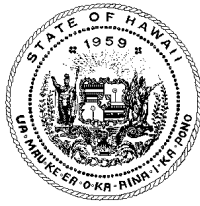


JOSH GREEN, M.D.
GOVERNOR



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
DEPARTMENT OF PUBLIC SAFETY
Ka 'Oihana Ho'opalekana Lehulehu
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TOMMY JOHNSON
DIRECTOR

Melanie Martin
Deputy Director
Administration

Michael J. Hoffman
Acting Deputy Director
Corrections

William F. Oku
Deputy Director
Law Enforcement

No. _____

TESTIMONY ON HOUSE BILL 824, HOUSE DRAFT 1
RELATING TO MEDICAL RELEASE.

By
Tommy Johnson, Director

House Committee on Judiciary & Hawaiian Affairs
Representative David A. Tarnas, Chair
Representative Gregg Takayama, Vice Chair

Wednesday, February 15, 2023; 2:00 p.m.
State Capitol, Conference Room 325 and via Video Conference

Chair Tarnas, Vice Chair Takayama, and Members of the Committees:

The Department of Public Safety (PSD) offers comments on House Bill (HB) 824, House Draft (HD) 1, which proposes to codify, in statute, a medical release program for certain ill, disabled, or impaired incarcerated individuals who pose a low risk to public safety. The proposed measure would alter the established and effective Medical Release Program that has existed in the policies and procedures of PSD and the Administrative Rules of the Hawai'i Paroling Authority (HPA) since December 2014.

EFFECTIVENESS OF CURRENT MEDICAL RELEASE PROGRAM

Chapter 353 of the Hawai'i Revised Statutes currently provides for an established and effective medical release program through the Hawai'i Administrative Rules, as specified in Chapter 700 of Title 23, and COR.10.1G.11 (Medical Release) of the Department's Policies and Procedures. The Department's Medical Release database demonstrates the effectiveness of the medical release program, with substantial program improvement since 2019. The table below shows PSD medical release applications submitted over the last seven years.

Year	Medical Release Applications
2022	5
2021	5
2020	22
2019	12
2018	0
2017	0
2016	3

The effectiveness of the current medical release program is attributed to Mr. Tommy Johnson, PSD Director and former HPA Parole and Pardons Administrator, and Mr. Edmund “Fred” Hyun, HPA Board Chairman, who initiated the collaborative working relationship with the newly appointed Corrections Health Care Administrator, beginning January 2, 2019.

Over the last four years, PSD embraced an active approach to the medical release program with a clear demonstration of effectiveness between the Departmental Medical Release policy and the Hawai'i Administrative Rules. HB 824, HD1, duplicates the four eligibility criteria for the medical release program, as defined in the Departmental Medical Release policy. These include:

1. Has a terminal illness with a predictably poor prognosis;
2. Has a seriously debilitating and irreversible mental or physical condition that impairs the inmate's functional ability to the extent that the inmate would be more appropriately managed in a community setting;
3. Is too ill or cognitively impaired to participate in rehabilitation or be aware of punishment; or
4. Has a disease or condition that requires a complexity of treatment or level of care that the department is unable to provide on a long-term basis.

Criteria 3, though not currently recognized in the Hawai'i Administrative Rules, has been found to be redundant and possibly unnecessary. The key point: the eligibility criteria for medical release as defined by the Department's Medical Release policy has been proven to meet the requirements of the Hawai'i Administrative Rules.

Despite the success of the PSD-HPA medical release program, identified areas for improvement include the following: a) guardianship procedures and b) housing. With the assistance of the Family Courts for the Judiciary, PSD, along with the Office of the Public Guardian, developed a process for cases requiring guardianship of inmates being considered for medical release. Although the collaborative process has shown progress, the limits of law and the comprehensive requirements of the process do not allow for expeditious relief in time-sensitive cases. HB 824, HD 1 does not resolve the guardianship issue.

