



HB629 HD2 SD1
RELATING TO MEDICAL RELEASE
Senate Committee on Judiciary
Senate Committee on Ways and Means

April 3, 2019

10:00 a.m.

Room 211

The Office of Hawaiian Affairs **SUPPORTS** HB629 HD2 SD1, 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.”¹ 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.² **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.³ 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 from either a budgetary or a humane approach.

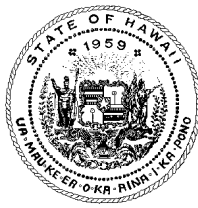
Therefore, OHA urges the Committees to **PASS** HB629 HD2 SD1. Mahalo for the opportunity to testify on this important measure.

¹ 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.

² *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.

³ 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‘I 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 (citing a 2011 study revealing that health care costs for a few California prisoners averaged nearly \$2 million per prisoner).

DAVID Y. IGE
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NOLAN P. ESPINDA
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Renee R. Sonobe Hong
Deputy Director
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STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

No. _____

TESTIMONY ON HOUSE BILL 629, HOUSE DRAFT 2, SENATE DRAFT 1
RELATING TO MEDICAL RELEASE.

by

Nolan P. Espinda, Director
Department of Public Safety

Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Glenn Wakai, Vice Chair

Senate Committee on Ways and Means
Senator Donovan Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair

Wednesday, April 3, 2019; 10:00 a.m.
State Capitol, Conference Room 211

Chairs Rhoads and Dela Cruz, Vice Chairs Wakai and Keith-Agaran, and Members of the Committees:

The Department of Public Safety (PSD) supports House Bill (HB) 629, House Draft (HD) 2, Senate Draft 1, 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.

The Medical Release program proposed in this bill requires the Department to: 1) identify qualified inmates through medical and psychiatric evaluation, and 2) develop a medical release plan that provides for continuity of care. PSD notes that the measure also enables an inmate or inmate representative to initiate a request for a medical release.

The preparation of the medical report and medical release plan necessitates the careful and timely evaluation and research on each subject by trained professional staff. Presently, physician and psychiatry staffing is insufficient to comply with the bill's requirements. Moreover, when physician and/or psychiatry staff are occupied with the evaluation, research, and report writing, the result is a backlog in patient care, leading to increasing costs due to worsening of untreated patient conditions over time and increasing expenditures of already limited staffing resources required to attend to more emergent situations and to grievances and other legal complaints. With the passage of HB 629, HD 2, SD 1, the number of requests for medical releases can only be expected to increase.

The Department, therefore, respectfully requests that an appropriation of \$2.1 million and the addition of 7.0 FTE professional staffing positions for each year of the fiscal biennium be inserted in order to effectuate the purposes of this bill. The following provides a summary of current and additional requested physician and psychiatrist positions:

Position	Current FTE	Additional Requested FTE
Physician Manager	0.0	1.0
Physician	5.5	1.5
Psychiatrist Manager	0.0	1.0
Psychiatrist	4.5	1.5

In addition to clinical and administrative duties, the requested Physician manager (1.0 FTE) and Psychiatrist Manager (1.0 FTE) positions would be responsible for providing oversight, coordination, and review of the statewide medical release program. An additional 1.5 RTE Physician and 1.5 FTE Psychiatrist positions would be needed to meet the requirements of the medical release program and avoid the resultant clinic backlog.

PSD further 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

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

Thank you for the opportunity to present this testimony.

DAVID Y. IGE
GOVERNOR



EDMUND "FRED" HYUN
CHAIR

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

TOMMY JOHNSON
ADMINISTRATOR

No. _____

LATE

STATE OF HAWAII
HAWAII PAROLING AUTHORITY

1177 Alakea Street, First Floor
Honolulu, Hawaii 96813

TESTIMONY ON HOUSE BILL 629, HD2, SD1
A BILL FOR AN ACT RELATING TO MEDICAL RELEASE

BY

HAWAII PAROLING AUTHORITY
Edmund "Fred" Hyun, Chairman

Committee on Judiciary

Representative Karl Rhoads, Chair
Representative Glenn Wakai, Vice Chair

Committee on Ways and Means

Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice-Chair

Wednesday, April 3, 2019 – 10:00 a.m.
State Capitol, Conference Room 211

Chairs Rhoads and Dela Cruz, Vice Chairs Wakai and Keith-Agaran, and Members of the Committees:

