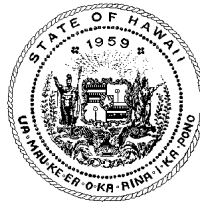


JOSH B. GREEN, M.D.  
GOVERNOR



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'  
**DEPARTMENT OF PUBLIC SAFETY**  
**KA 'OIHANA HO'OPALEKANA LEHULEHU**  
1177 Alakea Street  
Honolulu, Hawaii 96813

**TOMMY JOHNSON**  
DIRECTOR

**Melanie Martin**  
Deputy Director  
Administration

**Michael J. Hoffman**  
Acting Deputy Director  
Corrections

**William Oku**  
Acting Deputy Director  
Law Enforcement

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

TESTIMONY ON HOUSE BILL 824  
RELATING TO MEDICAL RELEASE

By  
Tommy Johnson, Director

House Committee on Corrections, Military and Veterans  
Representative Mark J. Hashem, Chair  
Representative Cory M. Chun, Vice Chair

Friday, February 03, 2023; 9:00 a.m.  
CR 430 and Via Videoconference

Chair Hashem, Vice Chair Chun, and Members of the Committee:

The Department of Public Safety (PSD) offers comments on House Bill (HB) 824, which seeks to codify, in statute, a medical release program for PSD, which would significantly alter the established and effective Medical Release Program that has existed in the policies and procedures of the Department and the Administrative Rules of the Hawaii Paroling Authority (HPA) since December 2014. The Department respectfully requests the measure be deferred for further discussion through the establishment of a focused working group, based on the following comments.

**EFFECTIVENESS OF CURRENT MEDICAL RELEASE PROGRAM**

Chapter 353 of the Hawaii Revised Statutes currently provides for an established and effective medical release program through the Hawaii 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.

<b>Year</b>	<b>Medical Release Applications</b>
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 Hawaii Administrative Rules. HB 824 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 Hawaii 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 Hawaii 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 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 does not resolve the guardianship issue. The Department respectfully requests that this issue receive further discussion through the establishment of a focused working group.

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 does not resolve the housing issue. Like traffic, HB 824 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). Again, the Department respectfully suggests that

these issues be addressed separately, perhaps by Concurrent Resolution(s) appointing an appropriate working group or task force(s) to further investigate and develop proposals for improvement.

### **MALFICIENCE OF HB 824**

While the Department appreciates the support from all stakeholders in this attempt to improve the PSD medical release program, HB 824, in truth, **harms** the medical release program through the inclusion of an expansion of unqualified requestors with the resultant unwarranted urgency in ineligible cases, a painful waste of limited physician and fixed budget resources, and inundation of physicians with unnecessary and unfunded medical procedures, studies, and tasks. 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 further discussion through the establishment of a focused working group and deletion of all references in the proposed measure to the issues discussed below.

PSD is concerned that HB 824 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. Because the bill requires PSD to produce a report for every application, including ineligible cases, the Department's understaffed and underbudgeted Health Care Division will be overburdened by having to research and produce exhaustive medical reports for each application. 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 private licensed medical doctor, pursuant to HRS 353.13.5. PSD respectfully requests further discussion on the need to incorporate the licensed physician recommendation requirement through the establishment of a focused working group.

In addition, the bill proposes to expedite the process of medical release by establishing immutable deadlines within which PSD would be required to complete the comprehensive medical testing and evaluations, literature research, report writing, and case management, which would take up valuable time of the professional medical and facility staff who are already working over capacity. Implementation of this proposal, under current operating conditions and staffing levels, is impractical and would be detrimental to the delivery of health care for all inmates. This bill would compel a medical doctor to attend to a medical release case which may or may not be urgent in order to meet an unreasonably short deadline fixed in statute, rather than triage cases and provide needed medical care to other inmates who may have more immediate issues. HB 824 would deleteriously result in the following:

“I’m sorry, sir, the doctor cannot see you today for your serious health condition, because statute requires the doctor to provide a report to the Hawaii Paroling Authority about another inmate who does not qualify for medical release. We will reschedule you for a later date.”

Although the bill would serve to expedite the medical release process for certain cases, it would simultaneously create an overall backlog in patient care, leading over time, to the worsening of untreated patient conditions and increased expenses of addressing grievances and other legal complaints.

