

SCR 193/SR 147

Measure Title:

**REQUESTING THE DEPARTMENT OF PUBLIC SAFETY
AND THE HAWAII PAROLING AUTHORITY TO CREATE
A TWO-YEAR PILOT PROGRAM FOR MEDICAL OR
COMPASSIONATE RELEASE OF CERTAIN ILL,
DISABLED, AND GERIATRIC INMATES WHO POSE A
LOW RISK TO PUBLIC SAFETY.**

NEIL ABERCROMBIE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY

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TESTIMONY ON SENATE CONCURRENT RESOLUTION (SCR) 193 AND
SENATE RESOLUTION (SR) 147

Ted Sakai, Director
Department of Public Safety

Senate Committee on Public Safety, Intergovernmental and Military Affairs

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

Senate Committee on Health
Senator Josh Green, Chair
Senator Rosalyn H. Baker, Vice Chair

Senate Committee on Human Services
Senator Suzanne Chun Oakland, Chair
Senator Josh Green, Vice Chair

Thursday, March 28, 2013, 1:15 p.m.
State Capitol, Conference Room 16

Chairs Espero, Green, Chun Oakland, Vice Chairs Baker and Green, and
Members of the Committee:

The Department of Public Safety (PSD) **supports the intent** of SCR 193/
SR 147 requesting PSD and the Hawaii Paroling Authority to create a two-year
pilot program for medical or compassionate release of certain ill, disabled, and
geriatric inmates, who pose a low risk to public safety. The existing PSD Medical
Release Policy and Procedures presently provides the PSD Physicians the
opportunity to request a Director's recommendation for medical release for all
cases that meet the criteria described in both SCR 193/ SR 147.

SCR 193/SR 147 would create an additional avenue for inmates or their
representatives to file such a request. If PSD receives such a request, we would

have twenty days to submit a report to the Hawaii Paroling Authority. We would be willing to entertain such requests as part of a pilot program. However, we are concerned that twenty days may not be enough time for us to comply with all of the requirements set forth in these resolutions. Medical staff may not be available to conduct the evaluations, as they may be focused on other pressing matters. As such, we ask for more flexibility in this pilot study.

The Department would like to clarify the statistics cited in both SCR 193 and SR 147. Of the (2009-2011) thirty-seven requests for compassionate release recommendations submitted by the PSD Physicians, the PSD Director disapproved fifteen requests due to public safety issues. The remaining twenty-two requests were approved. The PSD Director sent recommendations of these approved cases to the HPA, where fourteen were granted medical releases. The eight cases that were not granted medical releases did not meet the criteria set forth in the HPA Administrative Rules. Upon further review of these cases, the obstacle in being able to provide an appropriate compassionate medical release were these Administrative Rules.

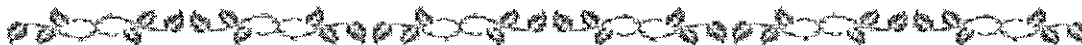
The PSD Medical Release Policy and Procedure presently provides the means and criteria in which PSD Physicians can request medical releases based on their professional opinion, in the best interest of the patient and their families. We would be willing to afford inmates and their representatives with an additional avenue on a pilot basis, so long as we are not constrained by time deadlines that we may not be able to meet.

Thank you for this opportunity to testify.

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS

Sen. Will Espero, Chair

Sen. Rosalyn Baker, Vice Chair

COMMITTEE ON HEALTH

Sen. Josh Green, Chair

Sen. Rosalyn Baker, Vice Chair

COMMITTEE ON HUMAN SERVICES

Sen. Suzanne Chun Oakland, Chair

Sen. Josh Green, Vice Chair

Thursday, March 28, 2013

1:15 p.m.

Room 016

SUPPORT for SCR 193/SR 147- COMPASSIONATE RELEASE PILOT PROGRAM

Aloha Chairs Espero, Green, & Chun Oakland and Members of the Committees!

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.

SCR 193/SR 147 requests the Department of Public Safety and the Hawaii Paroling Authority to create a two-year pilot program for medical or compassionate release of certain ill, disabled, and geriatric inmates who pose a low risk to public safety.

Community Alliance on Prisons is in strong support of this measure requesting a pilot program for compassionate release of sick and/or elderly incarcerated persons as is the medical community, research organizations, and the U.S. Bureau of Justice.

In fact, after the release of a report entitled "The Answer is No"¹, the Bureau of Prisons now says it will eliminate the regional office review, ensuring that prisoners who wardens agree deserve early release can have their cases go directly to Washington.

¹ THE ANSWER IS NO Too Little Compassionate Release in US Federal Prisons, Human Rights Watch, FAMM. ISBN: 1-56432-969-0, November 2012. <http://www.hrw.org/reports/2012/11/30/answer-no-0>

The Annals of Internal Medicine²

"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 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 Watch³

"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 Statistics⁴

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.

A compelling story in Mother Jones⁵ 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,

² 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>

³ OLD BEHIND BARS The Aging Prison Population in the United States, January 2012,
http://www.hrw.org/sites/default/files/reports/usprisons0112webwcover_0.pdf

⁴ 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.

⁵ *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>

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. ...

Department of Public Safety Compassionate Release Statistics 2009-2011⁶

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.

Every day a person must wait to be released from prison to die matters.

Community Alliance on Prisons respectfully asks the committee to pass SCR 193/SR 147. 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 whose prison health care system is under federal receivership. 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.

⁶ Department of Public Safety 2009 -2011 Compassionate Release Statistics

SCR193

Submitted on: 3/23/2013

Testimony for PSM/HTH/HMS on Mar 28, 2013 13:15PM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Shannon Rudolph	Individual	Support	No

SCR193

Submitted on: 3/25/2013

Testimony for PSM/HTH/HMS on Mar 28, 2013 13:15PM in Conference Room 016

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

Comments: Dear Chairs Espero, Green, Chun; Vice Chairs Baker, Green, and Committee Members of PSM, HTH, HMS: Thank you for the opportunity to submit testimony on SCR193/147, the Compassionate Release Pilot Program. Keeping inmates who have debilitating diseases creates hardship for the families who worry about their loved ones in prison, and is costly. As we all know, there are inadequate number of physicians available to treat all the incarcerated individuals. The prisons are not equipped with the wide range of medication available on the "outside." Being with loved ones to care for them would benefit both the state and their families. Mahalo and Aloha, elaine funakoshi