
A BILL FOR AN ACT

RELATING TO PUBLIC SAFETY.

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

1 SECTION 1. According to the Society of Correctional
2 Physicians, an ever increasing number of people are entering
3 prison with serious medical conditions or disabilities, while
4 those in custody are at increasing risk of developing a serious
5 illness or disability due to the long terms of incarceration
6 that are being imposed through mandatory minimum sentencing.
7 Longer sentences and an aging population mean that correctional
8 facilities across the United States are becoming home to a
9 growing number of elderly adults who often have extensive and
10 costly medical needs that are driving up the cost of
11 incarceration. Concern over how society should deal with the
12 aging and seriously ill prison population has led policymakers
13 in many states to endorse early release for older and seriously
14 ill prisoners who pose a low risk to public safety. As of 2009,
15 thirty-nine states had laws governing compassionate release.
16 However, these laws are rarely used due to political
17 considerations, narrow eligibility criteria, procedures that



1 discourage inmates from applying for release, and complicated
2 and lengthy referral and review processes.

3 The authors of an article recently published in Annals of
4 Internal Medicine, the flagship journal of the American College
5 of Physicians, recommend broader use of "compassionate" release
6 in the nation's prison system. "Compassionate" release is a
7 program through which some eligible, seriously ill prisoners are
8 able to die outside of prison before sentence completion. The
9 program functions on two premises: It is ethically and legally
10 justifiable to release a subset of prisoners with life-limiting
11 illnesses, and the financial costs to society of continuing to
12 incarcerate such persons outweigh the benefits. The United
13 States Federal Prison System and most state systems have a
14 compassionate or medical release program.

15 Many states are also considering expanding compassionate
16 release to include physically or mentally incapacitated and
17 elderly prisoners in addition to those with a terminal
18 diagnoses. Physicians and other medical professionals thus have
19 an opportunity to use their unique expertise and knowledge of
20 prognosis, geriatrics, cognitive and functional decline, and
21 palliative medicine to ensure that medical criteria for
22 compassionate release are appropriately evidence-based. Using



1 this medical foundation, criminal justice professionals can
 2 balance the need for punishment with an eligible individual's
 3 appropriateness for release. Society is incorporating
 4 compassionate release into most prison jurisdictions. The
 5 medical profession must lend its expertise and ethical suasion
 6 to ensure that compassion is fairly delivered.

7 The purpose of this Act is to establish a compassionate
 8 release program and authorize the department of public safety to
 9 assess and refer inmates to the Hawaii paroling authority for
 10 the release of inmates under the program.

11 SECTION 2. Chapter 353, Hawaii Revised Statutes, is
 12 amended by adding a new section to part I to be appropriately
 13 designated and to read as follows:

14 "§353- Compassionate release program. The department
 15 shall assess and refer inmates to the Hawaii paroling authority
 16 under the compassionate release program established by the
 17 Hawaii paroling authority under subpart of part II."

18 SECTION 3. Chapter 353, part II, Hawaii Revised Statutes,
 19 is amended by designating sections 353-61 to 353-72 as subpart A
 20 and inserting a title before section 353-61 to read as follows:

21 "A. General Provisions"



1 SECTION 4. Chapter 353, Hawaii Revised Statutes, is
2 amended by adding a new subpart to part II to be appropriately
3 designated and to read:

4 " . **Compassionate Release Program**

5 **§353-A Definitions.** For the purpose of this subpart,
6 unless the context clearly requires otherwise:

7 "Compassionate release" means the release of an inmate
8 before the expiration of the inmate's sentence due to the
9 patient's medical condition.

10 "Compassionate release plan" means a comprehensive written
11 medical and psychosocial care plan that is specific to the
12 inmate and includes, at a minimum:

- 13 (1) A recommended course of treatment; and
- 14 (2) A plan to provide continuity of care as the inmate
15 transitions from prison to the community.

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

20 "Department" means the department of public safety.

21 "Inmate" means any person sentenced to the custody of the
22 department of public safety.



1 "Paroling authority" means the Hawaii paroling authority.

2 "Reasonable medical probability" means that a medical

3 outcome is more likely to occur than to not occur.