The Department has also encountered challenges with the medical release program due to housing issues, which have proven to frustrate all stakeholders, because of the indefinite postponement of granted and approved medical releases. Two populations have been particularly difficult: a) sex offender and b) non-U.S. citizens. Attorney Robert Merce has been a champion for the PSD medical release program, voluntarily assisting the Department with housing for medical release cases. He, too, has experienced this shared difficulty with housing. HB 824, HD 1, does not resolve the housing issue. Like traffic, HB 824, HD 1, creates a hurry-up and wait scenario (i.e., even though an incarcerated individual might be granted and approved parole for medical reasons, the incarcerated individual would remain in custody indefinitely without the existence of housing in the community).

Page 6, subsection (h) reads: "The department shall adopt a fast-track procedure for the evaluation and release of rapidly dying prisoners; provided that the procedure shall be posted on the websites of the department and the Hawai'i paroling authority." Once an incarcerated individual has been identified as being eligible for medical release by the treating Provider, PSD currently proceeds expeditiously on all eligible cases to

request the release of incarcerated individuals due to medical reasons. In addition to the primary concern involving the condition of the incarcerated individual, other pressing factors (e.g., overcrowding, budget considerations), have influenced the urgent prioritization of the medical release process. *Due to the already existing protocol that fast-tracks all eligible cases, to the extent possible, and the ongoing issue with housing in the community that makes the fast-track release of rapidly dying prisoners impossible, PSD respectfully requests deletion of subsection (h).*

MALFICIENCE OF HB 824, HD 1

While the Department appreciates the support from all stakeholders in this attempt to improve the PSD medical release program, HB 824, HD 1, in truth, **harms** the medical release program through the inclusion of an expansion of unqualified requestors with the resultant unwarranted urgency in ineligible cases and a painful waste of limited physician and fixed budget resources. As an advocate for the healthcare of all individuals in our custody, the Department cannot support the proposed measure, which would cause unneeded and unnecessary delays in health care services for incarcerated individuals with serious health care needs and respectfully requests the following amendments.

Page 4, subsection (b) reads: "Requests for medical release may be initiated by the director, an inmate, or an inmate's representative." *PSD respectfully requests subsection (b) to read as follows: "Requests for medical release may be initiated by the director, an inmate, or an inmate's representative when the request is accompanied by the recommendation for medical release by a physician who is licensed to practice medicine in the State of Hawai'i."*

PSD is concerned that HB 824, HD 1, seeks to expand the medical release program by providing non-medically trained inmates or inmate representatives the opportunity to initiate requests for medical release, by submitting a simple written statement explaining the grounds for the requested release, where the inmate would reside if released, who would care for the inmate, and how the inmate plans to obtain

medical care, which PSD believes would significantly increase the number of applications for medical release. The Department's Medical Release policy effectively and reasonably resolves the expansion issue by requiring an inmate to submit a recommendation for medical release from a licensed medical doctor, pursuant to HRS 353.13.5.

The Department is also concerned with the requirement in HB 824, HD 1, for PSD to appoint an advocate for the inmate who requests medical release and is unable, due to incapacitation or debilitation, to advocate on the inmate's own behalf. Page 5, subsection (g) reads: "The director shall appoint an advocate for any inmate who requests medical release and is unable, due to incapacitation or debilitation, to advocate on the inmate's own behalf." The question of mental capacity is a legal decision and appointment for representation in such cases is legal matter initiated by the incarcerated individual's legal representative and appointment of a guardian ad litem (i.e., advocate), is determined by the court. *PSD respectfully requests deletion or modification of subsection (g) to be in compliance with legal processes and requirements.*

APPROPRIATIONS NEEDED TO SUPPORT HB 824

In order to comply with the revised requirements of HB 824, HD 1, the following provides an updated analysis of the resources needed for compliance. Anticipated staffing increases include a Physician (1.0 FTE) position, which would be responsible for providing oversight, coordination, and review of the statewide medical release program. As a component of the medical release program, HB 824, HD 1, also requires the development of a medical release plan for purposes of continuity of care. One barrier to the medical release plan process has been the absence of specialized nursing positions to provide case management and pursue guardianship for incapacitated inmates. Currently, nursing case management positions within the Health Care Division of the Department of Public Safety do not exist. An additional Advanced Practice

Registered Nurse II (1.0 FTE) position would be responsible for the development of the medical release plan, including serving as petitioner for guardianship when needed.

