



HB629 HD1
RELATING TO MEDICAL RELEASE
Ke Kōmike Ho'okolokolo

Pepeluali 13, 2019

3:00 p.m.

Lumi 325

The Office of Hawaiian Affairs **SUPPORTS** HB629 HD1, which establishes streamlined guidelines and clarifies conditions for the compassionate release of prisoners who are disabled, senescent, or suffering from debilitating or terminal illness. This measure would facilitate the humane reunion of offenders who pose little to no risk to society with their 'ohana and community, while reducing the costs of prison overcrowding to the state, taxpayers, and other inmates.

In OHA's 2010 study on the disparate treatment of Native Hawaiians in the criminal justice system, OHA recommended that the Hawai'i Paroling Authority "release older people from prison who are generally considered to be low risk, and utilize Hawai'i's medical parole policies to the fullest extent possible."¹ This recommendation sought to reduce to the overrepresentation of Native Hawaiians in prison and provide relief to the burdens of overcrowded facilities and the continental relocation of pa'ahao; OHA's report noted that "an overall reduction in the number of people in prison will support efforts to reduce racial disparities" identified both in our report, as well as by the Native Hawaiian Justice Task Force.² **OHA appreciates and supports this measure as a long awaited step towards the implementation of our recommendation.**

OHA notes that this measure would further address findings in the recently published report by the HCR85 Task Force on prison reform. The HCR85 Task Force report expressed concerns regarding the exorbitant healthcare costs of aging prisoners, and the state's lack of capacity to handle the rapidly increasing aging population in our prisons.³ Accordingly, facilitating the medical release of such individuals would ease a significant burden on taxpayers, while reducing the strain on prison facilities and other resources presented by overcrowding, and allowing more resources to be invested in programs and services for prisoner rehabilitation, reentry, and recidivism prevention. Insofar as the supervised parole of elderly, sick, and dying

¹ THE OFFICE OF HAWAIIAN AFFAIRS, THE DISPARATE TREATMENT OF NATIVE HAWAIIANS IN THE CRIMINAL JUSTICE SYSTEM 81 (2010), available at

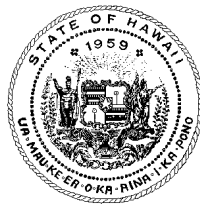
http://www.oha.org/wp-content/uploads/2014/12/ir_final_web_rev.pdf.

² See generally, OFFICE OF HAWAIIAN AFFAIRS, NATIVE HAWAIIAN JUSTICE TASK FORCE REPORT (2012), available at http://www.oha.org/wp-content/uploads/2012NHJTF_REPORT_FINAL_0.pdf.

³ HCR 85 TASK FORCE, CREATING BETTER OUTCOMES, SAFER COMMUNITIES: FINAL REPORT OF THE HOUSE CONCURRENT RESOLUTION 85 TASK FORCE ON PRISON REFORM TO THE HAWAII LEGISLATURE 7 (2018), available at https://19of32x2yl33s8o4xza0gf14-wpengine.netdna-ssl.com/wp-content/uploads/HCR-85-Task-Force-on-Prison-Reform_Final-Report_12.28.18.pdf (citing a 2011 study revealing that health care costs for a few California prisoners averaged nearly \$2 million per prisoner).

pa‘ahao presents little to no risk to the public, the continued costly incarceration of this population cannot be justified both from either a budgetary or a humane approach.

Therefore, OHA urges the Committee to **PASS** HB629 HD1. Mahalo for the opportunity to testify on this important measure.



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
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No. _____

TESTIMONY ON HOUSE BILL 629, HOUSE DRAFT 1
RELATING TO MEDICAL RELEASE.

by

Nolan P. Espinda, Director
Department of Public Safety

House Committee on Judiciary
Representative Chris Lee, Chair
Representative Joy A. San Buenaventura, Vice Chair

Wednesday, February 13, 2019; 3:00 p.m.
State Capitol, Conference Room 3 25

Chair Lee, Vice Chair San Buenaventura, and Members of the Committee:

The Department of Public Safety (PSD) supports House Bill (HB) 629, House Draft (HD) 1, which codifies the ongoing Medical Release program, in which PSD assesses and refers qualified inmates to the Hawaii Paroling Authority for possible medical release and which has existed in practice for several years and is now in the process of being promulgated through the Administrative Rules procedure.

HB 629 also updates Chapter 346-29, Part I, Section 1, Hawaii Revised Statutes (HRS), that states, in part, "an inmate who is on medical release pursuant to subpart B of part II of HRS Chapter 353, shall be presumed eligible for receive medical assistance." The Department has some concern that this change in the statute will result in a significantly increased number of applications for Medical Release, which will add substantially to the workload of PSD's Health Care Office, as well as, that of other Corrections Program and facilities' staff. However, this concern may be addressed with an infusion of funding for the affected areas.