The Department is also concerned with the requirement in HB 824 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. The Department currently adheres to the guardianship procedure, as required by statute, working collaboratively with the Family Courts of the Judiciary and the Office of the Public Guardian to obtain legal advocacy through

guardianship. The advocacy requirement and the deadlines imposed by the proposed measure are unrealistic and inconsistent with the Family Court guardianship procedure. In order for a guardianship application to be scheduled for hearing, the family court requirements for a physician's report, social summary, and a thorough investigation of potential relatives who might serve as guardian must be completed. The application requirements could take a month or more to complete. Subsequently, the typical case would be scheduled for hearing in three months, expedited hearing requests in one month, and two weeks for cases in which the individual is expected to live for less than one month. Given the family court process, the twenty-day requirement proposed by HB 824 is an impossible task. As indicated above, in order to further expedite the medical release process in such cases involving incapacitation, the Department respectfully requests that this issue be further discussed through the establishment of a working group and possibly addressed through a different measure.

#### **APPROPRIATIONS NEEDED TO SUPPORT HB 824**

During the 2019 Legislative session, the Department submitted testimony on a similar measure in a joint hearing of the Senate Committees on Judiciary and Ways and Means that outlined an initial estimate of the fiscal impact of the bill on PSD's Health Care Division. In order to comply with the requirements of HB 824 the following provides an initial analysis of the resources needed for compliance. Anticipated staffing increases include a Physician Manager (1.0 FTE) position, which would be responsible for providing oversight, coordination, and review of the statewide medical release program. An additional 1.5 FTE Physician and 1.5 FTE Psychiatrist positions would be required to comply with the medical and psychiatric components of HB 824, including the development of a fast-track procedure for the evaluation and release of rapidly dying prisoners.

As a component of the medical release program, HB 824 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 does not exist.

Additional Advanced Practice Registered Nurse II (3.0 FTE) positions would be responsible for the development of the medical release plan, including serving as petitioner for guardianship when needed. An additional Secretary II (1.0 FTE) position would provide the office support needed for the implementation of the medical release program.

The table below shows the anticipated staffing increases that the implementation of HB 824 would require. The total increase in payroll cost for the additional 8.0 FTE staffing requirement is estimated at \$1.8 million each year. With an undetermined, yet expected increase, in requests for medical release from non-medical sources with a heightened possibility of litigation, an initial annual recurring estimate of \$500,000 for specialized medical testing, studies, and specialty Provider referrals is requested. 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.

<b><u>Position</u></b>	<b><u>FTE</u></b>
Physician Manager	1.0
Physician	1.5
Psychiatrist	1.5
Advanced Practice R.N.	3.0
<u>Secretary</u>	<u>1.0</u>
<b>Total FTE</b>	<b>8.0</b>

In contrast, if the goal is limited to improving the efficiency of the current medical release program, absent HB 824, the immediate staffing needs are

minimal: 1.0 FTE Physician and 1.0 FTE Advanced Practice Registered Nurse. 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 further discussion on the matter through the establishment of a focused working group and the immediate appropriation of the requested minimal staffing to support the existing medical release program: 1.0 FTE Physician and 1.0 FTE Advanced Practice Registered Nurse II.

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





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

TO: The Honorable Mark J. Hashem, Chair  
The Honorable Cory M. Chun, Vice Chair  
House Committee on Corrections, Military and Veterans

FROM: Mark Patterson, Chair  
Hawaii Correctional System Oversight Commission

SUBJECT: House Bill 824, Relating to Medical Release  
Hearing: Friday, February 3, 2023; 9:00 a.m.  
State Capitol, Room 430

Chair Hashem, Vice Chair Chun, and Members of the Committee:

The Hawaii Correctional System Oversight Commission (HCSOC, the Commission) **supports** House Bill 824 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, two inmates have died in custody: one individual was 73 years old, and the second individual was 87 years old. Both died while housed in the prison infirmary at the Halawa Correctional Facility (prison).

As of the date of this testimony, there are 17 individuals housed within a jail or prison infirmary, and six individuals hospitalized due to complex medical issues.

<b>Facility</b>	<b>Number of Inmates in Medical Infirmary</b>	<b>Number of Inmates Currently Hospitalized</b>
Hawaii Community Correctional Center (Jail)	0	1
Halawa Correctional Facility (Prison)	12	3
Oahu Community Correctional Center (Jail)	4	2
Women’s Community Correctional Center (Prison)	1	0

Additionally, the Department of Public Safety currently houses 152 individuals who are between the ages of 65-84 years old. 119 (78%) of those individuals are sentenced inmates.

