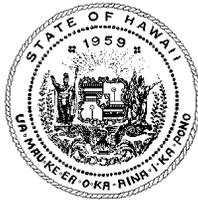


JOSH GREEN, M.D.  
GOVERNOR



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 F. Oku  
Deputy Director  
Law Enforcement

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

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

By

Tommy Johnson, Director

House Committee on Finance  
Representative Kyle T. Yamashita, Chair  
Representative Lisa Kitagawa, Vice Chair

Wednesday, February 22, 2023; 2:30 p.m.  
State Capitol, Conference Room 308 and via Video Conference

Chair Yamashita, Vice Chair Kitagawa, and Members of the Committees:

The Department of Public Safety (PSD) **supports** House Bill (HB) 824, HD 2, which proposes to codify, in statute, a medical release program that has existed in the policies and procedures of the Department and the Administrative Rules of the Hawai'i Paroling Authority (HPA) since December 2014 for certain ill or impaired incarcerated individuals who pose a low risk to public safety.

**EFFECTIVENESS OF CURRENT MEDICAL RELEASE PROGRAM**

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

Despite the success of the PSD-HPA’s medical release program, identified areas for improvement include the following: a) guardianship procedures and b) housing. With the assistance of the Family Courts for the Judiciary, PSD, along with the Office of the Public Guardian, developed a process for cases requiring guardianship of inmates being considered for medical release. Although the collaborative process has shown progress, the limits of law and the comprehensive requirements of the process do not allow for expeditious relief in time-sensitive cases. HB 824, HD 2 does not resolve the guardianship issue.

PSD 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 PSD with housing for medical release cases. He, too, has experienced this shared difficulty with housing. HB 824, HD 2, does not resolve the housing issue. Like traffic, HB 824, HD 2, 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).

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

In order to comply with the requirements of HB 824, HD 2, the following provides an updated analysis of the resources needed for compliance. Anticipated staffing increases include a Physician (1.0 FTE) position, which would be responsible for providing oversight, coordination, and review of the statewide medical release program. As a component of the medical release program, HB 824, HD 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 Department of Public Safety does not exist. An additional Advanced Practice Registered Nurse II (1.0 FTE) position would be responsible for the development of the medical release plan, including serving as petitioner for guardianship when needed.

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

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

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. PSD respectfully requests appropriation of the requested minimal staffing to support the proposed medical release program: 1.0 FTE Physician and 1.0 FTE Advanced Practice Registered Nurse II.

Thank you for the opportunity to provide testimony in support of HB 824, HD2.



**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 Kyle T. Yamashita, Chair  
The Honorable Lisa Kitagawa, Vice Chair  
House Committee on Finance

FROM: Mark Patterson, Chair  
Hawaii Correctional System Oversight Commission

SUBJECT: House Bill 824 House Draft 2, Relating to Medical Release  
Hearing: Wednesday, February 22, 2023; 2:30 p.m.  
State Capitol, Room 308

Chair Yamashita, Vice Chair Kitagawa, and Members of the Committee:

The Hawaii Correctional System Oversight Commission (HCSOC, the Commission) **supports the intent** of House Bill 824, House Draft 2, relating to Medical Release within the Department of Public Safety for certain ill, disabled, or impaired inmates who pose low risk to public safety. Please note that the amendments added to House Draft 1 (creating House Draft 2) adds an immense number of barriers for those who would have initially been eligible for medical release. The Commission has grave concerns about the amendments added as it severely limits the pool of eligible ill, disabled, or impaired inmates.

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. For these reasons, the Commission is requesting the following Amendments to House Bill 824 House Draft 2 be removed:

**Request to Remove Amendments:**

- (1) Clarifying that an inmate must pose a low risk to public safety to be eligible for the medical release program;

The issue here is that there is no definition of what, “low risk to public safety” means. Moreover, this phrasing is irrelevant since the bill is focused on those who have a terminal illness, have seriously debilitating or irreversible conditions, those who are too ill to participate in rehabilitation, and those who require complex treatments. People who are incapacitated to this level are unlikely to be a risk to the public. Removing this type of phrasing is important as this phrasing is often used to exclude lifers, or those with longer sentences due to violent crimes.

(2) Requiring that requests for medical release be accompanied by a recommendation for medical release by a physician who is licensed to practice medicine in the State;

This creates additional barriers that are costly, timely, and disregards the fact that many outside providers are uninterested in giving such an opinion. There is no indication that the Department of Public Safety would cover costs, or that the Department of Public Safety would help secure an opinion from a physician. Moreover, this does not account for the inmates who are housed in Arizona, who are the vast majority of lifers/older patients.

(3) Deleting language that would have required the Director of Public Safety to appoint an advocate for any inmate who requests medical release and is unable, due to incapacitation or debilitation, to advocate on the inmate's own behalf;

This again creates immense barriers for those who are too incapacitated to advocate for themselves. The Department should take responsibility in assisting these individuals in appointing an advocate who can help them through the process. This is especially important given that the Department of Public Safety does not have adequate or humane space to house people with complex medical needs.

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, with the adjusted amendments, 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 important to note that **within the past two months, three elderly inmates have died in custody:** one individual was 73 years old, and the second individual was 87 years old, and the third individual was 74 years old. All three died while housed in the prison infirmary at the Halawa Correctional Facility (prison).

