

DAVID Y. IGE  
GOVERNOR



STATE OF HAWAII  
**HAWAII PAROLING AUTHORITY**  
1177 Alakea Street, First Floor  
Honolulu, Hawaii 96813

EDMUND "FRED" HYUN  
CHAIR

JOYCE K. MATSUMORI-HOSHIJO  
MICHAEL A. TOWN  
ANNELLE C. AMARAL  
FITUINA F. TUA  
MEMBERS

TOMMY JOHNSON  
ADMINISTRATOR

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

TESTIMONY ON HOUSE BILL 629, HD2  
A BILL FOR AN ACT RELATING TO MEDICAL RELEASE  
BY  
HAWAII PAROLING AUTHORITY  
Edmund "Fred" Hyun, Chairman

Committee on Public Safety, Intergovernmental and Military Affairs  
Senator Clarence K. Nishihara, Chair  
Senator Glenn Wakai, Vice Chair

Tuesday, March 19, 2019 – 1:35 p.m.  
State Capitol, Conference Room 229

Chair Nishihara, Vice Chair Wakai, and Members of the Committee:

The Hawaii Paroling Authority (HPA) supports the intent of this House Bill 629, HD2 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 most of the provisions outlined in this measure, the Authority is concerned that requests from inmates and/or their representative sent directly to the HPA needlessly delays the process. All requests for medical release requests received by the HPA from inmates or the inmate's representative would need to be referred to PSD for review and completion of the medical release plan. Therefore, all medical release requests should be reviewed by PSD prior to forwarding to HPA.

Also, clarification regarding the proposed medical release hearings process and timeline are needed. The PSD and HPA already have procedures in place to address medical release consideration, which includes HPA's proposed amendments to this agency's Administrative Rules. In part, the proposed amendments create identical language for medical release consideration as outlined in PSD's Policy COR.10.1G.11 (Medical Releases). As written, this measure is in contravention to HRS 706-670 (Parole procedures; release on parole; terms of parole, recommitment, and reparole; final unconditional release) as it relates scheduling initial parole release consideration hearings.

Thank you for the opportunity to provide testimony on House Bill 629, HD2.



**HB629 HD2  
RELATING TO MEDICAL RELEASE**

Senate Committee on Public Safety, Intergovernmental, and Military Affairs

March 19, 2019

1:35 p.m.

Room 229

The Office of Hawaiian Affairs **SUPPORTS** HB629 HD2, which establishes streamlined guidelines and clarifies conditions for the compassionate release of prisoners who are disabled, senescent, or suffering from debilitating or terminal illness. This measure would facilitate the humane reunion of offenders who pose little to no risk to society with their 'ohana and community, while reducing the costs of prison overcrowding to the state, taxpayers, and other inmates.

In OHA's 2010 study on the disparate treatment of Native Hawaiians in the criminal justice system, OHA recommended that the Hawai'i Paroling Authority "release older people from prison who are generally considered to be low risk, and utilize Hawai'i's medical parole policies to the fullest extent possible."<sup>1</sup> This recommendation sought to reduce to the overrepresentation of Native Hawaiians in prison and provide relief to the burdens of overcrowded facilities and the continental relocation of pa'ahao; OHA's report noted that "an overall reduction in the number of people in prison will support efforts to reduce racial disparities" identified both in our report, as well as by the Native Hawaiian Justice Task Force.<sup>2</sup> **OHA appreciates and supports this measure as a long awaited step towards the implementation of our recommendation.**

OHA notes that this measure would further address findings in the recently published report by the HCR85 Task Force on prison reform. The HCR85 Task Force report expressed concerns regarding the exorbitant healthcare costs of aging prisoners, and the state's lack of capacity to handle the rapidly increasing aging population in our prisons.<sup>3</sup> Accordingly, facilitating the medical release of such individuals would ease a significant burden on taxpayers, while reducing the strain on prison facilities and other resources presented by overcrowding, and allowing more resources to be invested in programs and services for prisoner rehabilitation, reentry, and recidivism prevention. Insofar as the supervised parole of elderly, sick, and dying pa'ahao presents little to no risk to the public, the continued costly incarceration of this population cannot be justified both from either a budgetary or a humane approach.

Therefore, OHA urges the Committee to **PASS** HB629 HD2. Mahalo for the opportunity to testify on this important measure.

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<sup>1</sup> THE OFFICE OF HAWAIIAN AFFAIRS, THE DISPARATE TREATMENT OF NATIVE HAWAIIANS IN THE CRIMINAL JUSTICE SYSTEM 81 (2010), available at

[http://www.oha.org/wp-content/uploads/2014/12/ir\\_final\\_web\\_rev.pdf](http://www.oha.org/wp-content/uploads/2014/12/ir_final_web_rev.pdf).

