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

No. _____

TESTIMONY ON HOUSE BILL 255, HD1
RELATED TO PUBLIC SAFETY
By
Bert Y. Matsuoka, Chairman
Hawaii Paroling Authority

House Committee on Judiciary
Representative Karl Rhoads, Chair
Representative Sharon E. Har, Vice Chair

Friday, January 17, 2014; 2:00 p.m.
State Capitol, Conference Room 325

Chair Rhoads, Vice Chair Har, and Members of the Committee:

The Hawaii Paroling Authority (HPA) believes in the concept of medical release and **supports the intent** of this bill. Additionally, the HPA shares the concerns raised by the Public Safety Department (PSD).

The role of the HPA in medical release cases is decision making. The HPA is not comfortable with the possibility of involvement in the request/application process outside of requests from the PSD Director, where proper screening has been completed.

The HPA has drafted proposed changes to this agency's Administrative Rules, which includes amendments to the current language of Hawaii Administrative Rules 23-700-26c and 24-700-29b. These changes would allow the HPA to consider reducing an offender's previously set HPA minimum term(s) of imprisonment when an inmate has a seriously debilitating medical condition for which treatment is not available in prison, or the inmate's condition is such that the inmate's medical condition renders the inmate too cognitively impaired and/or functionally compromised to pose a significant risk to public safety. This also applies to inmates who have a terminal disease wherein competent medical authorities have determined that death is imminent.

Given the established expedited administrative hearings process, the 100% approval rate (23 out of 23 of the cases that qualified for reduction of minimum term(s) of imprisonment for medical reasons received from the PSD during the period January 1, 2011, through December 31, 2013) and with HPA's initiative to broaden the categories of offenders that can be considered for medical release, the proposed three-year pilot project does not appear to be necessary.

Thank you for the opportunity to provide testimony on HB 255, HD1.

NEIL ABERCROMBIE
GOVERNOR

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

TED SAKAI
DIRECTOR

Martha Torney
Deputy Director
Administration

Max Otani
Deputy Director
Corrections

Shawn Tsuha
Deputy Director
Law Enforcement

TESTIMONY ON HOUSE BILL 255, HD1
RELATING TO
PUBLIC SAFETY
by
Ted Sakai, Director
Department of Public Safety

House Committee on Judiciary
Representative Karl Rhoads, Chair
Representative Sharon E. Har, Vice Chair

Friday, January 17, 2014; 2:00 p.m.
State Capitol, Conference Room 325

Chair Rhoads, Vice Chair Har, and Members of the Committee:

The Department of Public Safety (PSD) **supports the intent** of this bill, which will broaden the existing criteria used by the Hawaii Paroling Authority (HPA) to provide medical releases for inmates/patients recommended by the Director. However, we have some concerns that this bill will increase the workload of one of our scarcest resources – physicians – without resulting in any significant change in the number of medical releases that are already granted.

A mechanism for medical releases already exists. Our physicians are already authorized to recommend a medical release when they find that an inmate's condition meets the criteria outlined in Section 2 (c) of this bill. This information, along with an assessment of the inmate's risk for reoffending, the inmate's record while incarcerated, the nature of the inmate's offense, and the length of time left to be served on the sentence are forwarded to the HPA for their consideration in making a decision.

We would be willing to participate in a three-year pilot study, but ask that the following amendments be made to this bill:

1. Amend Paragraph two of Section 2 (f), starting on line 21 on Page 4, to read: "All requests initiated by an inmate shall be referred to the director immediately. If the department's physician agrees that the inmate's condition meets the criteria set forth in Section 2 (c), within twenty days of the request, the department shall submit a medical release report to the paroling authority containing the information required in subsection (e). The department shall provide the inmate with a copy of the medical release report. If the department's physician finds that the inmate's condition does not meet the criteria set forth in Section 2 (c) the department shall so inform the inmate within sixty days. The inmate may then petition directly to the paroling authority for medical release."
2. Delete Section (p) which requires that we adopt rules pursuant to chapter 91. While we are willing to adopt such rules, we point out that this bill contemplates a three-year pilot program. It seems unusual to require that administrative rules be adopted to implement a pilot program. Further, this requirement will significantly delay the implementation of this program, as the rulemaking process is not designed for speed.