PSD also notes that the Department established a partnership in 2016 with the Department of Human Services MedQuest Division to ensure that all prison

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House Committee on Judiciary
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inmates who exit a correctional institution are provided the opportunity to apply for Medicaid prior to release, allowing the exiting inmate to be qualified to receive medical services upon release. This also applies to those who are approved for Medical Release by the Hawaii Paroling Authority.

Thank you for the opportunity to present this testimony.



STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809-0339

February 12, 2019

TO: The Honorable Representative Chris Lee, Chair
House Committee on Judiciary

FROM: Pankaj Bhanot, Director

SUBJECT: **HB 629 HD1 – RELATING TO MEDICAL RELEASE**

Hearing: Wednesday, February 13, 2019 3:00 p.m.
Conference Room 325, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) supports the intent of the bill, offers comments, and suggests an amendment.

PURPOSE: The purpose of this bill requires the Department of Public Safety to assess and refer inmates to the Hawaii Paroling Authority (HPA) for possible medical release. Allows an inmate to be considered for medical release at the request of the director, the inmate, or the inmate's representative, if the inmate meets specified criteria. Requires the HPA to grant or deny the request after a hearing, to set reasonable conditions on an inmate's medical release, and to promptly order an inmate returned to custody to await a revocation hearing if the HPA receives credible information that an inmate has failed to comply with any reasonable conditions of medical release. Makes inmates on medical release presumptively eligible to receive medical assistance from the Department of Human Services.

DHS has partnered with the Department of Public Safety (PSD) to create systems that seek to ensure justice involved populations are able to apply for Medicaid prior to being released from incarceration. This partnership includes data sharing improvements between PSD and DHS that allow for more systemic improvements in Med-QUEST's (MQD) ability to suspend and unsuspend enrollment in Medicaid for those taken into and released from

custody. Additionally, MQD and PSD have collaborated to work through challenging cases that may present themselves and require a more hands-on approach.

DHS offers comments on the bill's amendment (page 2, lines 3-6), "An inmate of a public institution who is on medical release pursuant to subpart B of part II of chapter 353 shall be presumed eligible to receive medical assistance." DHS believes this language should not be included in the measure since "presumptive eligibility" for Medicaid for those on medical release from incarceration is not part of Hawai'i's Medicaid State Plan.

Medical assistance for an individual who is not eligible under Hawai'i's Medicaid State Plan would not be compliant with the rules set forth by the Centers for Medicare & Medicaid Services (CMS). This means any "presumptive eligibility" for medical assistance for individuals who do not meet Medicaid eligibility requirements would need to be funded with state general funds only (i.e., not eligible for federal matching funds), and consequently, DHS would require an additional appropriation.

For this reason, we respectfully suggest that the above-mentioned language be deleted from the measure.

Thank you for the opportunity to testify on this bill.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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DWIGHT K. NADAMOTO
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**THE HONORABLE CHRIS LEE, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Thirtieth State Legislature
Regular Session of 2019
State of Hawai'i**

February 13, 2019

RE: H.B. 629, H.D. 1; RELATING TO MEDICAL RELEASE.

Chair Lee, Vice-Chair San Buenaventura, and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in opposition to H.B. 629, H.D. 1.

The purpose of H.B. 629, H.D. 1, is to establish and implement policies and procedures in which inmates may be considered for medical release. Currently, the Department of Public Safety maintains Policy COR.10.1G.11, which has been in effect since December 29, 2014. This 2014 policy supersedes a similar administrative directive that had been in effect since February 2, 2011, which establishes administrative policies and procedures regarding the medical release of inmates (See Attached Exhibit A). As adopted, Policy COR.10.1G.11 adequately addresses the purpose, definitions, policies, procedures and scope regarding medical release of inmates. Thus, the passage of H.B. 629, H.D. 1, to codify such procedures for medical release of inmates is unnecessary, duplicative and moot at this time.

In addition, the Department is concerned that the procedures as currently proposed in H.B. 629, H.D. 1, would create unnecessary delays in the current medical release process being implemented by the Department of Public Safety and the Hawaii Paroling Authority, thus achieving the opposite effect H.B. 629, H.D. 1, proposes to resolve.

For all the reasons above, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes the passage of H.B. 629, H.D. 1. Thank you for the opportunity to testify on this matter.