The Hawaii Paroling Authority (HPA) supports the intent of this House Bill 629, HD2, SD1 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

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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, SD1.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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ACTING FIRST DEPUTY
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**THE HONORABLE KARL RHOADS, CHAIR
SENATE COMMITTEE ON JUDICIARY**

**THE HONORABLE DONOVAN M. DELA CRUZ, CHAIR
SENATE COMMITTEE ON WAYS AND MEANS**

**Thirtieth State Legislature
Regular Session of 2019
State of Hawai`i**

April 3, 2019

RE: H.B. 629, H.D. 2, S.D. 1; RELATING TO MEDICAL RELEASE.

Chair Rhoads, Chair Dela Cruz, Vice-Chair Wakai, Vice-Chair Keith-Agaran, member of the Senate Committee on Judiciary, and members of the Senate Committee on Ways and Means, 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, S.D. 1.

The purpose of H.B. 629, H.D. 2, S.D. 1, 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 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, S.D. 1, 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, S.D. 1. Thank you for the opportunity to testify on this matter.

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair

Senator Glenn Wakai, Vice Chair

COMMITTEE ON WAYS AND MEANS

Senator Donovan Delacruz, Chair

Senator Gilbert Keith-Agaran, Vice Chair

Wednesday, April 3, 2019

10:00 am

Room 211

STRONG SUPPORT w AMENDMENT for HB 629 HD2 SD1 - COMPASSIONATE RELEASE

Aloha Chairs Rhoads and Delacruz, Vice Chairs Keith-Agaran and 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 5,400 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 SD1 and we urge the committee to pass this important bill that demonstrates our community values of aloha and malama.

I remember being a guest in a class at the women's prison and meeting a woman with stage 4 lung cancer. One of the women asked the guard if she could fill the cooler with water because Carol was having difficulty breathing. The guard refused. This kind of inhumane treatment should never be excused. Finally, we found a bottle of water so Carol could have at least a bit of relief.

This terminally ill woman filed for compassionate relief and her family, who lived close by wanted her to spend her last days with them. She was not granted that option and died alone in prison. That incident is etched into my mind and makes my heart sore for all the incarcerated people **TOO MANY INCARCERATED PEOPLE** who die alone. This is NOT aloha.

Community Alliance on Prisons urges you to pass this important bill.

Mahalo for this opportunity to testify

TESTIMONY IN SUPPORT OF HB 629, HD 2, SD 1

TO: Chair Rhoads, Vice-Chair Wakai, and Senate Judiciary Committee
Chair Dela Cruz, Vice-Chair Keith-Agaran, and Senate Ways & Means Committee

FROM: Nikos Leverenz
Grants, Development & Policy Manager

DATE: April 3, 2019 (10:00 AM)

Hawai'i Health & Harm Reduction Center (HHRC) **strongly supports** HB 629, HD 2, SD 1, 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. Direct legislative guidance regarding the timely notification of a prisoner's family and their attorney regarding diagnosis and the facilitation of in person visits is much 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. Recently 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.

HHRC 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-SD-1

Submitted on: 4/2/2019 1:23:26 AM

Testimony for JDC on 4/3/2019 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Carl Bergquist	Testifying for Drug Policy Forum of Hawaii	Support	No

Comments:

HB-629-SD-1

Submitted on: 4/2/2019 9:31:57 AM

Testimony for JDC on 4/3/2019 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Testifying for O`ahu County Democrats Legislative Priorities Committee	Support	No

Comments:

The O`ahu County Democrats Legislative Priorities Committee supports HB 629, HD2, SD1, because of concern of how the Department of Public Safety should deal with aging and seriously ill prison inmates in need of special medical attention. Many states endorse early release for older and seriously ill prisoners who pose a low risk to public safety; therefore, the State of Hawai`i should follow their lead as these inmates are in need of special medical attention which cannot be provided while incarcerated.

Mahalo nui loa.

Meloidie Aduja

Chair, OCDLPC