In summary, we support the intent of this bill. We support the concept of medical release, and note that we already have a viable mechanism in place for this. It is the Department's concern that its already scarce physician resources will be bogged down in administrative medical release determinations versus attending to direct patient care.

Thank you for the opportunity to present this testimony.

ALAN M. ARAKAWA
Mayor

JOHN D. KIM
Prosecuting Attorney

ROBERT D. RIVERA
First Deputy Prosecuting Attorney

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TESTIMONY
ON
H.B. 255, H.D. 1 - RELATING TO PUBLIC SAFETY

January 17, 2014

The Honorable Karl Rhoads
Chair
The Honorable Sharon E. Har
Vice Chair
and Members
House Committee on Judiciary

Chair Rhoads, Vice Chair Har, and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui, OPPOSES HB 255, HD 1, Relating to Public Safety.

This bill requires the Department of Public Safety to establish a three-year medical release pilot project.

While releasing long-term elderly and seriously ill prisoners may be a cost-saving measure for the State, the department is not satisfied that the need to protect the public is adequately addressed through such a program. Those inmates were given long prison terms, including mandatory minimum terms, because they committed serious crimes and their prison terms, especially those with mandatory minimum terms and extended terms, were deemed necessary to protect the public. While compassion is part of the Aloha Spirit, the responsibility to protect the members of one's community is, in the department's perspective, a greater part of the Aloha Spirit.

We ask that HB 255, HD 1 be HELD.

Thank you very much for the opportunity to provide testimony on this bill.

POLICE DEPARTMENT
COUNTY OF MAUI

ALAN M. ARAKAWA
MAYOR

OUR REFERENCE

YOUR REFERENCE

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GARY A. YABUTA
CHIEF OF POLICE

CLAYTON N.Y.W. TOM
DEPUTY CHIEF OF POLICE

January 13, 2014

The Honorable Karl Rhoads, Chair
And Members of the Committee on Judiciary
House of Representative
State Capitol
Honolulu, HI 96813

RE: House Bill No. 255, HD1, Relating to Public Safety

Dear Chair Rhoads and Members of Committee on Judiciary:

The Maui Police Department opposes the passage of H.B. No. 255, HD1. The passage of this bill requires the Department of Public Safety to establish a three-year medical release pilot project.

Although this bill is seeking compassion for the inmate who was convicted of a crime in court, it does not measure the suffering and loss the victims endure.

This bill also does not define what crimes the inmates would be eligible for release. For example, would a convicted child molester qualify under the vagueness of this release program?

In its present form, the bill does not mention what happens if the inmate lives longer than the prognosis given by the doctor that the inmate would expire within one year. Will an inmate's medical release be revoked if his/her medical condition improves?

The only certainty in this bill is that an inmate will be allowed in our communities with no guarantees that they will cause additional suffering and loss to new and former victims.

The Maui Police Department asks that you oppose the passage of H.B. No. 255, HD1.

Thank you for the opportunity to testify.

Sincerely,

GARY A. YABUTA
Chief of Police

Justin F. Kollar
Prosecuting Attorney

Kevin K. Takata
First Deputy

Rebecca A. Vogt
Second Deputy

Diana Gausepohl-White, LCSW
Victim/Witness Program Director

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TESTIMONY IN SUPPORT OF
H.B. NO. 255, H.D. 1
A BILL FOR AN ACT RELATING TO PUBLIC SAFETY

Justin F. Kollar, Prosecuting Attorney
County of Kaua'i

House Committee on Judiciary

Friday, January 17, 2014
2:00 p.m., Room 325

Honorable Chair Rhoads, Vice-Chair Har, and Members of the House Committee on Judiciary:

The Office of the Prosecuting Attorney, County of Kaua'i submits the following testimony in OPPOSITION to H.B. 255, H.D. 1, Relating to Public Safety.

