
A BILL FOR AN ACT

RELATING TO PUBLIC SAFETY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. An ever increasing number of men and women are
2 entering prison with serious medical illnesses, many of whom
3 suffer from an increasing risk of developing a serious illness
4 or disability which becomes exponentially more likely for those
5 prisoners with long mandatory sentences. Longer sentences and
6 an aging population mean that correctional facilities in Hawaii
7 and across the United States are housing a growing number of
8 elderly inmates who often have extensive medical needs. Concern
9 over how society should deal with the aging and seriously ill
10 prison population has led policy makers in many states to
11 endorse early release for older and seriously ill prisoners who
12 pose a low risk to public safety. As of 2009, the United States
13 federal prison system and thirty-nine states had laws governing
14 medical or compassionate release.

15 Compassionate release provides physicians and other medical
16 professionals with an opportunity to use their unique expertise
17 and knowledge of prognosis, geriatrics, cognitive and functional
18 decline, and palliative medicine to ensure that medical criteria



1 for compassionate release are appropriately evidence-based.
2 Using this medical foundation, criminal justice professionals
3 can balance the need for punishment with an eligible
4 individual's appropriateness for release.

5 Compassion is an integral part of the Aloha spirit. The
6 purpose of this Act is to create a medical or "compassionate"
7 release program for certain ill, disabled, and geriatric inmates
8 who pose a low risk to public safety.

9 SECTION 2. Chapter 353, Hawaii Revised Statutes, is
10 amended by adding a new subpart to part II to be appropriately
11 designated and to read:

12 "B. MEDICAL RELEASE PROGRAM

13 §353- Definitions. For the purpose of this subpart:

14 "Continuity of care" means an integrated system that
15 ensures that a patient's medical needs are met as the patient
16 transitions from one health care provider to another, from one
17 setting to another, and from one level of care to another.

18 "Inmate" means any person sentenced to the custody of the
19 department of public safety.

20 "Medical release" means the release of an inmate before the
21 expiration of the inmate's sentence due to the inmate's medical
22 condition.



1 "Medical release plan" means a comprehensive written
2 medical and psychosocial care plan that is specific to the
3 inmate and includes, at a minimum:

- 4 (1) A recommended course of treatment for the inmate; and
- 5 (2) A plan to provide continuity of care as the inmate
6 transitions from prison to the community.

7 "Paroling authority" means the Hawaii paroling authority.

8 "Reasonable medical probability" means that a medical
9 outcome is more likely to occur than to not occur.

10 **§353- Medical release program; authority to release;**

11 **rules.** (a) An inmate in the custody of the department shall be
12 eligible to be considered for medical release if the inmate:

13 (1) Has an illness, disease, or medical condition with a
14 prognosis to a reasonable medical probability that
15 death will occur within one year;

16 (2) Has a seriously debilitating and irreversible mental
17 or physical condition that impairs the inmate's
18 functional ability and that can be managed more
19 appropriately in a community setting; or

20 (3) Suffers from a serious, debilitating and irreversible
21 physical or mental condition related to aging that
22 impairs the inmate's functional ability and is



1 expected to require costly or complex care, treatment,
2 or management.

3 (b) All requests for medical release shall be in writing
4 and shall be made to the paroling authority. Requests may be
5 made by the director, an inmate, or an inmate's representative.

6 (c) If a request for medical release is made by the
7 director, the request shall contain the following information:

8 (1) A report from a department physician stating whether
9 or not the inmate meets the criteria for medical
10 release and the basis for the physician's opinion;
11 provided that the report shall state each diagnosis
12 that applies to the inmate and the prognosis for each
13 condition to a reasonable medical probability;
14 provided further that where practicable the physician
15 shall discuss the results of any tests, studies, or
16 physical findings that support the diagnosis and
17 prognosis and the nature and extent of the medical
18 treatment that will most likely be required to manage
19 the inmate's condition while in prison within the
20 standard of care. Where appropriate, the physician
21 shall provide citations to relevant medical
22 literature;



1 (2) A written evaluation prepared by the director on the
2 risk for violence and recidivism, if any, that the
3 inmate poses to society in light of such factors as
4 the inmate's medical condition, the severity of the
5 offense for which the inmate is incarcerated, the
6 inmate's prison record, and the medical release plan;
7 and

8 (3) A report from the department stating whether or not
9 the department recommends medical release for the
10 inmate and the reasons therefore; provided that if the
11 department recommends release, the report shall also
12 contain a medical release plan that provides for
13 continuity of care. The department shall provide the
14 inmate with a copy of the report.