<b>Number of Inmates</b>	<b>Age</b>
35	65
15	66
23	67
17	68
9	69
6	70
12	71
5	72
8	73
4	74
4	75
3	76
2	77
2	78
2	79
0	80
1	81
1	82
2	83
1	84

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. Thank you for the opportunity to testify.

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

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



EDMUND "FRED" HYUN  
CHAIR

GENE DEMELLO, JR.  
CLAYTON H.W. HEE  
MILTON H. KOTSUBO  
CAROL K. MATAYOSHI  
MEMBERS

COREY J. REINCKE  
ACTING ADMINISTRATOR

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

**LATE**

STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I  
**HAWAII PAROLING AUTHORITY**  
*Ka 'Ākena Palola o Hawai'i*  
1177 Alakea Street, First Floor  
Honolulu, Hawaii 96813

TESTIMONY ON HOUSE BILL 824  
RELATING TO MEDICAL RELEASE

by  
Edmund "Fred" Hyun, Chairman  
Hawaii Paroling Authority

House Committee on Corrections, Military & Veterans  
Representative Mark J. Hashem, Chair  
Representative Cory M. Chun, Vice Chair

Friday, February 3, 2023 – 9:00 a.m.  
Conference Room 430

Chair Hashem, Vice Chair Chun, and Members of the Committee:

The Hawaii Paroling Authority (HPA) offers comments on House Bill 824. The measure seeks to reinvent an established practice that works in the best interest of the offender/patient and public safety. The Department of Public Safety's current Medical Release database demonstrates the effectiveness of the medical release program, with substantial improvement since 2019.

HPA has also encountered challenges with the medical release program due to housing issues, which have proved to frustrate all stakeholders, because of the indefinite postponement of granted and approved medical releases. Two populations have been particularly difficult: (a) sex offenders and (b) non-US citizens.

Lastly, along with the Department of Public Safety, HPA currently adheres to the guardianship procedure, as required by statute, working collaboratively with the Family Courts of the Judiciary and the office of the Public Guardian to obtain legal advocacy through guardianship.

HPA respectfully request further discussion on this matter through the establishment of a focused working group and the immediate appropriate of the requested minimal staffing to support the existing medical release program.

Thank you for the oppotuning to provide testimony on House Bill 824

**HB-824**

Submitted on: 2/1/2023 11:22:21 AM

Testimony for CMV on 2/3/2023 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Louis Erteschik	Hawaii Disability Rights Center	Support	Written Testimony Only

Comments:

We have always thought this is an excellent idea. Currently, it may be being done on an ad hoc basis. However, this would codify and formalize the process and that would be a big improvement. A corollary issue that should be addressed, however, is the lack of community placements that are willing to accept released prisoners. We have seen cases where the Department of Public Safety wanted to release certain inmates ( including some that had been paroled or had actually served the full length of their sentence), but could not simply because there were no care homes or other facilities in the community where they could go. That is a very unfortunate situation to put it mildly and whether it is in the context of this bill or some other process we would urge the Legislature and the Administration to use its best efforts to address that.



**To: Committee on Corrections, Military and Veterans**

**Hearing Date/Time: Friday February 3, 2023 9am**

**Re: Testimony in Support of HB 824**

**From: Heather Lusk, Hawaii Health and Harm Reduction Center**

Dear Chair Hashimoto, Vice Chair Aiu, and Members of the Committee

The Hawaii Health & Harm Reduction Center (HHRC) supports HB 824 which would create a medical release program within DPS (soon to be Dept. on Corrections and Rehabilitation) for those who are severely ill, disabled or impaired. This bill would only apply to those who do not pose a risk to public safety, and would allow people who are at end-of-life to be able to die with dignity.

HHRC's mission is to *reduce harm, promote health, create wellness and fight stigma in Hawaii and the Pacific*. We focus our efforts on those disproportionately affected by social determinants of health, including but not limited to: people living with and/or affected by HIV, hepatitis, substance use, and the transgender, LGBTQ and the Native Hawaiian communities.

Thank you for the opportunity to testify.

