JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA

STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
HAWAII PAROLING AUTHORITY
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ACTING ADMINISTRATOR

No. ____________________

TESTIMONY ON HOUSE BILL 824, HD 2
RELATING TO MEDICAL RELEASE

by
Edmund "Fred" Hyun, Chair
Hawaii Paroling Authority

Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

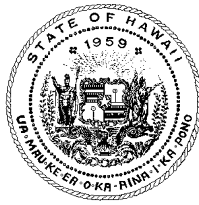
Thursday, January 25, 2024; 10:00 a.m.
State Capitol, Conference Room 016 and via Video Conference

Chair Rhoads, Vice Chair Gabbard, and Members of the Committees:

The Hawaii Paroling Authority (HPA) supports the intent of HB 824, HD2, regarding creating a medical release program within the Department of Corrections and Rehabilitation (DCR). As stated in previous testimonies, in place is a medical release program. Basically, HPA receives referrals via DCR Director's office from DCR/Health Care. The most difficult to place are Sex Offenders and non-US citizens. On-going challenges for those granted parole for Medical Release is housing and/or servicing issues.

Thank you for the opportunity to provide testimony on HB 824, HD2.

JOSH GREEN, M.D.
GOVERNOR
KE KIAʻĀINA



STATE OF HAWAIʻI | KA MOKUʻĀINA ʻO HAWAIʻI
DEPARTMENT OF CORRECTIONS AND REHABILITATION
Ka ʻOihana Hoʻomalu Kalaima a Hoʻoponopono Ola
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TOMMY JOHNSON
DIRECTOR

Melanie Martin
Deputy Director
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Deputy Director
Correctional Institutions

Sanna Muñoz
Deputy Director
Rehabilitation Services and Programs

No. ________________

TESTIMONY ON HOUSE BILL 824, HD 2
RELATING TO MEDICAL RELEASE
By
Tommy Johnson, Director

Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Mike Gabbard, Vice Chair

Thursday, January 25, 2024; 10:00 a.m.
State Capitol, Conference Room 016 and via Video Conference

Chair Rhoads, Vice Chair Gabbard, and Members of the Committees:

The Department of Corrections and Rehabilitation (DCR) provides **comments** on House Bill (HB) 824, House Draft (HD) 2, which proposes to codify, in statute, a medical release program that has existed in the policies and procedures of both, the Department and the Hawaiʻi Paroling Authority (HPA) since December 2014, and in the HPA's Administrative Rules since January 1991.

EFFECTIVENESS OF THE CURRENT MEDICAL RELEASE PROGRAM

Chapter 353 of the Hawaiʻi Revised Statutes currently provides for an established and effective medical release program through the Hawaiʻi 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 DCR's 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, DCR Director and former HPA Parole and Pardons Administrator, and Mr. Edmund “Fred” Hyun, HPA Board Chairman. DCR has embraced an active approach to the medical release program with a clear demonstration of effectiveness between the Departmental Medical Release policy and the Hawaiʻi Administrative Rules.

Despite the success of the DCR-HPA medical release program, some areas of improvement have been identified: a) guardianship procedures and b) housing. Despite partnership with the Family Courts for the Judiciary, DCR, and the Office of the Public Guardian, the comprehensive requirements of the process do not allow for expeditious release in time-sensitive cases. As written, HB 824, HD 2 does not address nor seek to resolve the critical guardianship issue.

Regarding housing, the DCR and all stakeholders have been frustrated due to the indefinite postponement of granted medical releases due to a lack of approved housing. Two populations have been particularly difficult to relocate to appropriate housing: a) sex offenders and b) non-U.S. citizens. Retired Attorney Robert Merce has been a champion for the DCR medical release program, voluntarily assisting the Department with housing for medical release cases. He, too, has experienced this shared difficulty with housing. Unfortunately, HB 824, HD 2, does not address nor seek to resolve the critical need for appropriate housing upon release. As written HB 824, HD 2,

sufficiently outlines all necessary steps to assess candidates for the program and proceed with request processing. However, it does not account for the above-mentioned population which accounts for the majority of our long-term infirmary boarders.

APPROPRIATIONS NEEDED TO SUPPORT HB 824, HD 2

To comply with the requirements of HB 824, HD 2, the following provides an updated analysis of the resources needed for compliance in relation to socially complex patients. 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 2, 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 DCR 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 and petitioning for guardianship when applicable.