<sup>2</sup> See generally, OFFICE OF HAWAIIAN AFFAIRS, NATIVE HAWAIIAN JUSTICE TASK FORCE REPORT (2012), available at [http://www.oha.org/wp-content/uploads/2012NHJTF\\_REPORT\\_FINAL\\_0.pdf](http://www.oha.org/wp-content/uploads/2012NHJTF_REPORT_FINAL_0.pdf).

<sup>3</sup> HCR 85 TASK FORCE, CREATING BETTER OUTCOMES, SAFER COMMUNITIES: FINAL REPORT OF THE HOUSE CONCURRENT RESOLUTION 85 TASK FORCE ON PRISON REFORM TO THE HAWAII LEGISLATURE 7 (2018), available at [https://19of32x2yl33s8o4xza0gf14-wpengine.netdna-ssl.com/wp-content/uploads/HCR-85-Task-Force-on-Prison-Reform\\_Final-Report\\_12.28.18.pdf](https://19of32x2yl33s8o4xza0gf14-wpengine.netdna-ssl.com/wp-content/uploads/HCR-85-Task-Force-on-Prison-Reform_Final-Report_12.28.18.pdf) (citing a 2011 study revealing that health care costs for a few California prisoners averaged nearly \$2 million per prisoner).

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

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DWIGHT K. NADAMOTO  
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ACTING FIRST DEPUTY  
PROSECUTING ATTORNEY



**THE HONORABLE CLARENCE K. NISHIHARA, CHAIR  
SENATE COMMITTEE ON PUBLIC SAFETY,  
INTERGOVERNMENTAL, AND MILITARY AFFAIRS  
Thirtieth State Legislature  
Regular Session of 2019  
State of Hawai'i**

March 19, 2019

**RE: H.B. 629, H.D. 2; RELATING TO MEDICAL RELEASE.**

Chair Nishihara, Vice-Chair Wakai, and members of the Senate Committee on Public Safety, Intergovernmental and Military Affairs, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in opposition to H.B. 629, H.D. 2.

The purpose of H.B. 629, H.D. 2, is to establish and implement policies and procedures in which inmates may be considered for medical release. Currently, the Department of Public Safety maintains Policy COR.10.1G.11, which has been in effect since December 29, 2014. This 2014 policy supersedes a similar administrative directive that had been in effect since February 2, 2011, which establishes administrative policies and procedures regarding the medical release of inmates (available online at <http://dps.hawaii.gov/wp-content/uploads/2015/10/COR.10.1G.11.pdf>). As adopted, Policy COR.10.1G.11 adequately addresses the purpose, definitions, policies, procedures and scope regarding medical release of inmates. Thus, the passage of H.B. 629, H.D. 2, to codify such procedures for medical release of inmates is unnecessary, duplicative and moot at this time.

For all the reasons above, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes the passage of H.B. 629, H.D. 2. Thank you for the opportunity to testify on this matter.

# COMMUNITY ALLIANCE ON PRISONS

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## COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL & MILITARY AFFAIRS

Senator Clarence Nishihara, Chair

Senator Glenn Wakai, Vice Chair

Tuesday, March 19, 2019

1:35 PM

Room 229

### STRONG SUPPORT - HB 629 HD2 - COMPASSIONATE RELEASE

Aloha Chairs Nishihara and Rhoads, Vice Chair Wakai 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 in Hawai'i for more than two decades. This testimony is respectfully offered on behalf of the families of **ASHLEY GREY, DAISY KASITATI, JOEY O'MALLEY, JESSICA FORTSON AND ALL THE PEOPLE WHO HAVE DIED UNDER THE "CARE AND CUSTODY" OF THE STATE** as well as the approximately 5,500 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety on any given day. We are always mindful that more than 1,600 of Hawai'i's imprisoned people are serving their sentences abroad thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

Community Alliance on Prisons is in strong support of HB 629 HD2 and we respectfully ask that the committee consider a manini amendment to clarify this bill. Substituting the term that is defined "debilitating disease or illness" in place of the undefined "seriously debilitating and irreversible mental or physical condition" would lend clarity to the bill and it removes the words "seriously" and "irreversible" which could prove to be a problem in some cases.