The purpose of H.B. 255, H.D. 1 is to address the concern regarding those aging and seriously ill inmates that require extensive medical needs by "compassionately releasing" them back into society due to their age and/or medical condition. While the well being of these inmates are a concern, we must remember that these inmates were sentenced to long prison terms due to the nature and serious crime they had committed, which in turn warranted an extended prison term in order to the safety of the public.

Please consider sentencing in conjunction with the crime committed, and the continued safety of the public, and to NOT have these inmates released solely based on age and/or medical needs.

For this reason, we OPPOSE H.B. 255, H.D. 1. Thank you for the opportunity to testify on this matter.

Respectfully,

Justin F. Kollar
Prosecuting Attorney
County of Kaua'i

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON JUDICIARY
Rep. Karl Rhoads, Chair
Rep. Sharon Har, Vice Chair
Friday, January 17, 2014
2:00 p.m.
Room 325

SUPPORT INTENT - HB 255 HD1 – COMPASSIONATE RELEASE PILOT PROGRAM

Aloha Chair Rhoads, Vice Chair Har and Members of the Committee!

Hau`oli Makahiki Hou! My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies for more than a decade. This testimony is respectfully offered on behalf of the 5,800 Hawai`i individuals living behind bars, always mindful that approximately 1,500 Hawai`i individuals are serving their sentences abroad, thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Native Hawaiians, far from their ancestral lands.

HB 255 HD1 requires the department of public safety to establish a three-year medical release pilot project. Effective July 1, 2050.

While Community Alliance on Prisons strongly supports a compassionate release program where the department of public safety works in concert with HPA, this bill calls for a three-year pilot program that we find unnecessary. The current system is broken; too many people are dying alone in prison.

"A pilot program, also called a feasibility study or experimental trial, is a small-scale, short-term experiment that helps an organization learn how a large-scale project might work in practice."[1]

Why do we need a pilot program? There is already a compassionate/medical release program, albeit a broken one. A pilot study could be used as a delaying tactic and we find no aloha in this strategy.

A story on National Public Radio[2] right after last session reported:

> *Nearly 30 years ago, Congress gave terminally ill inmates and prisoners with extraordinary family circumstances an early way out, known as compassionate release.*

[1] http://searchcio.techtarget.com/definition/pilot-program-pilot-study
[2] **Sick Inmates Dying Behind Bars Despite Release Program,** by Carrie Johnson, May 23, 2013. http://www.npr.org/2013/05/23/185563665/sick-inmates-dying-behind-bars-despite-release-program

Prison is a tough place, but Congress made an exception nearly 30 years ago, giving terminally ill inmates and prisoners with extraordinary family circumstances an early way out. It's called compassionate release.

But a recent investigation found that many federal inmates actually die while their requests drift through the system.
(…)
The Federal Bureau of Prisons didn't want to talk on tape for this story. But in a statement to NPR, and in response to the critical inspector general report, ***prison leaders say they will do a better job of letting inmates know about the program, cut down on how many people need to approve the requests, and start tracking them electronically.***

In an August 2013 Op-ed[3], Jamie Fellner of Human Rights Watch wrote:

MORE and more United States prisons resemble nursing homes with bars, where the elderly and infirm eke out shrunken lives. Prison isn't easy for anyone, but it is especially punishing for those afflicted by the burdens of old age. Yet the old and the very old make up the fastest-growing segment of the prison population.
(…)
Attorney General Eric Holder gave his answer to this question on Aug. 12 when he announced new compassionate release policies for the Bureau of Prisons. Elderly and infirm federal prisoners who have served a significant part of their sentence and pose no danger will now be eligible for early release.

Recidivism studies consistently show declining rates of crime with age. Those who are bedridden or in wheelchairs are not likely to go on crime sprees. The scores of older prisoners I have met want to spend their remaining time with their families; they are coming to terms with mortality, regret their past crimes and hope, if time permits, to make amends.

Keeping the elderly and infirm in prison is extraordinarily costly. Annual medical costs for older prisoners range from three to nine times higher than those for younger ones, because, as in the general population, older people behind bars have high rates of chronic disease and infirmities and require more hospitalizations and medical care.