The table below shows the anticipated staffing increases that the implementation of HB 824, HD 1 would require. The total increase in payroll cost for the additional 2.0 FTE staffing requirement is estimated at \$368,996 each year, recurring. Should the Committee decide to advance the measure, PSD respectfully requests that it be amended to include an appropriation of sufficient funds to support the requirements of the revisions to the medical release program.

<u>Position</u>	<u>FTE</u>
Physician	1.0
<u>Advanced Practice R.N.</u>	<u>1.0</u>
Total FTE	2.0

Our physicians are extremely committed to their patients yet overwhelmed and overworked. As an example, one physician experienced a heart attack on a Saturday and returned to work on Monday, because he needed to attend to his patients and he did not want to backlog his caseload further. For similar reasons, another physician continues working well into the evening hours during the week and often works on her days off. As discussed above, the appropriations needed to support the medical release program would be entirely dependent on the specific features of the medical release program. The Department respectfully requests appropriation of the requested minimal staffing to support the proposed medical release program: 1.0 FTE Physician and 1.0 FTE Advanced Practice Registered Nurse II.

Thank you for the opportunity to provide comments on HB 824, HD1.

JOSH B. GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
HAWAII PAROLING AUTHORITY
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EDMUND "FRED" HYUN
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MILTON H. KOTSUBO
CAROL K. MATAYOSHI
MEMBERS

COREY J. REINCKE
ACTING ADMINISTRATOR

No. _____

TESTIMONY ON HOUSE BILL 824, HD 1
RELATING TO MEDICAL RELEASE

by
Edmund "Fred" Hyun, Chairman
Hawaii Paroling Authority

House Committee on Judiciary & Hawaiian Affairs
Representative David A. Tarnas, Chair
Representative Gregg Takayama, Vice Chair

Wednesday, February 15, 2023 – 2:00 p.m.
Conference Room 325 – State Capitol

Chair Tarnas, Vice Chair Takayama, and Members of the Committee:

The Hawaii Paroling Authority (HPA) offers comments on HB 824, HD 1, which proposes to codify, in statute, a medical release program for certain ill, disabled, or impaired incarcerated individuals who pose a low risk to public safety. The proposed measure would alter the established and effective Medical Release Program that has existed in the policies and procedures of the Department of Public Safety (PSD) and the Administrative Rules of the Hawaii Paroling Authority (HPA) since December 2014.

The current challenges with the medical release program are housing and servicing issues that frustrate all stakeholders since it delays or defers approved parole medical releases. Two populations are particularly difficult to place: (1) sex offenders and (2) non-US citizens.

HPA respectfully requests further discussion on this matter through the establishment of a focused working group. The HPA would also request and support additional staffing to support the existing medical release program.

Thank you for the opportunity to provide testimony on House Bill 824, HD 1.