The table below shows the staffing increases that the implementation of HB 824, HD 2 would require. The total increase in payroll cost for the additional 2.0 FTE staffing requirement is estimated at $368,996 each year. Should this Committee decide to advance this measure, the DCR respectfully requests that it be amended to include an appropriation of sufficient funds to support the staffing requirements of the medical release program as outlined in this bill.

Position	FTE
Physician	1.0
Advanced Practice R.N.	1.0
Total FTE	**2.0**

Our physicians are extremely committed to their patients, yet they are extremely 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 did not want to backlog his caseload further or burden others. For similar reasons, another physician continues working well into the evening hours during the week and often works on her days off.

Thank you for the opportunity to provide comments on HB 824, HD2.

HB-824-HD-2
Submitted on: 1/23/2024 11:19:48 PM
Testimony for JDC on 1/25/2024 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Linda Rich	Testifying for Women's Prison Project	Support	Written Testimony Only

Comments:

Committee on Judiciary

Senator Karl Rhoads, Chair

Senator Mike Gabbard, Vice Chai

Thursday, January 25, 2024

10:00 AM

Conference Room 016 & Videoconference

State Capitol

415 South Beretania Street

Re: HB824 Strong Support

Women's Prison Project strongly supports the development and implementation of a Medical Release Program as outlined in HB824 HD2 .

Linda Rich for Women's Prison Project

ROBERT K. MERCE
2467 Aha Aina Place
Honolulu, Hawaiʻi 96821
(808) 398-9594

January 24, 2024

TO: Committee on Judiciary
RE: HB 824, HD 2
HEARING: January 25, 2024
TIME: 10:00 a.m.
ROOM: Conf. Rm. 016 and video conference
POSITION: Oppose with Comments

Chair Rhoads, Vice Chair Gabbard, and members of the commitee:

My name is Bob Merce. I am a retired lawyer and I have been working with the Department of Public Safety (DPS) on compassionate release issues for more than a decade. I assisted DPS in drafting the current criteria for medical release,[1] and I drafted two previous compassionate releases bills–SB 70 (27th Legislature 2013) and HB 629 (30th Legislature 2019)– which appear to be prototypes for HB 824. Over the past 10 years I have helped men and women dying from lung cancer, brain tumors, multiple sclerosis, and other conditions navigate Hawaii's medical release process.

I do **not support** HB 824 H.D. 2 in its present form and recommend the following changes to the bill:

1. The time between the diagnosis of a terminal illness and death can be very short, and therefore it is imperative that the release process proceed expeditiously so that inmates do not die while waiting for a decision. Best practices call for a reasonable time frame for decision making at each critical stage of the process. HB 824, H.D. 2 **does not have time limits for decision making.** Having time limits is essential to ensure that inmates do not die while waiting for medical release.

2. The requirement that a request for release initiated by an inmate or an inmate's representative be "accompanied by a recommendation for medical release by a

[1] See Hawaii Department of Public Safety, Corrections Administration Policy and Procedures, Medical Release, COR.10.1G.11, section 3.0

physician who is licensed to practice medicine in the State" presents an insurmountable barrier for most inmates because, in my experience, they do not have the resources to retain a doctor to examine them, review their medical records, and recommend medical release. Additionally, requiring a recommendation from a physician licensed in Hawaii presents a serious barrier for inmates who are treated by physicians in Arizona.

3. Under HB 824 H.D. 2, only "low risk" inmates may be considered for medical release, but the term "low risk" is not defined, and there are no standards for determining who is low risk. This extremely vague provision drastically reduces the pool of inmates who can be "considered" for release, and because of its vagueness it is open to abuse. For example, a doctor or a DPS administrator may not consider a person for medical release who has committed a serious crime, even though studies have shown that the severity of the offense alone does not necessarily predict the risk of reoffending. The Hawaii Paroling Authority (HPA) makes risk assessments every day, and is the appropriate entity to decide to decide who should be released. **No inmate should be excluded from consideration for compassionate release prior to a hearing before the HPA.**

4. HB 824 H.D. 2 eliminates the requirement that DPS appoint an advocate for inmates who request medical release but are unable, due to incapacitation or debilitation to advocate on their own behalf. Advocates are a best practice and an essential part of the compassionate release process.[2] The advocate does not, as DPS has asserted, have to be a lawyer, guardian ad litem ,or selected by guardian ad litem. In some cases, an incapacitated inmate may simply need someone to translate a document, or talk to a doctor, or place a phone call. For more complex tasks or legal advice the advocate could be drawn from a list of lawyers willing to help prisoners *pro bono*, or, depending on the situation, a public defender. Having a person available to assist and advocate for incapacitated or debilitated prisoners is a simple matter and is a critical best practice to ensure that the system operates effectively and equitably.