**Amend §353 (a) (2) on page 4, line 8 which now reads:** (a) An inmate may be considered for medical release if the inmate:  
(2) Has a seriously debilitating and irreversible mental or physical condition that impairs the inmate's functional ability to the extent that they would be more appropriately managed in a community setting;

**CHANGE TO:**

(a) An inmate may be considered for medical release if the inmate:

(2) Has a ~~seriously debilitating and irreversible mental or physical condition~~ **debilitating disease or illness** that impairs the inmate's functional ability to the extent that they would be more appropriately managed in a community setting;

Community Alliance on Prisons urges the committee to pass this important bill that demonstrates our community values of aloha and malama. Too many people have been dying in custody alone, despite their families wanting to take care of them. This is NOT aloha.

Mahalo for this opportunity to testify

*Wisdom, compassion, and courage  
are the three universally recognized moral qualities of men.  
Confucius*

## TESTIMONY IN SUPPORT OF HB 629, HD 2

TO: Senate Committee on Public Safety, Intergovernmental, & Military Affairs

FROM: Nikos Leverenz  
Grants, Development & Policy Manager

DATE: February 21, 2019 (12:30 PM)

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Chair Nishihara, Vice-Chair Wakai, and Members of the Committee:

Hawai'i Health & Harm Reduction Center (HHRC) **strongly supports** HB 629, HD 2, which would create a medical release program within the Department of Public Safety for certain ill, disabled, and geriatric inmates. We also offer recommended changes that can help the Legislature ensure that its intent to provide “compassionate parole” for terminally ill prisoners is operationally met by the Department of Public Safety in a timely fashion, thereby saving the heightened costs of providing elevated levels of medical care within prison (cf. Med-QUEST funded community-based care).

As a general matter, the scope of this bill is far too narrow when compared to the compassionate release provisions of the First Step Act (FSA), passed by Republican congressional majorities and signed into law by President Trump late last year.

***Timely Notification of Diagnosis & Eligibility to Attorneys, Partners, and Family.*** The FSA provides that the federal Bureau of Prisons (BOP) must provide notification of a prisoner's terminal diagnosis within 72 hours to that prisoner's attorney, partner, and family, and inform them that they may submit a request for compassionate release. Further, a visit must be provided within seven days. BOP staff must also assist the prisoner with a release request if asked to do so by the prisoner or their attorney, partner, or family member. BOP must also process a request for compassionate release within 14 days. Strong notification and processing requirements in Hawai'i law are needed to help ensure that those who have received a terminal medical diagnosis – and their families – can effectively avail themselves of this law in a timely and meaningful fashion. The failure of the Legislature to provide specific timeline guidance apart from the ten days referred to in the current version of the bill will foreseeably result in delays at the Department of Public Safety. More direct legislative guidance regarding the timely notification of prisoner's family and their attorney and facilitation of in person visits is needed.

***The Right to Court Proceedings.*** The FSA gives prisoners *the right to go to court if they can demonstrate that they have tried and failed to convince BOP to do so on their behalf.* A similar provision in Hawai'i law would help ensure that the Legislature's intent to enact what amounts to "compassionate parole" for terminally ill prisoners – and save the costs of providing elevated medical care in the prison setting – is not frustrated by undue bureaucratic delays or unarticulated resistance by the Hawai'i Paroling Authority. For terminally ill persons time is of unique essence. The ability to file a motion in court will ensure that terminally ill prisoners can effectively utilize this law.

In short, this bill should be strengthened by incorporating some of the most salutary features of the federal First Step Act. Under the FSA, those who are eligible for compassionate release include those over the age of 65 who have served the greater of 10 years or 75 percent of their sentence; those whose minor children are impacted by the death or incapacitation of their caregiver; and those whose spouse or registered partner are incapacitated by a serious injury, debilitating illness, or cognitive defect.

Even if this Legislature decides to offer "compassionate parole" only to terminally ill inmates, it should clearly consider expanding eligibility to elderly prisoners and those who have exigent family circumstances.

Incarceration is latently injurious to a person's health. Last month, the Robert Wood Johnson Foundation [issued a report that surveyed the deleterious long-term effects of incarceration on a person's health:](#)

People who are incarcerated face greater chances for chronic health conditions, both while confined and long after their release. Incarceration exposes people to a wide range of conditions, such as poor sanitation and ventilation and solitary confinement, that are detrimental to long-term physical and mental health.

HHHRC works with many individuals who are impacted by poverty, housing instability, and other social determinants of health. Many have behavioral health problems, including those relating to substance use and underlying mental health conditions. Incarceration for any length of time for those with undiagnosed or undertreated behavioral health conditions compounds human suffering and is neither wise nor compassionate public policy.

Thank you for the opportunity to testify on this measure.