STATE OF HAWAII
HAWAII CORRECTIONAL SYSTEM OVERSIGHT COMMISSION
235 S. Beretania Street, 16th Floor
HONOLULU, HAWAII 96813
(808) 587-4160

TO: The Honorable David A. Tarnas, Chair
The Honorable Gregg Takayama, Vice Chair
House Committee on Judiciary & Hawaiian Affairs

FROM: Mark Patterson, Chair
Hawaii Correctional System Oversight Commission

SUBJECT: House Bill 824 House Draft 1, Relating to Medical Release
Hearing: Wednesday, February 15, 2023; 2:00 p.m.
State Capitol, Room 325

Chair Tarnas, Vice Chair Takayama, and Members of the Committee:

The Hawaii Correctional System Oversight Commission (HCSOC, the Commission) **supports** House Bill 824 House Draft 1, relating to Medical Release within the Department of Public Safety for certain ill, disabled, or impaired inmates who pose low risk to public safety. Medical Release, sometimes referred to as Compassionate Release, allows inmates who have complex medical needs to spend their remaining days outside of jail or prison in the company of their family and friends. This is important as inmates with complex medical needs are not only some of the costliest individuals to house within the jails and prisons, but many are also the least likely (of the population) to pose any threat to society once released.

The Commission's mandate specifies that it is the Commission's duty to:

- Facilitate a correctional system transition to a rehabilitative and therapeutic model.
- Establish maximum inmate population limits for each correctional facility and formulate policies and procedures to prevent the inmate population from exceeding the capacity of each correctional facility.

The Commission believes that this bill will reduce the population, reduce costs to the Department, and elevate a level of humanity in corrections that would align with a rehabilitative and therapeutic model. To highlight the need of this bill, the Commission has broken down the current number of inmates housed in a medical infirmary or hospital and pulled the number of inmates ranging from ages 65-84. It is also important to note that within the past two months, **three elderly inmates have died in custody**: one individual was 73 years old, and the second individual was 87 years old, and the third individual was 74 years old. All three died while housed in the prison infirmary at the Halawa Correctional Facility (prison).

As of the date of this testimony, there are 13 individuals housed within a jail or prison infirmary, and four individuals hospitalized due to complex medical issues.

Facility	Number of Inmates in Medical Infirmary	Number of Inmates Currently Hospitalized
Hawaii Community Correctional Center (Jail)	0	1
Halawa Correctional Facility (Prison)	8	3
Oahu Community Correctional Center (Jail)	4	0
Women's Community Correctional Center (Prison)	1	0

Additionally, the Department of Public Safety currently houses 166 individuals who are between the ages of 65-84 years old.

Age	Number of Inmates
65-69 years	102
70-74 years	41
75-79 years	15
80-84 years	8
Total	166

The criminal justice system imprisons people to deter crime, punish those who commit crimes, protect the public, and rehabilitate those who will one day return home. The Commission believes that inmates should be released when they are too debilitated to commit further crimes, too compromised to benefit from rehabilitation, or too impaired to be aware of punishment. Additionally, the Commission heavily supports all amendments added to House Bill 824, making House Bill 824, House Draft 1 the best outcome for the State of Hawai'i.

Should you have additional questions, the Oversight Coordinator, Christin Johnson, can be reached at 808-900-2200 or at christin.m.johnson@hawaii.gov. Thank you for the opportunity to testify.

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

Rep. David Tarnas, Chair

Rep. Gregg Takayama, Vice Chair

February 15, 2023

Room 325

2:00 PM

STRONG SUPPORT FOR HB 824 - MEDICAL/COMPASSIONATE RELEASE

Aloha Chair Tarnas, Vice Chair Takayama and Members of the Committee!

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 4,043 Hawai'i individuals living behind bars¹ and under the "care and custody" of the Department of Public Safety/Corrections and Rehabilitation on any given day. We are always mindful that 918 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 appreciates this opportunity to testify in strong support of medical/compassionate release for persons suffering from terminal illnesses. Too many people are dying alone in prison when they could have received end-of-life care in the community or with their families.