15 (d) If a request is made by an inmate or the inmate's
16 representative, the request shall state the grounds for the
17 requested release and shall contain a statement as to where the
18 inmate will reside if released, who will care for the inmate,
19 and how the inmate plans to obtain medical care.

20 All requests initiated by an inmate shall be referred to
21 the director immediately. Within twenty days of receiving the
22 request the department shall submit a medical release report to



1 the paroling authority containing the information under
2 subsection (c).

3 (e) The paroling authority shall conduct an administrative
4 hearing on all requests for medical release. The hearing shall
5 be held within thirty days of receiving a medical release report
6 from the department. The inmate and the inmate's representative
7 shall be permitted to participate in the hearing and submit
8 medical and other evidence in support of the request. The
9 paroling authority shall independently determine whether the
10 inmate meets the criteria for medical release and shall
11 independently assess the risk for violence and recidivism, if
12 any, that the inmate poses to society. The paroling authority
13 shall also provide the victim of the inmate's criminal act for
14 which the inmate was sentenced or the victim's family with the
15 opportunity to be heard. The paroling authority shall grant or
16 deny the request within two days following the hearing.

17 (f) The paroling authority shall not grant a medical
18 release to an inmate who poses a danger to society.

19 (g) A denial of medical release by the paroling authority
20 shall not affect an inmate's eligibility for any other form of
21 parole or release under applicable law; provided that the inmate
22 may not reapply or be reconsidered for medical release unless



1 there is a demonstrated change in the inmate's medical
2 condition.

3 (h) The director shall appoint an advocate for any
4 inmate who requests medical release and is unable because of
5 incapacitation or debilitation to advocate on the inmate's own
6 behalf.

7 (i) The department shall adopt procedures for a fast track
8 procedure for the evaluation and release of rapidly dying
9 prisoners; provided that the procedures shall be posted on the
10 website of the department and the paroling authority.

11 (j) The department shall adopt rules in accordance with
12 chapter 91 to implement the medical release program.

13 **§353- Conditions of a medical release.** The paroling
14 authority shall set reasonable conditions on an inmate's medical
15 release that shall apply through the date upon which the
16 inmate's sentence would have expired. The conditions shall
17 include the following:

18 (1) The released inmate shall be subject to supervision by
19 the paroling authority;

20 (2) Personnel of the department shall be allowed to visit
21 the inmate at reasonable times at the inmate's home or
22 elsewhere; and



1 (3) The released inmate shall comply with all conditions
2 of release set by the paroling authority.

3 **§353- Return of inmate to custody.** (a) The paroling
4 authority shall promptly order an inmate to be returned to the
5 custody of the department to await a revocation hearing if the
6 paroling authority receives credible information that an inmate
7 has failed to comply with any reasonable condition set upon the
8 inmate's release.

9 (b) If the paroling authority revokes an inmate's medical
10 release for failure to comply with conditions of release, the
11 inmate shall resume serving the remaining balance of the
12 inmate's sentence, with credit given only for the duration of
13 the inmate's medical release served in compliance with all
14 reasonable conditions. Revocation of an inmate's medical
15 release for violating a condition of release shall not affect an
16 inmate's eligibility for any other form of parole or release
17 provided by law; provided that revocation of an inmate's medical
18 release may be used as a factor in determining eligibility
19 for future parole or release."

20 SECTION 3. Chapter 353, Hawaii Revised Statutes, is
21 amended by adding a new section to part I to be appropriately
22 designated and to read as follows:



1 "§353- Medical release program. The department shall
2 assess and refer inmates to the Hawaii paroling authority for
3 possible medical release as provided in subpart of part II."

4 SECTION 4. Chapter 353, part II, Hawaii Revised Statutes,
5 is amended by designating sections 353-61 to 353-72 as subpart A
6 and inserting a title before section 353-61 to read as follows:

7 "A. GENERAL PROVISIONS"

8 SECTION 5. New statutory material is underscored.

9 SECTION 6. This Act shall take effect on July 1, 2012.



Report Title:

Corrections; Medical Release Program; Compassionate Release

Description:

Requires the Department of Public Safety to assess and refer inmates to the Hawaii Paroling Authority (HPA) for possible medical release. Provides that an inmate in the custody of the Department shall be eligible to be considered for medical release if the inmate meets specified criteria under certain procedures. Requires HPA to set reasonable conditions on an inmate's medical release. Requires the HPA to promptly order an inmate returned to custody of the Department to await a revocation hearing if the HPA receives credible information that an inmate has failed to comply with any reasonable condition set upon the inmate's release. Effective July 1, 2012. (SB2248 HD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