**HB-629-HD-2**

Submitted on: 3/16/2019 1:32:10 PM

Testimony for PSM on 3/19/2019 1:35:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Chris Santomauro	Individual	Support	No

Comments:



**ROBERT K. MERCER**  
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March 17, 2019

TO: Committee on Public Safety, Intergovernmental, and Military Affairs  
RE: HB 629, HD 2  
HEARING DATE: Tuesday, March 19, 2019  
TIME: 1:35 p.m.  
CONF. ROOM: 229  
POSITION: **STRONG SUPPORT**

Dear Chair Nishihara, Vice Chair Wakai, and Members of the Committee:

I strongly support HB 629, HD 2. It is a clear and sensible medical release bill that will save the state money by releasing inmates who do not pose a danger to society and who often require intensive and costly care. It will also bring a vitally important element of compassion and mercy into our correctional system .

HB 629 incorporates all of the recommended provisions set out by the country's leading medical release experts,<sup>1</sup> including:

1. Procedures that are transparent and evidence-based;
2. An advocate to help inmates navigate the medical release process and if necessary represent incapacitated prisoners;
3. A "fast-track" option for the evaluation of rapidly dying prisoners; and
4. A clear decision process with appropriate deadlines for completing tasks and making decisions.

Hawai'i currently has more than 650 prisoners age 55 or older.<sup>2</sup> There is a growing body of evidence that at around age 55, prisoners start to develop health problems associated with people much older than 55 and consume a disproportionate share of the cost of prison

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<sup>1</sup> See BA Williams, RL Sudore, R Greifinger, and RS Morrison. "Balancing Punishment and Compassion for Seriously Ill Prisoners." *Ann Intern Med.* 2011;155:122-126.

<sup>2</sup> PSD System Wide Data, July 2018 (As of July 31, 2018, there were 661 inmates age 55 or older in Hawai'i's correctional system).

health care.<sup>3</sup> A 2011 article in the *Annals of Internal Medicine* reported that the average cost of health care for just 21 seriously ill prisoners in California (0.01% of the state's prison population) exceeded \$1.97 million per prisoner.<sup>4</sup> Removing terminally ill and seriously debilitated prisoners from the correctional system and getting them into a care home or hospice will shift much of the cost of caring for these prisoners to Medicaid, and that will save the state a significant amount of money. It will also reduce the State's exposure to medical negligence cases that might arise from trying to manage complex medical conditions in the prison setting.

Thank you for the opportunity to comment on this bill.

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<sup>3</sup> Balancing Punishment and Compassion, fn. 1 supra.

<sup>4</sup> Ibid.

**HB-629-HD-2**

Submitted on: 3/18/2019 9:07:15 AM

Testimony for PSM on 3/19/2019 1:35:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Diana Bethel	Individual	Support	No

Comments:

HB629 HD2 would allow the release of incarcerated persons who are sick and need medical assistance.

This is the compassionate thing to do and is consistent with the Aloha spirit of Hawaii.

Sick or dying inmates must be released based on the recommendations of medical staff.

An incarcerated person's advocate is allowed to act on their behalf if they are too sick to advocate for themselves.

Compassionate release would also protect people who are unable to care for themselves and are being abused by others, as has been reported in the case of a man with Alzheimers at the Halawa prison.

Compassionate release is urgently required because the Department of Public Safety is incapable of providing the level of care necessary for sick, incapacitated, and dying patients.

## nishihara1 - Venus

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**From:** Jeanne Hua <jhua@bates.edu>  
**Sent:** Sunday, March 17, 2019 12:06 PM  
**To:** PSMTestimony  
**Subject:** Testimony in SUPPORT of HB629

Aloha Chair Nishihara,

Please support HB629 and give ill, disabled, and geriatric inmates who pose a low risk to public safety a chance to make the best of their final days with a medical release program within the Department of Public Safety.

Mahalo,

**From:** [Hunter Heavilin](#)  
**To:** [PSMTestimony](#)  
**Subject:** Testimony in SUPPORT of HB629  
**Date:** Monday, March 18, 2019 6:33:14 AM

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Aloha Chair Nishihara,

Please support HB629 and give ill, disabled, and geriatric inmates who pose a low risk to public safety a chance to make the best of their final days with a medical release program within the Department of Public Safety.

Mahalo,  
Hunter Heavilin



**HB-629-HD-2**

Submitted on: 3/18/2019 11:53:47 AM

Testimony for PSM on 3/19/2019 1:35:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Christine Weger	Individual	Support	No

Comments:

Compassionate release serves two worthy purposes:

(1) obviously, having medical standards written into the statute is a better alternative than *ad hoc*, and perhaps arbitrary decision-making by prison officials.