COMMUNITY ALLIANCE ON PRISONS

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COMMITTEE ON JUDICIARY

Rep. Chris Lee, Chair

Rep. Joy SanBuenaventura, Vice Chair

Wednesday, February 13, 2019

3:00 pm

Room 325

STRONG SUPPORT for HB 629 HD1 - COMPASSIONATE RELEASE

Aloha Chair Lee, Vice Chair SanBuenaventura 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 families of **ASHLEY GREY, DAISY KASITATI, JOEY O'MALLEY, JESSICA FORTSON AND ALL THE PEOPLE WHO HAVE DIED UNDER THE "CARE AND CUSTODY" OF THE STATE** as well as the approximately 5,400 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety on any given day. We are always mindful that more than 1,600 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

HB 629 HD1 incorporates some great amendments to strengthen this measure. Community Alliance on Prisons is in strong support of this important measure that incorporates best practices. This is an important bill because it also demonstrates our community values of aloha and malama.

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 if an inmate believes that the DPS had made a mistake. An inmate can request medical release, PSD must prepare a medical report on the inmate and forward it to the Paroling Authority, who must give the inmate a hearing within 10 days. We believe the appeal process is absolutely essential because mistakes are inevitable and an appeal provides a mechanism for correcting them (or affirming the decision of the DPS if no mistake has been made).

The bill states that the Dept of Public Safety (PSD) must appoint an advocate for any inmate who requests medical release and is unable, due to incapacitation or debilitation, to advocate for himself or herself.

The bill specifies reasonable time limits for processing requests for compassionate release and incorporates all of the key recommendations found in an article¹ on compassionate release including:

- (a) The Use of evidence-based principles;
- (b) A transparent 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.

Community Alliance on Prisons urges the committee to pass this important bill. Too many people have been dying alone, despite their families wanting to take care of them. This is NOT aloha.

Mahalo for this opportunity to testify.

¹ Balancing punishment and compassion for seriously ill prisoners. *Ann Intern Med.* 2011 Jul 19; 155(2):122-6)

DAVID Y. IGE
GOVERNOR



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HAWAII PAROLING AUTHORITY
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MICHAEL A. TOWN
ANNELLE C. AMARAL
FITUINA F. TUA
MEMBERS

TOMMY JOHNSON
ADMINISTRATOR

No. _____

TESTIMONY ON HOUSE BILL 629, HD1
A BILL FOR AN ACT RELATING TO MEDICAL RELEASE

BY
HAWAII PAROLING AUTHORITY
Edmund "Fred" Hyun, Chairman

LATE

House Committee on Judiciary
Representative Chris Lee, Chair
Representative Joy A. San Buenaventura, Vice Chair

Friday, February 13, 2019, 3:00 p.m.
State Capitol, Conference Room 325

Chair Lee, Vice Chair San Buenaventura, and Members of the Committee:

The Hawaii Paroling Authority (HPA) supports the intent of this House Bill 629, HD1 which seeks to broaden the criteria that the HPA follows to consider inmates for medical release.

While the HPA defers to the Department of Public Safety (PSD) for most of the provisions outlined in this measure, the Authority is concerned that requests from inmates and/or their representative sent directly to the HPA needlessly delays the process. All medical release considerations should be reviewed by PSD prior to forwarding to HPA.

Also, clarification regarding the proposed medical release hearings process and timeline are needed. The PSD and HPA already have procedures in place to address medical release consideration, which includes HPA's proposed amendments to this agency's Administrative Rules. In part, the proposed amendments create identical language for medical release consideration as outlined in PSD's Policy COR.10.1G.11 (Medical Releases).

Thank you for the opportunity to provide testimony on House Bill 629, HD1.

LATE

HB-629-HD-1

Submitted on: 2/13/2019 10:15:07 AM
Testimony for JUD on 2/13/2019 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Monica Espitia	American Civil Liberties Union of Hawaii	Support	No

Comments:

LATE

HB-629-HD-1

Submitted on: 2/12/2019 10:09:54 PM

Testimony for JUD on 2/13/2019 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments:

ROBERT K. MERCE

February 12, 2019

TO: House Committee on Judiciary
RE: HB 629, HD 1
HEARING DATE: February 13, 2019
TIME: 3:00 PM
ROOM: 325
POSITION: **SUPPORT**

Chair Lee, Vice Chair Buenaventura, and members of the committee:

HB 629, HD 1 is a clear, sensible, and well thought out medical release bill. It will save the state money by releasing inmates who do not pose a risk to society and who often require extensive and costly care. It also creates a fair and transparent release process that will serve the interest of the public, the government and inmates.

HB 629, HD 1 incorporates all of the provisions recommended by the country's leading medical release experts,¹ including:

1. Evidence based release criteria;
2. A transparent and evidence based release process;
3. The appointment of an advocate to help incapacitated inmates navigate the medical release process;
4. A "fast-track" option for the evaluation of rapidly dying prisoners; and
5. A well-described and well-disseminated medical release application procedure.

Thank you for the opportunity to testify on this excellent bill.

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

HB-629-HD-1

Submitted on: 2/11/2019 8:57:18 PM

Testimony for JUD on 2/13/2019 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Marcella Alohalani Boido	Individual	Support	No

Comments: