

**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2013**

ON THE FOLLOWING MEASURE:

S.B. NO. 1176, S.D. 1, RELATING TO THE HAWAII PAROLING AUTHORITY.

BEFORE THE:

HOUSE COMMITTEE ON PUBLIC SAFETY

DATE: Thursday, March 14, 2013

TIME: 9:30 a.m.

LOCATION: State Capitol, Room 309

TESTIFIER(S): David M. Louie, Attorney General, or
Lisa M. Itomura, Deputy Attorney General

Chair Aquino and Members of the Committee:

The Department of the Attorney General has one comment concerning this bill.

This bill in part amends section 353-62(b), Hawaii Revised Statutes (HRS), to require the Hawaii Paroling Authority (HPA) to make public thirty days after a hearing on parole the names of the inmates, whether the parole was granted or not, and the reasons if parole was denied.

While the names of the inmates and the parole decision are not confidential, the reasons for denying parole may be confidential. For example, federal law in general prohibits the disclosure of information concerning medical conditions, mental illness and substance abuse treatment without the consent of the patient. 42 U.S.C. § 201 et seq.; 45 C.F.R., Parts 160 and 164. Therefore, if an inmate's request for parole is denied because he or she refuses to comply with the doctor's recommendations for treatment, or was terminated from substance abuse treatment, disclosing such information without the inmate's consent arguably violates federal law and exposes the HPA and the State to liability.

Redaction of confidential information is not a recommended solution to the confidentiality concern, because the absence of such information for certain inmates while others have reasons published easily leads to speculation that the underlying reason for a denial is for one of a few confidential reasons.

It should be noted that while the public may not be aware of the reasons for a denial of parole, inmates are fully apprised of the reasons and have the opportunity to contest HPA's decision.

Based on the confidentiality issues, we respectfully ask the Committee to delete the requirement that HPA publish the reasons for parole denial from this bill.

NEIL ABERCROMBIE
GOVERNOR



STATE OF HAWAII
HAWAII PAROLING AUTHORITY
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ADMINISTRATOR

No. _____

TESTIMONY ON SENATE BILL 1176, SD1
RELATING TO THE HAWAII PAROLING AUTHORITY

BY

Bert Y. Matsuoka, Chairman
Hawaii Paroling Authority

House Committee on Public Safety

Representative Henry J.D. Aquino, Chair
Representative Kaniela Ing, Vice Chair

Thursday, March 14, 2013; 9:30 a.m.
State Capitol, Conference Room 309

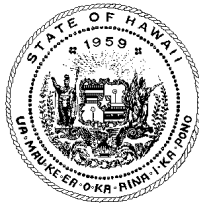
Chair Aquino, Vice Chair Ing, and Members of the Committee:

The Hawaii Paroling Authority (HPA) supports Senate Bill 1176, SD1, relating to the HPA, which allows designees to be appointed to the panel that reviews applications for the paroling authority and nominates members for the Governor's consideration. The primary purpose of this measure is to ensure the timely nomination of new members when vacancies occur. This measure also provides for the release of parole hearing decisions no more than thirty days following hearings.

The HPA appreciates the legislature's interest in the release of parole hearing decisions, but the release of such information can be accomplished monthly on a voluntary basis without the need to enact Section 2(b)(2) of this measure.

In addition, the HPA respectfully requests the following amendments to Section 2(b)(6) [~~If it is determined immediately preceding or during the course of a hearing that a sitting panel member must be recused due to a conflict of interest~~] Upon approval by the Chair, for good cause, including recusal and/or unanticipated absence, the panel may proceed with two members; and.....

Thank you for the opportunity to provide testimony on this measure.



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY

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Martha Torney
Deputy Director
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Max Otani
Deputy Director
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Keith Kamita
Deputy Director
Law Enforcement

No. _____

TESTIMONY ON SENATE BILL 1176, SENATE DRAFT 1
RELATING TO
THE HAWAII PAROLING AUTHORITY
by
Ted Sakai, Director
Department of Public Safety

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

Thursday, March 14, 2013; 9:30 a.m.
State Capitol, Room 309

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

The Department of Public Safety **strongly supports** Senate Bill 1176, Senate Draft 1, which 1) promotes the timely review of candidates for the Hawaii Paroling Authority (HPA), and 2) establishes the quorum required to take action on matters before the Authority.

This measure allows designees be appointed to the panel that reviews applicants for the paroling authority and nominates members for the Governor's consideration. The purpose of this measure is to ensure the timely nomination of new members.

The paroling authority nomination panel includes the Chief Justice of the Hawaii Supreme Court, the Director of Public Safety, the President of the Bar Association of Hawaii, and the President of the Hawaii Chapter of the National Social Workers Association. The panel is responsible for vetting the list of applicants, conducting interviews, and submitting not less than three names per vacancy for the Governor's consideration. This work averages three to five full days of meetings, a schedule that is

often impractical for persons in high level positions. The proposed amendments would allow the Chief Justice, Director, and President to appoint designees to represent them.

We are also requesting a most important amendment related to the Justice Reinvestment Initiative bill that was passed last session. Section 6 of Act 139, Session Laws of Hawaii 2012, increases the members of the Hawaii Paroling Authority (HPA) from a chairperson and two part-time members to a chairperson and four part-time members. This section, as introduced by the Administration, was intended to allow part-time members to rotate duties, requiring three members be present to act on matters before the parole board. The purpose of this section was to ensure a panel of three members was always available while other members were ill, on vacation, family leave, etc. It also allows for some members to be reviewing cases while others are hearing other cases.

Section 92-12, HRS, defines a quorum as "all the members to which the board or commission is entitled" unless it is otherwise specified in law. The proposed amendment allows for a panel of three members to convene a hearing, with all matters acted upon by the majority of those present. As some HPA members have previously been employed in the criminal justice system, it is not unusual for conflicts of interest in a given case to arise. Convening panels of three allows HPA to avoid conflicts requiring recusal of a member by not scheduling a member having a conflict when such a situation is identified beforehand.

On rare occasions, a member will not be aware prior to the hearing of a potential conflict of interest. This measure also allows for two members to continue to proceed with a hearing should a third member of the panel determine immediately preceding or during the course of a hearing that there is a conflict of interest that requires recusal.

Thank you for the opportunity to testify.