Hawaii needs a compassionate release law that reflects best practices as set out in Dr. Brie Williams' seminal article in the Annals of Internal Medicine (footnote 1 supra.). The changes I am recommending would strengthen HB 824 and would reflect best practices.

Thank you for allowing me to testify on this matter.

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[2] See 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.

Committee:	Committee on Judiciary
Hearing Date/Time:	Thursday, January 25, 2024 at 10:00 AM
Place:	Conference Room 016 & Videoconference
Re:	*Testimony of the ACLU of Hawai'i: OPPOSITION to HB 824, HD2 RELATING TO MEDICAL RELEASE*

Aloha Chair Rhoads, Vice Chair Gabbard and Committee Members:

The ACLU of Hawai'i strongly supports reducing the number of people in our jails and prisons, through data-driven strategies, including through Compassionate Release.[1] 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.

However, **as drafted**, **we oppose HB 824, H.D.2, because it includes amendments proposed by the Department of Public Safety (now Department of Corrections and Rehabilitation) that will make it more difficult for people who are sick and dying to receive compassionate release. However, we support H.B. 824 or H.B. 824 H.D.1 as it aligns with best practices in compassionate release.**

Our compassionate release program is in need of improvement. According to DCR'S own data, only 47 applications for compassionate release were filed. **This amounts to an average of 6 applications a year.**

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

[1] As outlined in *Blueprint for Smart Justice Hawai'i,* Hawai'i can dramatically reduce its incarcerated population by implementing just sensible reforms. https://50stateblueprint.aclu.org/assets/reports/SJ-Blueprint-HI.pdf https://www.prisonpolicy.org/blog/2020/05/29/compassionate-release/

Given the number of people with comorbidities and increasingly aging population[2] in our jails and prisons with significant health issues, an average of six applications filed per year demonstrates that compassionate release is underutilized.

Furthermore, DCR's compassionate release data is incomplete. **DCR's data does not tell us how many of the people who applied for compassionate release were actually released, how many were denied, and worst yet, how many people died in custody while awaiting a decision on their application.** Nor do we have accurate data from DCR outlining how many people died in our jails and prisons who were eligible for compassionate release but did not apply.

In 2022, Families Against Mandatory Minimums made an in-depth study of the Compassionate release processes of all states and D.C., and assigned each state a grade.[3] **Sadly, Hawai'i received a "F" grade due in part to our policy design, inconsistent rules and lack of clarity.** https://famm.org/wp-content/uploads/national-picture.pdf In stark contrast, states such as Colorado, Illinois, Rhode Island, Massachusetts and D.C. earned an "A."

As noted by the American Bar Association, "**Ultimately, expanding and better utilizing compassionate release programs would be an important step in making the prison system more humane and would reduce the financial strain of mass incarceration places on states**. The issue of compassionate release rests on an important question— why do we incarcerate people? If individuals are in the last stages of their lives and are incredibly unlikely to recommit, what do we gain by continuing to incarcerate them, especially when the older adult has spent decades in jail? These questions should be explored, and more than that, we should make efforts to allow people to die with their loved ones, regardless of their incarceration status."
https://www.americanbar.org/groups/law_aging/publications/bifocal/vol44/bifocal-vol-44-issue3/broken-and-underutilized-understanding-compassionate-release/

In closing, we respectfully respect that you adopt the earlier version of this bill, H.B. 824 or H.D.1, that aligns with best practices and creates a streamlined process that will ensure that those who should be released are not stymied by bureaucratic stumbling blocks. Otherwise, we ask that you defer H.B. 824, H.D.2.

Thank you for the opportunity to testify.

Sincerely,

Carrie Ann Shirota
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Policy Director
ACLU of Hawai'i
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[2] https://www.prisonpolicy.org/blog/2023/08/02/aging/
[3] https://famm.org/wp-content/uploads/compassionate-release-report.pdf; See also https://famm.org/wp-content/uploads/Exec-Summary-2-page.pdf