I have talked with dozens of correctional staff members who acknowledge that officers are not trained to manage geriatric prisoners. Nor are there enough of them to give the extra attention such prisoners may need — to ensure they take their medications, find their way to their cell, are clean if they are incontinent.
(…)

A December 2013 article in ProPublica[4] reported:

The government has long been criticized for rarely granting compassionate release. In August 2013, Attorney General Eric Holder announced the Justice Department would try to change that by expanding criteria for who can apply.

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[3] **Graying Prisoners,** By Jamie Fellner, Op-Ed Contributor, NY Times, Published: August 18, 2013
http://www.nytimes.com/2013/08/19/opinion/graying-prisoners.html?partner=rss&emc=rss

[4] **How Bureaucrats Stand in the Way of Releasing Elderly and Ill Prisoners,** by Christie Thompson ProPublica, Dec. 4, 2013
http://www.propublica.org/article/how-bureaucrats-stand-in-the-way-of-releasing-elderly-and-ill-prisoners

> ***Under the new guidelines*** *http://www.bop.gov/policy/progstat/5050_049.pdf*, ***compassionate release can be granted not just to prisoners who have terminal illnesses, but also to those with debilitating conditions. Prisoners who need to serve as caregivers for family members may now also seek reductions in sentencing. And for the first time, elderly federal inmates who aren't necessarily dying or incapacitated can apply to be let out early.***
>
> *Holder touted the compassionate release initiative as one way to cut down on the "astonishing" federal prison population, which has grown by nearly 800 percent since 1980.*
> *(…)*

Warden Burl Cain of Louisiana State Prison at Angola was quoted as saying:

"This place was not built to accommodate people like this, I'm telling you, we're really feeling it."

"We are on an unsustainable path here," Justice Inspector General Michael Horowitz said in an interview with USA TODAY.

The Op-ed from Jamie Fellner concluded:

> *If we aren't willing to change sentencing laws or make more use of compassionate release, we'll need to pour vast sums of money into prisons to provide adequate conditions of care for the soaring population of geriatric prisoners.*
>
> *That means investing in special training for correction officers; in round-the-clock medical care; in retrofitting buildings, wheelchair-accessible cells and bathrooms; in units with lower bunks and no stairs; and in increased hospice care for the terminally ill.*
>
> *But do we really want to go that route? In the case of frail and incapacitated prisoners who can safely be released to spend what remains of their lives under supervised parole, release is a far more compassionate, sensible course.*

The Bureau of Justice Statistics found that between 1995 and 2010, the number of state and federal prisoners age 55 or older nearly quadrupled (increasing 282 percent), while the number of all prisoners grew by less than half (increasing 42 percent). There are now 124,400 prisoners age 55 or older.

When you consider this bill, we ask that you picture in your mind's eye a person whose body is riddled with cancer making him or her unable to walk, feed themselves or perform the most basic hygiene.

We humbly ask why the Hawai`i Department of Public Safety needs a pilot program when the Bureau of Prisons and a plethora of research show that

> *…Keeping thousands of old men locked away might make sense to die-hards seeking maximum retribution or politicians seeking political cover, but it has little effect on public safety. By age 50, people are far less likely to commit serious crimes. "Arrest rates drop to 2 percent," explains Hood, the retired federal warden. "They are almost nil at the age of 65." The arrest rate for 16-to- 19-year-olds, by contrast, runs around 12 percent. …*[5]

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[5] **The Other Death Sentence** *More than 100,000 Americans are destined to spend their final years in prison. Can we afford it?*, by James Ridgeway.
http://www.motherjones.com/politics/2012/09/massachusetts-elderly-prisoners-cost-compassionate-release

We urge the committee to pass a good compassionate release law, not a pilot program, that is a system based on medical evidence, protection of the public and compassion.

We can reduce our prison population and our out-of-control prison budget by implementing strategies such as compassionate release that allow the sick and elderly to enjoy their last days with their loved ones with little or no risk to public safety.

We have spoken to folks who know about Medicaid and the cost for those on compassionate release is around $1,500 a month. This is compared to the monthly costs of incarceration which are $3,810/month ($127/day x 30 days) that we know doesn't take into account the rising cost of medical care.