THE RESEARCH

Here is a good description of Compassionate Release and its problems from the 2018 report on Compassionate Release by Families Against Mandatory Minimums (FAMM)²:

Compassionate release allows prisoners facing imminent death, advancing age, or debilitating medical conditions to secure early release when those developments diminish the need for or morality of continued imprisonment. At FAMM, we routinely hear from prisoners and their loved ones seeking information about how to secure compassionate release. We have listened to heart-wrenching stories of families like Lynn and Bernie's trying to help sick and dying prisoners navigate an absurdly complicated and confusing process for release. They do not understand how to ask for compassionate release or

¹ Department of Public Safety, Weekly Population Report, February 6, 2023.

https://dps.hawaii.gov/wp-content/uploads/2023/02/Pop-Reports-Weekly-2023-02-06_George-King.pdf

² Everywhere and Nowhere: Compassionate Release in the States, Executive Summary, FAMM, June 2018.

<https://famm.org/wp-content/uploads/Exec-Summary-2-page.pdf>

interpret eligibility criteria. They encounter walls of silence and endure lengthy delays. Most are turned down.

...
“Compassion” is defined as the sympathetic consciousness of others’ distress together with a desire to alleviate it. Every program we studied would benefit from taking a compassion-based look at what it means for a prisoner and his or her loved ones to go through the process in light of the barriers and complexity we found. Doing so could help ensure that programs are attentive to the needs and challenges faced by the individuals seeking to use them and that the application process itself does not inflict unnecessary distress or suffering.

We call these programs “compassionate release” so that the human experience is foremost in our minds and those of our readers.

...
*Mandatory prison sentences and truth-in-sentencing laws mean that more people are serving prison terms, and that those terms are longer and cannot easily be shortened. **State prison populations increased 55 percent between 1993 and 2013 the proportion of prisoners 55 years old and older increased 400 percent in that same period.** These older prisoners made up 11.3 percent of the state and federal prison population at the end of 2016, an increase of more than 8 percent from 2003. **While state prison populations are finally falling, the same cannot be said for their elderly populations. By 2030 prisons will house more than 400,000 individuals who will be 55 and older, making up nearly one-third of the population.***

The FAMM study reported that 49 states have compassionate release policies, yet only three states scored an A: Colorado A+; Rhode Island A; and Illinois with DC and Massachusetts earning A-. The whole map can be viewed at: <https://famm.org/wp-content/uploads/national-picture.pdf>. **Hawai`i received an F for scoring 47 out of 100.**³

An article from National Public Radio talks about federal compassionate release:

“Federal prosecutors have been seeking to limit defendants’ rights to win compassionate release from prison in plea negotiations across the country, a practice that advocates say undermines the intent of Congress and produces cruel outcomes.

*Two advocacy groups — Families Against Mandatory Minimums and the National Association of Criminal Defense Lawyers — asked Deputy Attorney General Lisa Monaco on Tuesday to prohibit U.S. attorneys from including the “pernicious” language in plea agreements.*⁴

Community Alliance on Prisons urges the committee to support a medical/compassionate release program that has clearly understood criteria, ensures that eligibility criteria is fair and just, establishes deadlines to keep the process moving, provides assistance with post-release planning and requires data collection and reporting.

³ <https://famm.org/wp-content/uploads/hi-report-card-final.pdf>

⁴ The U.S. is limiting compassionate release in plea deals. Many say that's cruel. Carrie Johnson, February 16, 2022. <https://www.npr.org/2022/02/16/1080863822/the-u-s-is-limiting-compassionate-release-in-plea-deals-many-say-thats-cruel>

HB-824-HD-1

Submitted on: 2/14/2023 10:49:07 AM

Testimony for JHA on 2/15/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Juanita Kawamoto Brown	Individual	Support	In Person

Comments:

Please support this important legislation and as Government Representatives of your individual House Districts please fulfill the missions to improve the many challenges and historical trauma we continue to suffer from due to the multi-generational ambivalence towards an entire Native Hawaiian Nation!

ALL NATIVE HAWAIIAN LIVES MATTER!