(2) releasing low-risk inmates who can't be appropriately cared for in prison/jail relieves our State system of some of the current criticism for inadequate resources/treatment. If they are low-risk, incapacitated and/or dying, there are community resources better equipped to handle them.

Mahalo for listening,

Christine Weger, Attorney at Law

**HB-629-HD-2**

Submitted on: 3/18/2019 11:53:25 PM

Testimony for PSM on 3/19/2019 1:35:00 PM

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Carrie Ann Shirota	Testifying for Hawai'i Justice Coalition	Support	No

Comments:

Aloha,

Hawai'i Justice Coalition is comprised of organizations and individuals united in our work to reduce the number of people incarcerated in Hawai'i's jails and prisons. We seek to shift the state's spending priorities away from mass criminalization and incarceration towards rehabilitation, education, restorative justice, health and human services. We believe that comprehensive criminal justice reform promotes public safety, makes responsible use of our resources, and builds healthy communities.

Given the high rates of suicide in Hawaii's correctional facilities compared to other jurisdictions, and the recognition that best practices can reduce and often eliminate suicides behind bars, we support HB 1416 as it would create a 13-member commission composed of experts on suicide prevention to be placed within the department of health for administrative purposes. The suicide prevention commission shall examine, evaluate, and determine methods to improve education, awareness, support services, and inmate outreach to best prevent suicides in Hawaii's correctional facilities.

Please pass this measure!

**HB-629-HD-2**

Submitted on: 3/19/2019 3:38:19 AM

Testimony for PSM on 3/19/2019 1:35:00 PM

**LATE**

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Lorenn Walker	Testifying for Hawai'i Friends of Restorative Justice	Support	No

Comments:

Dear Committee Members,

Mahalo for your public service.

We support this bill with the suggested amendment Robert Merce made in his February 20, 2019 testimony to: "delete the phrase seriously debilitating and irreversible mental or physical condition and insert the defined phrase "debilitating disease or illness" in its place so that §353(a)(1)-(2) would read:

§383- Medical release program; authority to release; rules. An inmate may be considered for medical release if the inmate:

...

(2) Has a debilitating disease or illness that seriously debilitating and irreversible mental or physical condition that impairs the inmate's functional ability to the extent that they would be more appropriately managed in a community setting;"

Mahalo again and please pass this bill.

Aloha, Lorenn Walker, Hawai'i Friends of Restorative Justice





LATE

STATE OF HAWAII  
**DEPARTMENT OF PUBLIC SAFETY**  
919 Ala Moana Boulevard, 4th Floor  
Honolulu, Hawaii 96814

**NOLAN P. ESPINDA**  
DIRECTOR

**Maria C. Cook**  
Deputy Director  
Administration

**Jodie F. Maesaka-Hirata**  
Deputy Director  
Corrections

**Renee R. Sonobe Hong**  
Deputy Director  
Law Enforcement

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

**AMENDED**  
**WRITTEN TESTIMONY ONLY**

TESTIMONY ON HOUSE BILL 629, HOUSE DRAFT 2  
RELATING TO MEDICAL RELEASE.

by  
Nolan P. Espinda, Director  
Department of Public Safety

Senate Committee on Public Safety, Intergovernmental, and Military Affairs  
Senator Clarence K. Nishihara, Chair  
Senator Glenn Wakai, Vice Chair

Tuesday, March 19, 2019; 1:35 p.m.  
State Capitol, Conference Room 229

Chair Nishihara, Vice Chair Wakai, and Members of the Committee:

The Department of Public Safety (PSD) supports House Bill (HB) 629, House Draft (HD) 2, which codifies the ongoing Medical Release program, in which PSD assesses and refers qualified inmates to the Hawaii Paroling Authority for possible medical release and which has existed in practice for several years and is now in the process of being promulgated through the Administrative Rules procedure.

PSD notes that although HB 629, HD 2 deleted the language granting a presumption of eligibility to receive medical assistance to inmates who have been granted a medical release, the Department has procedures in place to provide these and other exiting inmates with medical coverage. Since 2016, the Department of Human Services MedQuest Division has partnered with PSD to facilitate the Medicaid application process and to provide initial medical coverage while the application is pending, allowing the exiting inmate to receive medical services upon

Amended Testimony on HB 629, HD 2  
Senate Committee on Public Safety,  
Intergovernmental, and Military Affairs  
March 19, 2019  
Page 2

release. This also applies to those who are approved for Medical Release by the Hawaii Paroling Authority.

Further, an analysis of the costs made by the Health Care Division revealed an estimated seven (7) positions and \$2.1 million will be needed for each year of the fiscal biennium to effectuate the purposes of this bill.

Thank you for the opportunity to present this testimony.