Heather Lusk, Executive Director, Hawaii Health and Harm Reduction Center

## COMMUNITY ALLIANCE ON PRISONS

P.O. Box 37158, Honolulu, HI 96837-0158

Phone/E-Mail: (808) 927-1214 / [kat.caphi@gmail.com](mailto:kat.caphi@gmail.com)



### COMMITTEE ON CORRECTIONS, MILITARY, & VETERANS

Rep. Mark J. Hashem, Chair

Rep. Cory M. Chun, Vice Chair

Friday, February 3, 2023

Room 430

9:00 AM

**LATE**

### SUPPORT FOR HB 824 - CODIFYING COMPASSIONATE RELEASE

Aloha Chair Hashem, Vice Chair Chun 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 4,074 Hawai'i individuals living behind bars<sup>1</sup> and under the "care and custody" of the Department of Public Safety/Corrections and Rehabilitation on any given day. We are always mindful that 964 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 support of HB 824 - compassionate release of certain ill, disabled, or impaired inmates who pose a low risk to the community.

There is a program at the Department of Public Safety named compassionate or medical release. This bill codifies compassionate release by amending Chapter 353, Hawai'i Revised Statutes, by adding a new section to part I.

This new statute is important because although there is already a program at DPS, it seems to ignore the sad fact that Hawai'i has aging incarcerated people with serious illnesses and/or disabilities who are still under the care and custody of the state. A severely disabled 89 year-old man died in Halawa last December.

The new statute would ensure that there is an evidence-based process used to determine the person's eligibility, that there is clear criteria for eligibility for compassionate/medical release, and the process is earnestly followed by DPS and the Hawai'i Paroling Authority (HPA).

<sup>1</sup> Department of Public Safety, Weekly Population Report, January 30, 2023.

[https://dps.hawaii.gov/wp-content/uploads/2023/01/Pop-Reports-Weekly-2023-01-23\\_George-King.pdf](https://dps.hawaii.gov/wp-content/uploads/2023/01/Pop-Reports-Weekly-2023-01-23_George-King.pdf)



## TESTIMONY IN SUPPORT OF HB 824

**LATE**

TO: Chair Hashem, Vice-Chair Chun, & Committee Members

FROM: Nikos Leverenz  
Grants & Advancement Manager

DATE: February 23, 2023 (9:00 AM)

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Hawai'i Health & Harm Reduction Center (HHRC) **strongly supports** HB 824, which , which would create a medical release program within the Department of Public Safety for certain ill, disabled, and geriatric inmates.

This bill could be strengthened by incorporating some of the most salutary features of the federal First Step Act, passed by Republican congressional majorities and signed into law by President Trump in 2018. 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.

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.

HHRC's mission is to reduce harm, promote health, create wellness, and fight stigma in Hawai'i and the Pacific. We work with many individuals impacted by poverty, housing instability, and other social determinants of health. Many have behavioral health problems, including those related to substance use and mental health conditions. Many of our program clients and participants have also been deeply impacted by trauma, including histories of physical, sexual, and psychological abuse.

Thank you for the opportunity to testify on this measure.

**HB-824**

Submitted on: 2/1/2023 11:53:17 PM

Testimony for CMV on 2/3/2023 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Malina Kaulukukui	Individual	Support	Written Testimony Only

Comments:

This bill, which creates a compassionate release law for eligible incarcerated persons, should be part of any correctional system's ability to provide responsible, humane treatment for its most vulnerable population. I wholeheartedly support this bill.



**HB-824**

Submitted on: 2/2/2023 12:42:08 AM

Testimony for CMV on 2/3/2023 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Will Caron	Individual	Support	Written Testimony Only

Comments:

Please support HB824.

**HB-824**

Submitted on: 2/2/2023 3:03:36 AM

Testimony for CMV on 2/3/2023 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Patrick Uchigakiuchi	Individual	Support	Written Testimony Only

Comments:

My name is Patrick Uchigakiuchi, and I am submitting testimony in strong support of H.B. No. 824 Relating to Medical Release. I have about 5 years of work experience with the Department of Public Safety as a psychologist contracted to provide research, program evaluation, and training for the department. This work included interacting with inmates and researching programs and services provided to them during the course of their incarceration in preparation for re-entry back into the community. Creating a medical release program for individuals held in our prison system who meet the criteria for early medical release as stated in HB 824 represents a form of compassion that should be extended to all people in our society, including those who are incarcerated who also meet the rigorous criteria stated in this Bill. Because of their past criminal offenses, HB 824 requires a review of all significant issues related to early release, including assessment of their current danger to society, pre-approval notification to the victim(s) of the past offense(s) and the opportunity to be heard, diagnosis and treatment plans by medical professionals, decision making by the Hawai'i Paroling Authority, pre-conditions requiring medical treatment plans, health care provisions, housing, and personal care. Federal prisons and correctional institutions in many states have successfully implemented this type of compassionate release. Passing HB 824 recognizes the basic humanity of the incarcerated person with a terminal illness or a serious disability or illness and who is now experiencing additional harm and pain because the Department of Public Safety does not have the ability to provide appropriate treatment and services. This situation goes beyond the nature of punishment for which the person was sentenced and away from what is intended by our justice system. HB 824 effectively addresses this issue.

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

February 2, 2023

TO: Committee on Corrections, Military & Veterans  
RE: HB 824  
HEARING: February 3, 2023  
TIME: 9:00 a.m.  
ROOM: Conf. Rm. 430  
POSITON: **Strongly Support**

Chair Hashem, Vice Chair Chun, and members of the committee:

My name is Bob Merce. I am a retired lawyer and have been active in prison reform for the past ten years. I served as vice-chair of the HCR 85 Task Force on Prison Reform and I was the principal author of the Task Force's final report to the 2019 Legislature. I also served on the Reentry Commission from 2018 until its responsibilities were transferred to the Hawaii Correctional System Oversight Commission in 2019.

HB 824 is nearly identical to SB 72 (Twenty-Seventh Legislature 2013) and SB 629 (Thirtieth Legislature 2019). SB 72 died in conference committee, and HB was vetoed by Governor Ige.<sup>1</sup> I hope this committee will pass HB 824 so that Hawaii, at long last, will have a medical (compassionate) release law that reflects our values and embodies best practices. HB 824 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 the Department of Public Safety (DPS) has a policy that uses one criteria for medical release and the Hawaii Paroling Authority (HPA) has an administrative rule that uses an entirely different criteria.<sup>2</sup> The vast differences between the DPS policy and the HPA rule has the

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<sup>1</sup> 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](https://www.capitol.hawaii.gov/sessions/session2019/bills/GM1374_.PDF)

<sup>2</sup> 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's Paroling Authority's administrative rule on compassionate release (HAR §23-700-23(c)) state 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

potential to create confusion, uncertainty, arbitrary decisions, and inconsistent outcomes. HB 824 fixes those problems by establishing a single set of criteria that would apply to both DPS and HPA, and the criteria is clear and simple so that the people who have to apply it should have no trouble doing so.

HB 824 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 sick they become.

HB 824 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 at all times. 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.<sup>3</sup> **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
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, which, as I mentioned, is virtually identical to HB 824. A copy of her written testimony is attached.

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prison or a terminal disease wherein competent medical authorities indicate death is imminent.”

<sup>3</sup> 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.

In his July 9, 2019 veto message for HB 629, Governor Ige said that a medical release bill was unnecessary because Hawaii already has a medical release program. He is right that we have a medical release program, but as I previously noted, the policies of DPS and HPA are vastly different and inconsistent, and the “program” is not evidence-based, and does not reflect correctional best practices.

Governor Ige also criticized HB 629’s reporting requirements –which are identical to those in HB 824–as burdensome, and although not mentioned in the veto message, DPS has privately expressed concern that some inmates may file repeated frivolous requests simply because they have nothing to lose and nothing better to do.

To address those concern, I recommend modifying and reducing the reporting requirements of HB 824 by deleting sections (b) to (d), page 4, line 4 to page 6, line 7, and replacing them with the following:

(b) Requests for medical release may be made by the Director, an inmate, or an inmate’s representative. All requests shall be in writing. Requests made by an inmate or an inmate’s representative shall state the grounds for the request, relevant diagnoses, and a statement describing how and why the inmate meets the criteria for medical release.

(c) Within 20 days of receiving a request from an inmate or an inmate’s representative, the Director shall forward the request to the Hawaii Paroling Authority along with a recommendation for or against release, together with a brief statement of the reasons for the recommendations, including a statement as to whether or not the inmate meets the statutory criteria for release. A copy of all documents sent to the Paroling Authority shall be provided to the inmate.

(d) The Paroling Authority shall conduct a hearing on all requests for medical release within ten days of receiving the request and the Director’s recommendation.

(e) If it appears that a request clearly does not meet the criteria for release or is frivolous, the Director may hold the request and not submit it to the Paroling Authority unless and until it is supported by a report from a physician stating that, to a reasonable degree of medical probability, the inmate meets the criteria for release.

Thank you for allowing me to testify on this matter.



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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.<sup>1</sup>

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

<sup>1</sup> 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."

