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Supreme Court
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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 RE: INITIAL SUMMARY REPORT
AND INITIAL RECOMMENDATIONS OF THE SPECIAL MASTER

(By: Recktenwald, C.J., Nakayama, McKenna, and Pollack, JJ.,
with Wilson, J., Dissenting¹)

On April 9, 2020, Special Master Daniel R. Foley (“Special Master”) filed his initial summary report and initial recommendations (“Interim Report”). This court appreciates the efforts of the Special Master, the parties, the amici, and the many stakeholders who continue to work to address the pressing issues that have been raised in these consolidated proceedings.

Upon consideration of the Interim Report, the exhibits attached thereto and submitted in support thereof, 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.

2. No later than 4:30 p.m. on Monday, April 13, 2020, any party, including amici, may file objections, corrections, and comments on the Interim Report.

3. As recommended by the Special Master, it appears that an updated list of inmates that includes sufficient information to enable the Office of the Public Defender to

¹ A dissent by Wilson, J., is forthcoming.

clearly identify the inmate for which release is being sought, so that appropriate motions can be filed for individualized consideration by a judge, is vital and necessary to this process. Thus, in continuing efforts to expedite and facilitate a prompt resolution of the issues herein, no later than 12:00 p.m. on Tuesday, April 14, 2020, the Department of Public Safety shall provide an accurate list of the inmates held in State correctional centers and facilities who meet the following criteria:

- a. Inmates serving a sentence (not to exceed 18 months) as a condition of felony deferral or probation except for (i) inmates serving a term of imprisonment for a sexual assault conviction or an attempted sexual assault conviction; or (ii) inmates serving a term of imprisonment for any felony offense contained in HRS chapter 707, burglary in the first or second degree (HRS §§ 708-810, 708-811), robbery in the first or second degree (HRS §§ 708-840, 708-841), abuse of family or household members (HRS § 709-906(7)&(8)), and unauthorized entry in a dwelling in the first degree and in the second degree as a class C felony (HRS §§

708-812.55, 708-812.6(1) & (2)), including attempt to commit these specific offenses (HRS §§ 705-500, 705-501).

- b. Inmates serving sentences for misdemeanor or petty misdemeanor convictions except those convicted of abuse of family or household members (HRS § 709-906), violation of a temporary restraining order (HRS § 586-4), violation of an order for protection (HRS § 586-11), or violation of a restraining order or injunction (HRS § 604-10.5);
- c. All pretrial detainees charged with a petty misdemeanor or a misdemeanor offense, except those charged with abuse of family or household members (HRS § 709-906), violation of a temporary restraining order (HRS § 586-4), violation of an order for protection (HRS § 586-11), or violation of a restraining order or injunction (HRS § 604-10.5); and
- d. All pretrial detainees charged with a felony, except those charged with a sexual assault or an attempted sexual assault, any felony offense contained in HRS chapter 707,

burglary in the first or second degree (HRS §§ 708-810, 708-811), robbery in the first or second degree (HRS §§ 708-840, 708-841), abuse of family or household members (HRS § 709-906(7)&(8)), and unauthorized entry in a dwelling in the first degree and in the second degree as a class C felony (HRS §§ 708-812.55, 708-812.6(1) & (2)), including attempt to commit these specific offenses (HRS §§ 705-500, 705-501).

4. To the extent possible, the list shall include the following information:
 - a. The inmate's name;
 - b. All criminal numbers for which the inmate is held;
 - c. The trial or sentencing judge in each case;
 - d. The correctional center or facility where the inmate is housed; and
 - e. The inmate's status (e.g., pretrial felon, sentenced felon probationer, pretrial misdemeanor, petty misdemeanor, etc.)
5. The Department of Public Safety shall provide the list to all parties in this consolidated proceeding and to the Administrative Director of the Courts.

6. This order does not limit the continued collaborative and ongoing efforts currently being undertaken to reduce the inmate populations, and does not preclude any party from taking any other steps as may be deemed appropriate to obtain the release of an inmate during this time of emergency or stay any pending motions seeking the release of inmates, which should be addressed as expeditiously as possible. This order also does not affect the Department of Public Safety's authority under the law to release inmates on its own accord.

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

DATED: Honolulu, Hawai'i, April 9, 2020.

/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