Respectfully

Mrs. Juanita Mahienaena Brown Kawamoto - 6th Generation Native Hawaiian

HB-824-HD-1

Submitted on: 2/13/2023 7:52:54 PM

Testimony for JHA on 2/15/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Will Caron	Individual	Support	Written Testimony Only

Comments:

Please support HB824 HD1.

ROBERT K. MERCÉ
2467 Aha Aina Place
Honolulu, Hawai'i 96821
(808) 398-9594

February 14, 2023

TO: Committee on Judiciary & Hawaiian Affairs
RE: HB 824
HEARING: February 15, 2023
TIME: 2:00 p.m.
ROOM: Conf. Rm. 325
POSITON: **Strongly Support**

Chair Tarnas, Vice Chair Takayama, and members of the committee:

My name is Bob Merce. I am a retired lawyer, and for the last 10 years I have been working with the Department of Public Safety (DPS) and the Hawaii Paroling Authority on compassionate release cases. I collaborated with a former DPS Medical Director and a former Health Care Administrator in drafting the criteria for medical release that appears in DPS policy COR.10.G.1.11 (February 6, 2014), and I have had a hand in drafting all of the compassionate release bills that have been introduced in Hawaii since 2013. I regret that I cannot testify in person on HB 824 HD 1, but I have a longstanding commitment on Hawaii Island that conflicts with the time of the hearing on this very important bill.

HB 824 is very similar to SB 72 (Twenty-Seventh Legislature 2013) and HB 629 (Thirtieth Legislature 2019). SB 72 died in conference committee, and HB 629 was vetoed by Governor Ige.¹ I hope this committee will pass HB 824, HD 1 so that Hawaii, at long last, will have a medical (compassionate) release law that reflects our values and embodies best practices.

HB 824 HD 1 provides a clear, efficient, equitable, and transparent process to parole terminally ill and seriously debilitated inmates to appropriate settings such as hospice care, hospitals, nursing homes, or to the care of their families. It will reduce the prison population and transfer costly medical care from the State to Medicaid. It will also allow terminally ill prisoners to die with dignity.

One of the problems with the current medical release process is that DPS has a relatively broad and inclusive criteria for medical release, while the Hawaii Paroling Authority (HPA) relies on a vague, 1992 administrative rule that authorizes a reduction

¹ See Statement of Objections to House Bill 629, Executive Chambers, July 9, 2019. Accessed February 1, 2012. <https://www.capitol.hawaii.gov/sessions/session2019/bills/GM1374 .PDF>

of a dying inmate's minimum sentence, *but does not even mention release*.² The vast differences between the DPS policy and the HPA rule create confusion and uncertainty as to who can be released, and have the potential to lead to arbitrary decisions and inconsistent outcomes. HB 824, HD 1 addresses those problems by establishing a *single set of criteria* that would apply to both DPS and HPA, and the set of criteria is clear, simple, and easy to apply.

HB 824, HD 1 protects the public by specifically stating that the Paroling Authority "shall not grant medical release to an inmate who poses a danger to society." Thus, potentially dangerous inmates will not be released no matter how ill they become.

HB 824, HD 1 also directs the HPA to impose appropriate conditions on all inmates who are granted medical release. Inmates will have a regular parole officer and will be under the supervision of the HPA. If an inmate violates a condition of parole, he may be sent back to prison to finish his or her sentence.

In 2011, Dr. Brie Williams, a gerontologist at the University of California at San Francisco, and several of her colleagues made a detailed study of compassionate release at both the state and federal levels and published their findings and recommendations in the prestigious *Annals of Internal Medicine*, the Journal of the American College of Physicians.³ **HB 824 incorporates all of the key recommendations made by Dr. Williams and her colleagues**, including:

1. The use of evidence-based principles;
2. A transparent release process;
3. Assignment of an advocate to help incapacitated prisoners navigate the medical release process;
4. A fast-track procedure for rapidly dying prisoners; and