4 **§353-B Compassionate release program; authority to**
5 **release; rules.** (a) An inmate in the custody of the department
6 of public safety shall be eligible to be considered for
7 compassionate release if the inmate:

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

11 (2) Has a seriously debilitating and irreversible mental
12 or physical condition that impairs the inmate's
13 functional ability and that can be managed more
14 appropriately in a community setting; or

15 (3) Suffers from a serious, debilitating, and irreversible
16 physical or mental condition related to aging that
17 impairs the inmate's functional ability and is
18 expected to require costly or complex care, treatment,
19 or management.

20 (b) All requests for compassionate release shall be in
21 writing and shall be made to the Hawaii paroling authority.



1 Requests may be made by the director of public safety or by an
2 inmate or the inmate's representative.

3 (c) If a request for compassionate release of an inmate is
4 made by the department of public safety it shall contain the
5 following information:

6 (1) A report from a department of public safety physician
7 stating whether or not the inmate meets the criteria
8 for compassionate release and the basis for the
9 physician's opinion; provided that the report shall:

10 (A) State each diagnosis that applies to the inmate
11 and the prognosis for each condition to a
12 reasonable medical probability;

13 (B) Discuss the results of any tests, studies, or
14 physical findings that affect the diagnosis,
15 prognosis, and the nature and extent of the
16 medical treatment that will be required to manage
17 the inmate's condition in prison within the
18 standard of care, where applicable; and

19 (C) Provide citations to relevant medical literature,
20 where appropriate; and

21 (2) A report on the risk for violence and recidivism, if
22 any, that the inmate poses to society in light of such



1 factors as the inmate's medical condition, the
2 severity of the offense for which the inmate is
3 incarcerated, the inmate's prison record, and the
4 compassionate release plan, if any;

5 (3) A statement as to whether or not the department
6 recommends compassionate release for the inmate and
7 the reasons therefore; and

8 (4) A compassionate release plan that provides for
9 continuity of care if the inmate meets the criteria
10 for compassionate release.

11 (c) If a request for compassionate release is made by an
12 inmate or the inmate's representative, it shall state the basis
13 for the request and contain a statement as to:

14 (1) Where the inmate will reside if released;

15 (2) Who will care for the inmate;

16 (3) How the inmate will remain self-sufficient; and

17 (4) How the inmate will obtain medical insurance or pay
18 for medical care.

19 All requests initiated by an inmate shall be promptly referred
20 to the department of public safety. Within twenty days of
21 receiving such a request the department shall submit a report to
22 the Hawaii paroling authority containing the information in



1 paragraphs (1) to (3) and a recommendation from the director as
2 to whether the inmate should be released or not. If the
3 director recommends release, the report shall also contain a
4 compassionate release plan that ensures continuity of care.

5 (d) The department of public safety shall provide the
6 inmate with all department reports pertaining to the request for
7 compassionate release.

8 (e) The Hawaii paroling authority shall conduct a hearing
9 on all requests for compassionate release. The hearing shall be
10 held within fifteen days of receiving a compassionate release
11 report from the department of public safety. The inmate and the
12 inmate's representative shall be permitted to participate in the
13 hearing and submit medical and other evidence in support of the
14 request. The Hawaii paroling authority shall also provide the
15 victim or victims of the inmate or the victim's or victims'
16 family or families with the opportunity to be heard.

17 (f) The Hawaii paroling authority shall independently
18 determine whether the inmate meets the criteria for
19 compassionate release and shall independently assess the risk
20 for violence and recidivism, if any, that the inmate poses to
21 society. The Hawaii paroling authority shall not release any
22 inmate who poses a danger to society. The Hawaii paroling



1 authority shall grant or deny the request within two days of the
2 hearing.

3 (g) A denial of compassionate release by the paroling
4 authority shall not affect an inmate's eligibility for any other
5 form of parole or release under applicable law.

6 (h) If the paroling authority denies compassionate release
7 under this subpart, the inmate may not reapply or be
8 reconsidered unless there is a demonstrated change in the
9 inmate's medical condition.