The Department of Public Safety could actually save money by exercising compassion!

If you pass this measure, please eliminate the pilot program and just fix the broken system.

Mahalo for this opportunity to testify.

LORENN WALKER, J.D., M.P.H.

COMMITTEE ON JUDICIARY

Honorable Representative Karl Rhoads, Chairperson
Honorable Representative Sharon Har, Vice Chairperson
Friday, January 17, 2014
2:00 p.m.
Room 325

STRONG SUPPORT HB 255 HD1 – RELATING TO PUBLIC SAFETY

This bill would allow for the compassionate release of imprisoned people who have serious medical problems.

The bill should be passed but without the requirement of a three (3) year pilot study.

There is no reason to pilot compassionate release of seriously ill or very elderly people from prison.

Many jurisdictions allow for compassionate release and Hawai'i should be doing it too as a regular practice. It is commonsense to release people who cannot properly be managed in prison due to illness and other physical problems. The cost too to the state of the inordinate amounts of money needed to supervise these people in prison also demand this bill be passed.

I am a former deputy attorney general who represented the state in many cases concerning the management of our state prisons. I believe this measure is in the best interest of the state and our citizens. Since 1994, after leaving state service, I have applied a public health approach to justice issues.

Please see my website www.lorennwalker.com for a description of my background and experience in improving the criminal justice system and prisons.

Thank you for your time and efforts in public service.

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January 16, 2014

HOUSE COMMITTEE ON JUDICIARY
Rep. Karl Rhoads, Chair
Rep. Sharon E. Har, Vice Chair
Friday, January 17, 2014
Conference Room 325
2:00 p.m.
HB 255 HD 1
Strongly Support

Dear Chair Rhoads, Vice Chair Har, and committee members:

My name is Robert Merce. I practiced law in Hawai'i for more than 25 years before retiring in 2007. For the past two years I have spent hundreds of hours helping inmates who were seeking compassionate release. I have seen first-hand how the current patchwork of incongruous and antiquated rules and policies consistently fails inmates, the criminal justice system, and the public. We need a clear and sensible compassionate release statute, and that is exactly what HB 255 HD 1 is. It will save the state money by paroling inmates who do not pose a risk to society and who are in need of intensive and costly end of life care. It addresses all of the problems I encountered in the compassionate release cases I have worked on and institutes a fair and transparent process that will serve the interests of the public, the government and inmates. As Senate Standing Committee Report No. 2494 to the companion bill notes, this bill and its underlying purpose are "pono" - good, upright, just, the right thing to do.

1. Our Prison Population is Rapidly Aging and the State Does Not Have the Resources or Skills To Care for Aging Inmates.

Three decades of "get tough" sentencing policies characterized by extremely long prison terms, mandatory minimum sentences, and reduced parole have resulted in a significant increase in the number and proportion of older prison inmates. Human Rights Watch reports that between 1995 and 2005 the number of inmates over age 55 in state and federal prison increased almost 300%, and between 2007 and 2010 the number of prisoners age 65 or older grew an astounding 94 times

faster than the prisoner population as a whole.[1] I do not know the statistics for Hawaii but there is no reason to believe that they deviate significantly from the national statistics.

Most of these older inmates will eventually develop serious, permanent and debilitating physical or mental conditions such as chronic heart, liver and kidney disease, cancer, stroke, Alzheimer's disease and dementia. And statistic show that they will develop these conditions much earlier than the general public because inmates tend to age faster than the general public. It is not uncommon for a 50-year old inmate may have the age-related health problems of a 60-year old on who is not in prison.[2]

The health problems of older people typically require intensive, long-term care by specialists, as anyone who has cared for an older family member can attest. An elderly relative of mine recently fractured her hip and required treatment from orthopedic surgeons, internists, gerontologists, psychiatric gerontologists, pain management specialists, physical and occupational therapists, and home health care nurses. Before she was able to return to her home she had to be treated in the acute care wing of Queens Medical Center, the Queens Rehabilitation Center, Maunalani Nursing Home and Rehabilitation Center, a private nursing home, and at our home. And although her fracture has healed, she is still very frail and requires 24/7 care because she cannot dress, bathe, or walk without assistance. This is a relatively common scenario among the elderly, and it will become increasingly common in prison, given the aging prison population.

