

# LATE TESTIMONY

**SB72**

Submitted on: 1/28/2013

Testimony for PSM on Jan 29, 2013 14:50PM in Conference Room 224

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Daphne Barbee-Wooten	Individual	Support	No



**DAPHNE E. BARBEE**

**ATTORNEY AT LAW**

**1188 BISHOP STREET, SUITE 1909, HONOLULU, HAWAII 96813  
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**TESTIMONY IN SUPPORT OF SB 72, COMPASSIONATE RELEASE**

**COMMITTEE ON PUBLIC SAFETY**

Senator Will Espero, Chair

Senator Rose Baker, Vice Chair

Hearing Date: 1-29-13

2:50 p.m., Room 224

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 compassionate release of inmates who are disabled, permanently infirm and have a debilitating illness or disease. SB 224 seeks to streamline and define the conditions for compassionate release which is much needed in Hawaii. Other States have compassionate release for ill and disabled and elderly inmates and have successfully used the releases. See attached news articles. 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 21<sup>st</sup> 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

January 29, 2013

THE  
POST CRIME

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## The State of Aging: Prisoners and Compassionate Release Programs

Posted: 08/23/2012 4:00 pm

When 69-year-old Betty Smithey was released from Arizona State Prison last week after serving 49 years for murdering a 15-month-old child, walking with a cane, she gave a face to a population that often goes unnoticed -- the aging men and women in our prison system.

With some 240,000 men and women over 50 in America's overly stretched prison system, should we as a society consider releasing the fragile, the ill, and the dying among these prisoners?

In theory, we already have. Compassionate, medical, or geriatric prisoner release laws have been around since the 1970s in the U.S. But the reality is that while such programs currently exist in 41 states, they are rarely if ever used. From 2001 until 2008, Colorado released just three prisoners under its compassionate release policy. Oregon has never released more than two prisoners per year and as of 2009, Maryland and Oklahoma had never released a single prisoner under their geriatric release provisions.

The reason behind such sparing use? Politics. Public opinion is often against such programs and their narrow eligibility criteria and complicated bureaucratic procedures (including a lengthy referral and review process) often deter prisoners from applying in the first place.

In the meantime, our elderly prisoner population continues to grow at an alarming rate, forcing our correctional system to act as a nationwide long-term care facility -- something it was never designed to be.

Historically, the U.S. legal system approach to incarceration has ebbed and flowed between two attitudes -- compassionate and punitive. In recent decades, stricter sentencing laws and the resulting long-term commitment of older adults have produced nothing less than a morally and financially expensive humanitarian crisis.

In the United States, current estimates suggest that older adults cost about three to five times more than their younger counterparts. The average annual cost of care for the typical prisoner is approximately \$5,500. From ages 55 to 59 however, that price tag doubles to \$11,000, and it goes up nearly eightfold for prisoners aged 80 and over, to \$40,000.

Many of these prisoners languish behind penitentiary walls in an environment designed for younger more healthy inmates. The culture of gangs and violence typical to prisons is particularly hard on the elderly. Even the most basic of activities, such as walking at a steady pace or dressing oneself, can be difficult without assistance -- something not every prison has the budget for or enough well trained staff available to provide.

But what about public safety? Offenders who reach old age present lower levels of danger to the public and are less likely to recommit crimes, compared to their younger counterparts. A recent American Civil Liberty report documented low rates of recidivism among older people, including those convicted of violent crimes. Some are too ill even to remember their crimes, or no longer have the capacity to commit a crime. The use of risk assessment programs can also be used to determine the level of risk to personal and public safety, screening out those considered still a danger to society. These combined characteristics bolster the argument for alternative sentencing and the leveraging of compassionate release programs for older adults in the criminal justice system.

Once released, community service agencies including hospitals, community health centers, nursing homes, and hospices, will need to open their arms to this population, especially the terminally ill nearing their end-of-life.

Yes, the associated financial costs will transfer to other agencies and organizations - but at least these organizations are equipped to assist the elderly. By releasing non-violent elderly prisoners into their care, we can prevent the bankrupting of our collective budgets and of our collective souls.

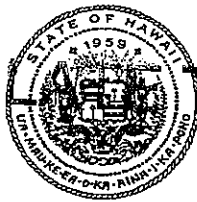
Deciding what to do about an aging prison population is complicated, not to mention a bureaucratic mess. But we can no longer afford to ignore it. We must consider the dignity of every person -- including the imprisoned.

It is time to open our blind eyes and impoverished hearts and hear the cries of agony and misery of our fellow human beings with mercy and forgiveness. In the words of Buddha--"To forgive is to set a prisoner free and realize that prisoner was you."

Tina Maschi is a Public Voices Fellow with [the Op-Ed Project](#).

For more on aging in the criminal justice system, see [here](#).

NEIL ABERCROMBIE  
GOVERNOR



# TESTIMONY

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ADMINISTRATOR

STATE OF HAWAII  
**HAWAII PAROLING AUTHORITY**  
1177 Alakea Street, First Floor  
Honolulu, Hawaii 96814

No. \_\_\_\_\_

TESTIMONY ON SENATE BILL 72

RELATING TO PUBLIC SAFETY

BY

HAWAII PAROLING AUTHORITY  
Bert Y. Matsuoka, Chairman

Senate Committee on Public Safety, Intergovernmental and Military Affairs

Senator Will Espero, Chair  
Senator Roselyn H. Baker, Vice Chair

Tuesday, January 29, 2013; 2:50 p.m.  
State Capitol, Conference Room 224

Chair Espero, Vice Chair Baker, and Members of the Committee:

The Hawaii Paroling Authority (HPA) supports the intent of this Senate Bill 72, which seeks to broaden the criteria that the HPA follows to consider inmates for medical release.

While the HPA defers to the Department of Public Safety (PSD) for the majority of the provisions of this measure, the Authority is concerned that requests from inmates and/or their representative to the HPA needlessly delays the process.

As all requests will need to be reviewed by PSD, it would be prudent for all requests be made directly to PSD to expedite the process.

Thank you for the opportunity to provide testimony on Senate Bill 72.



# NATIVE HAWAIIAN LEGAL CORPORATION

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**SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL,  
AND MILITARY AFFAIRS**

Senator Will Espero, Chair

Senator Rosalyn Baker, Vice Chair

Tuesday, January 29, 2013

Conference Room 224

2:50 PM

RE: SB 72

Dear Chair Espero Vice Chair Baker, and committee members:

Aloha. My name is Moses K. N. Haia III. I am the executive director of the Native Hawaiian Legal Corporation. The Native Hawaiian Legal Corporation strongly supports SB 72. The purpose of the bill is to provide compassionate release for elderly, terminally ill, and profoundly debilitated inmates who do not pose a danger to public safety. In 2011 the Native Hawaiian Legal Corporation handled a compassionate release case on behalf of a 67-year old Native Hawaiian gentleman who had been in prison for 41 years and was dying of end stage liver disease. That experience confirmed for us that a fair, efficient, and transparent procedure is needed to ensure that inmates who are suffering from conditions such as cancer, kidney failure, and end stage liver disease will have the opportunity to receive appropriate end of life care and die surrounded by their families rather than alone in prison. SB 72 will fairly and efficiently provide that opportunity. We strongly support SB 72 and urge you to pass it.

Mahalo for allowing me to testify.

*Services made possible with major funding from the Office of Hawaiian Affairs.*

LATE

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Lisa Jaramillo	Individual	Support	No