10 (i) The director of public safety shall appoint an
11 advocate for any inmate who is incapacitated or debilitated to
12 the extent of being unable to advocate on behalf of the inmate's
13 self.

14 (j) All rules and procedures pertaining to compassionate
15 release shall be published on the websites of the department of
16 public safety and Hawaii paroling authority.

17 (k) The Hawaii paroling authority and the department of
18 public safety shall adopt rules in accordance with chapter 91 to
19 implement the compassionate release program, including rules for
20 an expedited procedure for the evaluation and release of rapidly
21 dying prisoners.



1 **§353-C Conditions of a compassionate release.** (a) The
2 Hawaii paroling authority shall set reasonable conditions on an
3 inmate's compassionate release that shall apply through the date
4 upon which the inmate's sentence would have expired. These
5 conditions shall include the following:

6 (1) The released inmate shall be subject to supervision by
7 the paroling authority and shall permit officers from
8 the paroling authority to visit the inmate at
9 reasonable times at the inmate's home or elsewhere;
10 and

11 (2) The released inmate shall comply with all conditions
12 of release set by the Hawaii paroling authority.

13 (b) The Hawaii paroling authority shall promptly order an
14 inmate returned to custody of the department to await a
15 revocation hearing if the paroling authority receives credible
16 information that an inmate has failed to comply with any
17 reasonable condition set upon the inmate's release. If the
18 paroling authority subsequently revokes an inmate's
19 compassionate release for failure to comply with conditions of
20 release, the inmate shall resume serving the balance of the
21 sentence, with credit given only for the duration of the
22 inmate's compassionate release served in compliance with all



1 reasonable conditions set forth pursuant to subsection (a).
2 Revocation of an inmate's compassionate release for violating a
3 condition of release shall not affect an inmate's eligibility
4 for any other form of parole or release provided by law but may
5 be used as a factor in determining eligibility for such parole
6 or release."

7 SECTION 5. Section 353-62, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows:

9 "(a) In addition to any other responsibility or duty
10 prescribed by law for the Hawaii paroling authority, the
11 paroling authority shall:

- 12 (1) Serve as the central paroling authority for the State;
- 13 (2) In selecting individuals for parole, consider for
14 parole all committed persons, except in cases where
15 the penalty of life imprisonment not subject to parole
16 has been imposed, regardless of the nature of the
17 offense committed;
- 18 (3) Determine the time at which parole shall be granted to
19 any eligible individual as that time at which maximum
20 benefits of the correctional institutions to the
21 individual have been reached and the element of risk
22 to the community is minimal;



- 1 (4) Establish rules of operation to determine conditions
- 2 of parole applicable to any individual granted parole;
- 3 (5) Provide continuing custody, control, and supervision
- 4 of parole individuals;
- 5 (6) Revoke or suspend parole and provide for the
- 6 authorization of return to a correctional institution
- 7 for any individual who violates parole or any
- 8 conditions of parole when, in the opinion of the
- 9 Hawaii paroling authority, the violation presents a
- 10 risk to community safety or a significant deviation
- 11 from any condition of parole;
- 12 (7) Discharge an individual from parole when supervision
- 13 is no longer needed;
- 14 (8) Interpret the parole program to the public [~~in order~~]
- 15 to develop a broad base of public understanding and
- 16 support; [~~and~~]
- 17 (9) Establish the compassionate release program under
- 18 subpart ; and
- 19 [+9+] (10) Recommend to the legislature sound parole
- 20 legislation and recommend to the governor sound parole
- 21 administration."



1 SECTION 6. In codifying the new sections added by section
2 4 of this Act, the revisor of statutes shall substitute
3 appropriate section numbers for the letters used in designating
4 the new sections in this Act.

5 SECTION 7. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 8. This Act shall take effect upon its approval.



Report Title:

Paroling Authority; Compassionate Release Program

Description:

Requires the Hawaii paroling authority to establish a compassionate release program for inmates who are permanently and totally disabled, terminally ill, or have a serious debilitating and irreversible mental or physical condition, and pose no public safety risk. Requests the department of public safety to assess and refer inmates to the Hawaii paroling authority. Sets conditions for compassionate release. (SD1)

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