Here's the point: Prisons are prisons. They are not nursing homes, hospitals, or assisted living facilities. They were not designed to take care of older people and they are ill prepared to provide the sick and elderly with the intensive care they need. Keeping elderly and sick men and women who are not a danger to society in prison does not serve any legitimate penological interest and is not compassionate, economical or just.

It should also be noted that the Hawaii Intermediate Court of Appeals recently held that prison doctors exercising medical discretion in the diagnosis and treatment of inmates are not protected from medical malpractice claims by the doctrine of qualified immunity. *Slingluff v. State*, Hawaii Intermediate Court of Appeals No. 30233, decided December 31, 2013. The court made it clear that inmates are entitled to *the same quality of care as those who are not in prison,* and the failure to provide such care will render the State liable for damages to the inmate and his or her family. The damages in the *Slingluff* case were close to $1 million.

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[1] Human Rights Watch, *Old Behind Bars, The Aging Prison Population in the United States,* January 2012. Online at http://www.hrw.org/sites/default/files/reports/usprisons0112webwcover_0.pdf

[2] Carrie Abner, *Graying Prisons, States Face Challenge of Aging Inmate Population*, Project for Older Prisoners. November/December 2006. Online at Council of State Government website: http://www.csg.org/knowledgecenter/docs/sn0611GrayingPrisons.pdf

II. Highlights of HB 255 HD 1

Let me take a moment to highlight some of the most important provisions of HB 255 HD 1.

A. Incorporates Medical/Correctional Best Practices. In May 2011 a group of distinguished physicians co-authored an article on compassionate release that was published in the *Annals of Internal Medicine*, the journal of the American College of Physicians.[3] It was the first time in many years that compassionate release was examined in depth from the perspective of the medical community. After reviewing relevant literature, examining state and federal statutes, and acknowledging the failure of almost all of the presently existing laws to function in a manner that serves the interest of society or prisoners, the authors made several key recommendations:

1. Compassionate release procedures should be **evidence based**;

2. There should be a **completely transparent** compassionate release process

3. An **advocate** should be appointed to help inmates navigate the process and represent incapacitated prisoners;

4. There should be a **"fast-track" option** for the evaluation of rapidly dying prisoners; and

5. There should be a **well-described and well-disseminated application procedure.**

HB 255 HD1 *incorporates all of the foregoing recommendations* and to my knowledge is the first medical release bill in the nation to do so.

B. **A Completely Transparent Process**. HB 255 HD1 sets out a process by which the Department of Public Safety evaluates all compassionate release requests and makes a written recommendation to the Hawai'i Paroling Authority. The Authority then decides whether or not the inmate should be released. The HPA makes its decision after a hearing in which the inmate can present evidence of his own. This ensures that the process is completely transparent, that all sides are heard, and that all relevant evidence is considered.

C. **The Bill Does Not Ask Doctors to Make Public Safety Judgments That They Have Not Been Trained to Make.** The process set out in HB 255 HD1 provides that physicians determine whether an inmate meets the *medical* criteria for compassionate release, and correctional officials determine whether the inmate *poses a danger to society*. Health and safety are

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[3] 1 BA Williams, RL Sudore, R Greifinger, and RS Morrison. Balancing Punishment and Compassion for Seriously Ill Prisoners. Ann Intern Med. 2011;155:122-126.

evaluated separately by the professionals who have the knowledge, training and experience to make sound judgments. Under HB 255 HD 1 if a physician determines that an inmate meets the **medical criteria** for release, that inmate would still have to be evaluated by correctional officials to determine whether he poses a risk to public safety. If he poses a risk to public safety he would not be released, irrespective of his medical condition.

D. The Paroling Authority Decides All Medical Release Requests. One of the most important provision of HB 255 HD 1 is that the Hawai'i Paroling Authority decides **all** medical release requests, not just those referred to it by the Department of Public Safety. Let me explain why this is so important.

