

**Electronically Filed
Supreme Court
SCPW-20-0000200
15-APR-2020
06:16 PM**

SCPW-20-0000200 and SCPW-20-0000213

IN THE SUPREME COURT OF THE STATE OF HAWAI‘I

SCPW-20-0000200

OFFICE OF THE PUBLIC DEFENDER, Petitioner,

vs.

CLARE E. CONNORS, Attorney General of the State of Hawai‘i;
DONALD S. GUZMAN, Prosecuting Attorney, County of Maui;
MITCHELL D. ROTH, Prosecuting Attorney, County of Hawai‘i;
JUSTIN F. KOLLAR, Prosecuting Attorney, County of Kaua‘i;
DWIGHT K. NADAMOTO, Acting Prosecuting Attorney, City and County
of Honolulu, Respondents.

SCPW-20-0000213

STATE OF HAWAI‘I OFFICE OF THE PUBLIC DEFENDER, Petitioner,

vs.

DAVID Y. IGE, Governor, State of Hawai‘i; NOLAN P. ESPINDA,
Director, State of Hawai‘i Department of Public Safety;
EDMUND (FRED) K.B. HYUN, Chairperson, Hawai‘i Paroling Authority,
Respondents.

ORIGINAL PROCEEDING

INTERIM ORDER

(By: Recktenwald, C.J., Nakayama, McKenna, Pollack, and Wilson, JJ.,
and with Wilson, J., also concurring separately)

On April 9, 2020, Special Master Daniel R. Foley ("Special Master") filed his initial summary report and initial recommendations ("Interim Report"). In an amended order filed April 10, 2020, this court directed the Special Master to continue to work with the parties, the amici, and the many stakeholders to expeditiously address the pressing issues that have been raised in these consolidated proceedings in an effort to facilitate a collaborative resolution while protecting public health and public safety. In addition, this court provided an opportunity for the parties and the amici to file objections, corrections, and comments to the Interim Report and directed the Department of Public Safety to provide an accurate list of certain categories of inmates held in State correctional centers and facilities.

Upon consideration of the Interim Report, the comments to the Interim Report, the list of inmates provided pursuant to the April 10, 2020 amended order, and the record,

IT IS HEREBY ORDERED that:

1. The Special Master shall continue to work with the parties, the amici, and the many stakeholders to expeditiously address the issues in an effort to facilitate a collaborative resolution while protecting public health and public safety. Efforts shall be undertaken to reduce the inmate population of correctional centers and facilities to design capacity.

2. For the list of inmates provided pursuant to the April 10, 2020 amended order, for whom motions have yet to be filed, the following expedited process shall be undertaken to address the issues related to release:

a. Any motion for release or modification of condition of probation shall be filed by April 20, 2020. The motion shall identify the sentencing judge, if any. No motion shall be filed for any inmate on the list for whom a motion for release has already been adjudicated since March 16, 2020, unless new or changed circumstances have arisen since the motion was adjudicated.

b. Any objection to a motion for release or for modification of probation shall be filed within three business days of the filing of the motion.

c. The respective circuit, district, or family courts shall adjudicate these motions no later than April 28, 2020. The respective courts may adjudicate these matters on a non-hearing basis but may, in their sole discretion, set an expedited telephonic or video hearing. Release shall be presumed, unless the court finds that the release of the inmate would pose a significant risk to the safety of the inmate or the public.

3. This order does not preclude any inmate or party from taking any steps as may be deemed appropriate to seek the release of any inmate during this time of emergency, including inmates who do not fall within the category of inmates set forth in the current list of inmates that was provided pursuant to the April 10, 2020 amended order for whom motions are to be filed pursuant to this order. This order also does not stay any pending motions seeking the release of inmates, for which objections, if any, must be filed by April 20, 2020. The respective courts may adjudicate pending motions on a non-hearing basis but may, in their sole discretion, set an expedited telephonic or video hearing. Pending motions shall be adjudicated by April 28, 2020.

4. When an inmate is released, all conditions of release, if applicable, other than in-person reporting, originally imposed shall remain in full force and effect. The Department of Public Safety shall inform all inmates, prior to their release, of their continuing obligation to abide by conditions of deferral or probation or pretrial release to promote public safety. Specifically,

a. All inmates shall maintain contact with their attorney and appear at all future court hearings.

b. Any no-contact order shall remain in force.

c. Any driver's license suspension shall remain in force.

d. Obligations to report to probation officers in-person shall be converted to telephone or video reporting under further order of the respective court.

e. All inmates released from custody shall comply with any federal, state, or local laws, directives, orders, rules, and regulations regarding conduct during the declared emergency, including "social distancing" mandates and any proclamations issued by Governor David Y. Ige or the Governor's designee during the emergency associated with COVID-19, as well as any mandates or proclamations issued by respective county mayors.

f. Whether a verified residence for an inmate will be required in a specific case will be left to the discretion of the judge, but alternative means of maintaining contact such as telephone, probation review hearings, or scheduled contacts with probation officers may also be employed by the court.

5. Courts may deny release of a pretrial detainee who is a threat to public safety or a flight risk, but the practice of no cash bail, including the release of inmates on

their own recognizance, on signature bonds, or on supervised release, should be regularly employed, and pretrial detainees who are poor and not a risk to public safety or a flight risk should not be held simply because they do not have the means to post cash bail.

6. In deciding whether to release inmates for whom motions are filed, the respective courts shall also take into consideration the design capacity of the correctional center or facility and the health risks posed by the COVID-19 pandemic.

7. The provisions set forth in this order shall apply to inmates represented by the Office of the Public Defender and private or court-appointed counsel.

8. This order does not affect the Department of Public Safety's authority under the law to release inmates on its own accord.

9. The Hawai'i Paroling Authority ("Paroling Authority") shall move forward to expeditiously address requests for early parole consideration, including conducting hearings using remote technology. The Paroling Authority should also consider release of inmates who are most vulnerable to the virus, which includes inmates who are 65 years old and older, have underlying conditions, who are pregnant, and those inmates being held on technical parole violations (i.e. curfew violations, failure to report as directed, etc.) or who have been granted community or minimum security classifications and are near the end of their sentences. The Paroling Authority shall prepare and provide periodic progress reports to the Special Master and the parties of their efforts and progress in this respect. The list should include the names of the inmates who have been granted release, the names of the inmates who are under consideration for release, and the names of the inmates who were considered for release but for whom release was denied.

10. The Department of Public Safety shall also cooperate with and be responsive to the Oversight Commission's requests with respect to reconsidering, lowering and monitoring the operational capacities of Hawai'i correctional centers and facilities, and with respect to the conditions of confinement during the COVID-19 pandemic.

11. The Department of Public Safety shall immediately notify the Special Master and all parties of any positive or presumptive positive COVID-19 test for any inmate or staff member.

12. The Special Master may file reports or recommendations for orders to this court as he deems appropriate, but shall file another summary report with any recommendations by April 23, 2020. In his discretion, the Special Master may file confidential documents under seal.

13. This order does not limit the continued collaborative and ongoing efforts currently being undertaken to reduce the inmate populations.

14. This court reserves its authority to order other measures based on changed circumstances.

DATED: Honolulu, Hawai'i, April 15, 2020.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

/s/ Michael D. Wilson

