear Chair and Vice Chair and Committee Members:

My name is Daphne Barbee-Wooten and I am an attorney in private practice in Hawaii. I very much support medical release of inmates who are disabled, permanently infirm and have a debilitating illness or disease. HB 225 seeks to streamline and define the conditions for medical compassionate release which is much needed in Hawaii. Other States have medical compassionate release for ill and disabled and elderly inmates and have successfully used the releases. However in Hawaii, unchecked discretion to the Dpt. Of Public Safety (DPS) and or Hawaii Paroling Authority, and inability to appeal and or to obtain an independent medical exam are a concern In the event an inmate's request for compassionate release is denied, there should be an explanation and an ability to appeal or reconsider.

I am familiar with inmates who are suffering 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, chemotherapy, dialysis and other forms of life sustaining medical needs.

There should be checks and balances to ensure the decision to grant or deny compassionate release is done by persons with medical knowledge about the illness and how debilitating it is on the inmate. For example, how many lay persons know the affect

dialysis has on the body or chemotherapy. 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. 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. Please add provisions for independent medical exam and appeal process for inmates who apply for compassionate release in this bill. I am aware of inmates whose compassionate release requests have been recommended by physicians, even Halawa physicians , only to be turned down by DPS non doctors employees. There should be an appeal process to allow for the Hawaii Paroling Authority to hear these cases. In one case, I wrote to the Hawaii Paroling Authority to request a hearing on the compassionate release where the medical team at Halawa recommended a release. I was told that I could not request such a hearing and my request was denied. Please pass this bill. Let's move into the 21st Century and recognize inmates are human beings, with serious medical problems which may outweigh the costs and penalties of incarceration. The inmate now is undergoing surgery which DPS and the State will pay for. Had he been granted medical release, he could have obtained insurance to pay for surgery and recovery.

Please pass this bill.

Sincerely,



Daphne E. Barbee-Wooten
Attorney at Law

ing2-Brandon

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, January 29, 2013 6:43 AM
To: pbstestimony
Cc: maukalani78@hotmail.com
Subject: Submitted testimony for HB255 on Jan 31, 2013 09:00AM

HB255

Submitted on: 1/29/2013

Testimony for PBS on Jan 31, 2013 09:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
elaine funakoshi	Individual	Support	No

Comments: HB255 MEDICAL RELEASE PROGRAM; COMPASSIONATE RELEASE Dear Chair Aquino, Vice Chair Ing and Committee Members: I strongly support HB 255. One of Webster's definition of COMPASSIONATE is: Granted because of unusual distressing circumstances affecting an individual. Yes. We have aged people who are harmless to society still incarcerated at our expense who should be released. There are also those terminally ill inmates who are struggling to stay alive until their request is approved. Right now, you have inmates with cancer who would love to live their remaining days at home with family and be able to say their farewells to friends Can we, of the Aloha State, deny these fellow "ohana" members their request expeditiously? We place them far away from families who cannot afford to pay the cost of plane fares to see them. Therefore, may I ask for your consideration of approving HB 255. Thank you for the opportunity to submit my testimony. Aloha, elaine funakoshi

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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January 29, 2013

COMMITTEE ON PUBLIC SAFETY

Rep. Henry Aquino, Chair

Rep. Kaniela Ing, Vice Chair

VIA: email

STRONG SUPPORT for HB 255, Medical Release Program, Compassionate Release

Good Morning Chair Aquino, Vice-Chair Ing and Committee Members:

I am in strong support of HB255. We must do something about our national practice of putting everyone in jail for extended periods of time. We are a nation of jailers, and it does not work. It is lobbied for by the private prisons, and they are the only beneficiaries.

I believe this bill is a good start, using common sense, in reducing our prison populations. Please pass this bill.

Thank you,



Erin Welsh

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January 28, 2013

COMMITTEE ON PUBLIC SAFETY

Rep. Henry J.C. Aquino, Chair
Rep. Kaniela Ing, Vice Chair
Thursday, January 31, 2013
Conference Rm. 309
9:00 a.m.
HB 255 – compassionate release

Strongly support HB 255

Dear Chair Aquino, Vice Chair Ing, and committee members:

My name is Robert Merce. I practiced law in Hawai'i for over 25 years before retiring in 2007. Shortly after retiring I joined the board of directors of the Native Hawaiian Legal Corporation (NHLC) and in 2011 I worked closely with two NHLC attorneys to obtain compassionate release for a 67-year old Native Hawaiian man who had been in prison for 41 years and was suffering from end stage liver disease. The main thing I learned from that experience is that Hawai'i desperately needs a compassionate release statute. The patchwork of policies and rules that we have now are unclear, outdated, inefficient, and unworkable. We need a simple, clear statute that spells out exactly what compassionate release is and how it works. HB 255 does that and I strongly support it.

The Problem in brief. Three decades of “get tough” sentencing policies characterized by long prison terms, mandatory minimum sentences, and restrictive parole have resulted in a significant increase in the number and proportion of older prison inmates.¹ Most of these older inmates will eventually develop permanent and debilitating physical or mental conditions such as

¹ For more information on American's aging prison population see ACLU, *At America's Expense: The Mass Incarceration of the Elderly* (2012) online at <http://www.aclu.org/criminal-law-reform/americas-expense-mass-incarceration-elderly>; Carry Abner, *Graying Prisons, States Face Challenges of a Aging Prison Population*, Council of State Governments, State News, November-December 2006, online at <http://www.csg.org/knowledgecenter/docs/sn0611GrayingPrisons.pdf>; Human Rights Watch, *Old Behind Bars*, January 28, 2012, online at http://www.hrw.org/sites/default/files/reports/usprisons0112webwcover_0.pdf

heart disease, liver disease, kidney disease, cancer, stroke, Alzheimer's disease or dementia. These conditions, and others like them, require extensive and costly specialized care that prisons were never designed to provide and that government cannot afford. As a society we are finally beginning to realize that keeping elderly, sick and dying inmates in prison does not make sense. It does not serve a legitimate penological interest and it is not compassionate, economical, or just.

HB 255 will help the state resolve some of the problems presented by profoundly ill and dying prisoners in the correctional system. There are several important provisions of the bill that I would like to highlight and briefly comment on:

1. One of the main problems with the current process is that the Department of Public Safety (DPS) has a policy that uses one set of criteria for compassionate release and the Hawaii Paroling Authority (HPA) has an administrative rule that uses an entirely different and conflicting criteria.² The conflict between the DPS policy and HPA rule, and the lack of clarity in both, guarantees confusion, delays, arbitrary decision making lack of transparency, and inconsistent outcomes. HB 255 fixes these problems by establishing a single set of criteria that applies to both DPS and HPA (page 3 lines 20-21).
2. The criteria for compassionate release that HB 255 establishes is clear and reasonable. (see page 4 lines 1-12). The physicians who will have to apply them should have no trouble doing so.
3. HB 255 expressly provides that the paroling authority "shall not grant medical release to an inmate who poses a danger to society." (page 7 lines 4-5). Potentially dangerous inmates will not be released no matter how sick they become.
4. HB 255 directs the HPA to impose appropriate conditions on all inmates who are granted compassionate release. Inmates will have a regular parole officer and will be under the supervision of the HPA at all times. If an inmate violates a condition of parole he may be sent back to prison to finish his sentence (page 8 lines 9-22 and page 9 lines 1-15).
5. Under HB 255, DPS continues to have primary responsibility for identifying inmates who qualify for compassionate release, and initiating the compassionate release process (page 4 lines 16-22, and page 5 lines 1-19). This is appropriate because DPS is

² The Department of Public Safety's policy (COR.10.G.11) provides for compassionate release if a prisoner has: (1) An illness that by its nature can be expected to cause a patient to die within 1 year; or (2) A persistent illness or disease causing increasing physical weakness to the extent that the patient's quality of life is compromised and care could better be managed within the community. The Hawaii Paroling Authority's administrative rule on compassionate release (HAR §23-700-23(c)) states that the Paroling Authority may reduce an inmate's minimum term if the inmate has "a seriously debilitating medical condition for which treatment is not available in prison or a terminal disease wherein competent medical authorities indicate death is imminent."

responsible for the health of inmates and is in the best position to evaluate inmates and initiate compassionate release requests.

6. At present there are no time limits for processing compassionate release requests. The case I worked on with the NHLC lawyers took nearly six months to resolve (May 12 to October 28, 2011). HB 255 establishes reasonable time limits for processing compassionate release requests (page 6 lines 7-10, 13-15, and page 7 lines 1-3). Time limits are needed to avoid unreasonable delays.

7. In 2011 Dr. Brie Williams, a gerontologist at the University of California at San Francisco, and several colleagues made a detailed study of compassionate release at both the state and federal level and published their findings and recommendations in the prestigious *Annals of Internal Medicine*, the journal of the American College of Physicians.³ HB 255 incorporates all of the key recommendations made by Dr. Williams and her colleagues including:

- (a) The use of evidence-based principles (see e.g. page 5 lines 2-10);
- (b) A transparent release process (see e.g. page 5 lines 20-21 which provides that a copy of the compassionate release report prepared by DPS must be given to the inmate);
- (c) Assignment of an advocate to help incapacitated prisoners navigate the compassionate release process (page 7 lines 12-15);
- (d) A fast track procedure for rapidly dying inmates (page 7 lines 16-17); and
- (e) A well-described and disseminated application procedure (page 7 lines 18-19).

In conclusion, HB 255 is an excellent bill. I fully support it and urge you to pass it without modification.

Thank you for allowing me to testify.

Robert K. Merce

³ Brie A. Williams, Rebecca L. Sudore, Robert Greifinger, and R. Sean Morrison, Balancing Punishment and Compassion For Seriously Ill Prisoners, *Ann Intern Med.* 2011 Jul 19; 155(2):122-6)

ing2-Brandon

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, January 30, 2013 3:50 PM
To: pbstestimony
Cc: annsfreed@gmail.com
Subject: Submitted testimony for HB255 on Jan 31, 2013 09:00AM
Attachments: CompassionRelease2013.docx

HB255

Submitted on: 1/30/2013

Testimony for PBS on Jan 31, 2013 09:00AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Ann S. Freed	Hawai'i Women's Coalition	Support	No

Comments: ATTN: COMMITTEE ON PUBLIC SAFETY Rep. Henry Aquino, Chair Rep. Kaniela Ing, Vice Chair HEARING DATE: Thursday, January 31, 2013 HEARING TIME: 2:50 p.m. Room 309 IN STRONG SUPPORT OF HB255 - MEDICAL RELEASE PROGRAM; COMPASSIONATE RELEASE Dear Chair Aquino and committee members, It is inhumane to make an individual who presents no threat to the community die alone in prison. Too many people have done so while their paperwork lingered on some bureaucrat's desk. This is not in keeping with the aloha spirit or with the values of a civilized society. How would the program work? Sick and elderly incarcerated persons would be placed on parole and supervised in the community. The recidivism rates for these gravely ill people are very low. Add to this the fact that caring for the very ill at home or hospice is far cheaper than in prison, it seems the logical thing to do. The Coalition is in strong support of this measure and respectfully requests that this Committee pass HB255. Mahalo, Ann S. Freed Co-Chair Women's Coalition 95-227 Waikalani Dr. A403 Mililani, HI 96789 808-623-5676

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