Currently, the only person who can initiate compassionate release is the inmate's attending physician (i.e. the prison doctor). *See* Dept. Pub. Safety Policy COR. *10.1G.11, Compassionate Release for the Terminally Ill* (February 2, 2011). An inmate, a nurse, or an outside physician cannot initiate the process. If the attending physician decides, for whatever reason, not to recommend compassionate release, then the inmate will never be released, no matter how compelling the case for release may be. There is no reconsideration process, no independent review process, and no appeal process. The decision of one person is final and absolute. If a bad decision is made, there is nothing the inmate, his family or even a court can do about it.

And prison doctors make mistakes, often serious ones. I can say that from personal experience. I recently worked with attorney Rick Sing[4], on a case involving a 53-year old inmate (I will not mention his name to protect his privacy) who was brought back to Hawaii from Saguaro with a diagnosis of end stage liver disease (ESLD) and several of its most horrific and devastating complications. When I met with him for the first time on January 24, 2013, he had just returned from the Queens Emergency room where had been diagnosed with hepatic encephalopathy (a worsening of brain function that occurs when the liver is no longer able to remove toxic substances in the blood) and was so weak he could hardly speak. It was absolutely clear that he was terribly ill and dying.

I reviewed his medical records the next day and on January 29 I spoke to both Ted Sakai, Director of the Department of Public Safety (PSD), and Dr. Lori Karan, The PSD Medical Director, about the inmate. I told them that he had just returned from Saguaro, that he was desperately ill, and urged them to grant compassionate release quickly so he would not die in prison.

But nothing happened. The attending physician did not recommend compassionate release and the inmate's condition deteriorated. At one point he was so weak he fell over and hit his head and had to be hospitalized for several days. As time went by, his condition became even worse. Here are a few <u>verbatim</u> entries from his medical records in early to mid February:

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[4] Mr. Sing is in private practice and is currently Interim Chair of the Criminal Justice and Corrections section of the Hawaii State Bar Association. He worked on this case without fee (pro bono publico).

· Patient sitting on toilet fully dressed leaning over, drooling . . . attempted to give lactose x 2, pt. would drink then lactose would run out of mouth. Altered mental states

· Explained to patient what was going to be done. No verbal responses, pt. remained looking down with clear drool from mouth . . . unsteady, drooling.

· Walk pass pt. room, noted pt. sitting on edge of roommate's bed urinating on floor.

· Reports watery stools once a day and occasionally does not make It to the toilet in time.

· Medical Aide reports 2 episodes this week where pt. is completely unresponsive, slouched over, urinates on the floor, does not follow commands and is losing privileges because of it; for hours at time, then has no recollection of anything happening.

· Pt. seen standing next to bed with pants around knees. Actions appear sluggish with minimal effort.

· Pt. very slow in affect, slow to respond verbally, appears confused and has increased drooling this morning. Pt. unable to give name . . . pt. unable to give day, date, year.

· confused . . . Pt [illegible] then came to day room, pulled his pants down, and sat on chair . . . 20 minutes later, pt. urinated on floor in his cell and put his pants on and climbed into bed with his wet pants.

Toward the end of February the inmate was admitted to in-prison hospice, which required two physicians to independently certify that he was terminally ill and had less than 6 months to live. He agreed to "no resuscitation" and medical treatment was terminated**. But the attending physician still did not recommend compassionate release!**

Finally, sometime around February 26, the attending physician wrote a memo to the Medical Director and Health Care Administrator recommending compassionate release "as soon as possible". The Medical Director however, **rejected the recommendation** because she apparently believed the relevant criteria for compassionate release was that death must be "imminent" and she did not think the inmate met that criteria. In fact, the PSD criteria for compassionate release has nothing to do with "imminent death". The criteria is that the inmate must have a terminal illness that can be expected to cause death *within 1 year* or "[a] persistent illness or disease causing increasing physical weakness to the extent that the patient's quality of life is compromised and care could be better managed within the community. See PSD Policy COR 10.1G12*, Compassionate Release for the Terminally Ill* (February 2, 2011). The inmate Mr. Sing and I were helping clearly met both of PSD's compassionate release criteria, he was not a danger to society, yet PSD refused to recommend compassionate release.