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

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

Women’s Community Correctional Center (Prison)	1	0
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*Department data as of 2/14/2023*

Additionally, the Department of Public Safety currently houses 169 individuals who are between the ages of 65-84 years old.

Age	Number of Inmates
65-69 years	104
70-74 years	41
75-79 years	15
80-84 years	9
<b>Total</b>	<b>169</b>

*Department data as of 2/21/2023*

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. The Commission heavily supports all amendments added to House Bill 824, making House Bill 824, House Draft 1 the best outcome for the State of Hawai’i. However, House Bill 824, House Draft 2 creates significant barriers for those elderly, sick individuals who need the most help. For these reasons, the Commission supports the intent of the bill and hopes the Committee will remove the amendments listed above.

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'ĀINA



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

EDMUND "FRED" HYUN  
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ACTING ADMINISTRATOR

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

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

by  
Edmund "Fred" Hyun, Chairman  
Hawaii Paroling Authority

House Committee on Finance  
Representative Kyle T. Yamashita, Chair  
Representative Lisa Kitagawa, Vice Chair

Wednesday, February 22, 2023 – 2:30 p.m.  
Conference Room 308 – State Capitol

Chair Yamashita, Vice Chair Kitagawa, and Members of the Committee:

The Hawaii Paroling Authority (HPA) offers comments on HB 824, HD 2, which proposes to codify, in statute, a medical release program for certain ill, disabled, or impaired incarcerated individuals who pose a low risk to public safety. The proposed measure would alter the established and effective Medical Release Program that has existed in the policies and procedures of the Department of Public Safety (PSD) and the Administrative Rules of the Hawaii Paroling Authority (HPA) since December 2014.

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

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

Thank you for the opportunity to provide testimony on House Bill 824, HD 2.

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

February 21, 2023

TO: Committee on Finance  
RE: HB 824, H.D. 2  
HEARING: February 22, 2023  
TIME: 2:30 p.m.  
ROOM: Conf. Rm. 308  
POSITION: **OPPOSE**

Chair Yamashita, Vice Chair Kitagawa, and members of the committee:

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,<sup>1</sup> and I drafted two previous compassionate releases bills—SB 70 (27<sup>th</sup> Legislature 2013) and HB 629 (30<sup>th</sup> 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, End Stage Liver Disease (ESLD), End Stage Renal Disease (ESRD), multiple sclerosis and other conditions navigate Hawaii's byzantine, contradictory, opaque, and often arbitrary and capricious medical release process. I believe that I know the medical release process in Hawaii as well or better than anyone in the State.

HB 824 started out as a good bill that aimed to create a timely, fair and equitable procedure for identifying and paroling terminally ill and severely debilitated prisoners, and I strongly supported it. But based on recommendations from the Department of Public Safety it has become a cynical and cruel bill that dispenses with best practices and virtually assures that men and women suffering from painful and debilitating conditions from which they will never recover will continue to suffer and die in our prison infirmaries.

Among the many problems with the current version of HB 824 are the following:

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 frames for decision making** and therefore it does not reflect best practices in medical release.

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<sup>1</sup> See Hawaii Department of Public Safety, Corrections Administration Policy and Procedures, Medical Release, COR.10.1G.11, section 3.0

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 physician who is licensed to practice medicine in the State" presents an insurmountable barrier for most inmates because doctors may be able to say whether an inmate meets the *medical criteria for release*, but it is hard to imagine a physician going outside the scope of their medical training and recommending that a patient be released from prison. 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 HPA makes risk assessments every day, and it 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. The advocate does not, as DPS asserts, have to be 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 inmates *pro bono*, or, depending on the situation, a public defender. Having a person available to help and advocate for incapacitated or debilitated prisoners navigate the release process is a simple matter and is a critical best practice to ensure that the system operates effectively and equitably.

DPS is dead wrong when it says that we do not need a compassionate release law because the present system is effective. As the Hawaii Correctional System Oversight Commission pointed out in its testimony before the House Committee on Judiciary and Hawaiian Affairs, in the past two months, three elderly inmates have died in custody. One of them was 73 years old, one was 74 years old, and one was 87 years old. Worse yet, in 2021 and 2022 DPS sought release for 10 inmates, but in those two years 39 inmates died in Hawaii Correctional Facilities, and we don't know if any of the 10 inmates for whom release was sought were actually released, or whether they were part 39 inmates who died in custody.<sup>2</sup>

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<sup>2</sup> See DPS's February 15, 2023 testimony on HB 824 H.D. 1, and DPS "Death Notifications" at <https://dps.hawaii.gov/notification-of-inmate-death-in-a-psd-facility/>

In terms of effectiveness, I would also note that 2021, the non-profit Families Against Mandatory Minimums (FAMM) evaluated the compassionate release programs of all 50 states and the District of Columbia, and gave Hawaii a failing grade (F).<sup>3</sup>

HB 824 H.D. 2 will make it more difficult for sick and dying inmates to die peacefully and with dignity. **It is no longer a compassionate release bill and it should not be allowed to masquerade as one.**

Thank you for allowing me to testify on this matter.

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<sup>3</sup> See FAMM, “Grading the States” State Compassionate Release” at <https://famm.org/wp-content/uploads/national-picture.pdf>