² The DPS policy, (COR.10.G.1.11) provides for compassionate release if a prisoner has: (1) An illness that by its nature can be expected to cause a patient to die within 1 year, or (2) A persistent illness or disease causing increasing physical weakness to the extent that the patient's quality of life is compromised and care could better be managed within the community. The Hawaii Paroling Authority's administrative rule (HAR §23-700-23(c)) is much more restrictive *and does not mention release*. It states that the Paroling Authority may **reduce** an inmate's minimum sentence if the inmate has "a seriously debilitating medical condition *for which treatment is not available in prison* or a terminal disease wherein competent medical authorities indicate *death is imminent*" (emphasis added). It does not speak to the issue of release.

³ Brie A Williams, Rebecca L Sudore, Robert Greifinger, R Sean Morrison, *Balancing Punishment and Compassion for Seriously Ill Prisoners*, Ann Intern Med. 2011 Jul 19; 155(2):122-6.

5. A well-described and disseminated application procedure.

Dr. Williams is widely recognized as the country's leading authority on medical release, and in 2013 she submitted testimony to the Hawaii Senate Committee on Public Safety, Intergovernmental, and Military Affairs in strong support of HB 72 (2013) which was very similar to HB 824. A copy of Dr. Williams' written testimony is attached.

The medical release bill that passed the Legislature in 2019 was opposed by DPS and vetoed by Governor Ige in part because of its reporting requirements and the relatively short time frame for preparing the reports.⁴ HB 824 HD 1 addresses those concerns by removing most of the reporting requirement from HB 824. The reports required by HB 824, HD 1 are essentially the ones already required by DPS' policy COR.10.1G11 which has been in effect since February 6, 2014.⁵

It should also be noted that the latest draft of HB 824 provides that if a request for medical release "clearly does not meet the criteria for release or is clearly frivolous," the DPS Director may hold the request and take no action on it "unless and until it is supported by a report from a physician stating, to a reasonable medical probability, that the inmate meets the criteria for release." This change addresses DPS's concern that inmates will abuse the release process and waste the medical staff's time.

Finally, in 2022 the non-profit Families Against Mandatory Minimums (FAMM) made an in-depth study of the compassionate release process of all 50 states and the District of Columbia, and gave each state a grade. Hawaii received a grade of F in part because of poor policy design, inconsistency in its rules, and lack of clarity. HB 824 HD 1 addresses these issues and brings Hawaii into alignment with the states that have the very best medical release programs.⁶

Thank you for allowing me to testify on this matter.

⁴ See footnote 1 supra.

⁵ See COR.10.4.4 which requires the patient's primary care physical to draft a memorandum that includes the patient's "diagnoses with a description of the condition(s), a functional description of the patient, and designate the criteria for medical release that are met."

⁶ See FAMM, Compassionate Release, Hawaii Report Card, October 2022. <https://famm.org/our-work/compassionate-release/everywhere-and-nowhere/#memos>. The best grades were awarded to Colorado (A+), Rhode Island (A), Illinois (A), Massachusetts (A-), and the District of Columbia (A-).

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SANTA BARBARA • SANTA CRUZ

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COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL
AND MILITARY AFFAIRS

Senator Will Espero, Chair
Senator Rosalyn H. Baker, Vice Chair
Tuesday, January 9, 2013
Conference Room 224
2:50 p.m.
SB 72
Strongly Support

Dear Chair Espero, Vice Chair Baker, and Committee Members:

Introduction. My name is Dr. Brie Williams. I am an Associate Professor at the University of California at San Francisco (UCSF) Medical School. My research and academic focus is on assessing and improving the health and functional status of older adults in the criminal justice system. I have studied compassionate release at both the state and federal level and have published on the subject in the *Annals of Internal Medicine*, the journal of the American College of Physicians. I strongly support SB 72.