Mr. Sing and I then wrote to the Hawaii Paroling Authority and asked them to advance the regular parole hearing for our client which was already set for August. The basis for the request was that the inmate would not live until August so advancing the hearing made sense and was the right thing to do. We encountered technical problems with that approach but at least the facts of the case were made know to the Paroling Authority and a short time later PSD changed its position and recommended the inmate for compassionate release. The Paroling Authority gave us an expedited hearing and on March 21, 2013 our client was at long last released. We took him to a Hawaii Hospice residence in Kailua where he received compassionate care.

On April 7, 2013 I received a call from Hospice that our client had slipped into a coma. At 5:00 p.m. they called to say he had passed away.

It took us more than 2 months to get our client released from prison and into a compassionate, non-prison hospice setting. He died just 17 days after being released.

HB 255 HD 1 will go a long way toward ensuring that unconscionable delays like the ones that occurred in our case will not happen again, and that is critically important.

The process set out in HB 255 HD1 will not result in a flood of frivolous medical release claims. In most cases the PSD will initiate timely medical release requests for inmates who meet the medical release criteria, and those individuals will be referred to the HPA just as they are now and be released as a matter of course.

It is difficult to imagine that inmates who are healthy or have minor medical problems will contend that they are profoundly incapacitated or dying, but if they do, the PSD will simply have to write a very short report – probably no more than a few sentences - stating that the inmate is healthy or has one or more benign medical conditions that do not meet the criteria for medical release and forward it to the HPA. Unless there is compelling contrary evidence, the HPA hearing on that type of request would be extremely brief. The only cases that will take a little time are those where there are genuine issues regarding the inmate's condition, and those cases deserve whatever time is required to resolve them properly.

In conclusion, HB 255 HD1 provides a fair and open process for terminally ill and profoundly disabled inmates to be compassionately released while at the same time protecting the public from an unreasonable risk of harm. It is a good bill and I urge you to pass it.

I would however strongly recommend deleting the provision that makes the medical release a "pilot program". HB 255 HD 1 is well thought out, based on best practices and the best thinking of the medical/legal community, and non-controversial. It deserves to be adopted as

the law of the state, not as an experimental program that will end three years from now.

Thank you for allowing me to testify.

Robert K. Merce

January 17, 2014

RE: HB255

BY: LILLIAN ULULANI HARWOOD-WAKINEKONA.

I would like to share my reason for supporting HB 255. My husband was incarcerated for 41 years. During his incarceration he contracted Hepatitis – C for which he received a modicum of medical coverage. At one point his illness took a turn for the worse and the prognosis was terminal. He was given 1 to 4 weeks to live.

Our courageous attorney began the journey through the valley of bureaucracy that took six months for the transition to take place, bearing in mind that the illness is not being treated (except for narcotics to ease pain), and is debilitating.

Should we have not been so persistent in our efforts to get a compassionate parole approved, my husband would have died without dignity. The process, as it stands requires assurance that the inmate will die within a prescribed amount of time. When I last looked there was no expiration date stamped on my forehead. The present Bill also wants assurance that the applicant would not commit a crime once released. Is that same requirement asked of an able bodied, healthy inmate seeking parole?

My husband was given excellent medical and naturopathic care, he was able to repair broken relationships with his children, bury a son he never knew. Because of this compassionate parole my husband Delbert Wakinekona was given 27 months opposed to 1 to 4 weeks of life using that time to face death with quiet courage, strength and integrity.

My greatest concern is that your idea for a pilot program is a means to continue to keep the terminally ill incarcerated beyond help that would give them a degree of dignity in death. My husband would never have been able to mend the emotional broken bridge between him and his children if he were forced to wait for your 3 year “pilot program” to take effect in July 2050. Remove the “pilot program”, make this Bill take effect before 2050 Delbert Ka’ahanui Wakinekona, peacefully passed away one week ago on January 9, 2014, he may have died but his dream for the terminally ill inmate to die with dignity as he did will live on through the good decisions of leaders such as yourselves,

Thank you for your consideration to pass HB 255