My Background. I received my Doctor of Medicine degree and a Masters Degree in Community Medicine from Mount Sinai School of Medicine in New York. After completing my internship and residency in internal medicine at UCSF, I became a Clinician Educator in the Division of Internal Medicine. I subsequently did a fellowship in geriatric medicine at UCSF. In 2008 I received the Brookdale Leadership in Aging Fellowship to study the medical, cognitive, and functional status of geriatric prisoners and to assess predictors of adverse health events in older prisoners. I have served as a consultant on improving healthcare for older prisoners to the Human Rights Division of the United States Department of Justice, the California Department of Corrections and Rehabilitation, the Los Angeles County Disability Legal Rights Center, the Independent Medical Monitor of Michigan, and the San Francisco Elder Abuse Forensic Center. I am also the Founder and Co-Director of a 2-year pilot geriatrics teaching and consultation service at San Quentin Prison. My recent relevant publications include:

- Aging in correctional custody: setting a policy agenda for older prisoner health care. *Am J Public Health*. 2012 Aug; 102(8):1475-81.
- Addressing the aging crisis in U.S. Criminal justice health care. *J Am Geriatr Soc*. 2012 Jun; 60(6):1150-6.
- Balancing punishment and compassion for seriously ill prisoners. *Ann Intern Med*.

2011 Jul 19; 155(2):122-6.

Support of SB 72. I am writing in strong support of SB 72. It is a clear, thoughtful, and practical bill that in my view would efficiently and economically accomplish the fundamental purposes of compassionate release. There are several provisions of the bill that are particularly important:

1. It establishes uniform criterion for compassionate release that would apply to both the Department of Public Safety (DPS) and the Hawaii Paroling Authority. It is my understanding that DPS and the Hawaii Paroling Authority now have very different and inconsistent compassionate release criteria, a situation that can only lead to confusion and inconsistent outcomes.¹

2. The eligibility criteria for compassionate release are reasonable and clearly stated so that those who will have to apply should have no difficulty in doing so.

3. The bill builds on the system that is already in place in which primary responsibility for initiating compassionate release rests with the DPS medical personnel, but allows for what is essentially an appeal process for reconsideration. I believe the appeal process is absolutely essential because mistakes in prognosis are inevitable and an appeal provides a mechanism for correcting them (or affirming the decision of the DPS if no mistake has been made).


4. The bill specifies reasonable time limits for processing requests.

5. The bill makes a clear distinction between *eligibility* for compassionate release and *approval* for release and properly limits the role of the physician to determining eligibility while clarifying that approval decisions are to be made by appropriately designated correctional professionals and the Paroling Authority.

6. The bill incorporates all of the key recommendations that my colleagues and I made in our article on compassionate release (see Balancing punishment and compassion for seriously ill prisoners. *Ann Intern Med.* 2011 Jul 19; 155(2):122-6) including: (a) The Use of evidence-based principles; (b) A transparent application release process; (c) Assignment of an advocate to help incapacitated prisoners navigate the compassionate release process; (d) A fast track procedure for rapidly dying inmates; and (e) A well-described and disseminated application procedure.

I urge you to pass SB 72.

Sincerely,



Dr. Brie Williams

¹ The Department of Public Safety's policy (COR.10.G.11) provides for compassionate release if a prisoner has: (1) An illness that by its nature can be expected to cause a patient to die within 1 year; or (2) A persistent illness or disease causing increasing physical weakness to the extent that the patient's quality of life is compromised and care could better be managed within the community. The Hawaii Paroling Authority's administrative rule on compassionate release (HAR §23-700-23(c)) states that the Paroling Authority may reduce an inmate's minimum term if the inmate has "a seriously debilitating medical condition for which treatment is not available in prison or a terminal disease wherein competent medical authorities indicate death is imminent."

HB-824-HD-1

Submitted on: 2/15/2023 10:10:50 AM

Testimony for JHA on 2/15/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Ruth Love	Individual	Oppose	Written Testimony Only

Comments:

Their victims weren't given accommodation for illness or disability