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# 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 section to part I to be appropriately  
11 designated and to read as follows:

12 **"§353- Medical release program.** The department shall  
13 assess and refer inmates to the Hawaii paroling authority for  
14 possible medical release as provided in subpart of part II."

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

18 **"A. General Provisions"**

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

22 **"B. Medical Release Program"**



1           **§353- Definitions.** For the purpose of this subpart:

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

6           "Inmate" means any person sentenced to the custody of the  
7 department of public safety.

8           "Medical release" means the release of an inmate before the  
9 expiration of the inmate's sentence due to the inmate's medical  
10 condition.

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

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

17           "Paroling authority" means the Hawaii paroling authority.

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

20           **§353- Medical release program; authority to release;**

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



- 1 (1) Has an illness, disease, or medical condition with a  
2 prognosis to a reasonable medical probability that  
3 death will occur within one year;
- 4 (2) Has a seriously debilitating and irreversible mental  
5 or physical condition that impairs the inmate's  
6 functional ability and that can be managed more  
7 appropriately in a community setting; or
- 8 (3) Suffers from a serious, debilitating and irreversible  
9 physical or mental condition related to aging that  
10 impairs the inmate's functional ability and is  
11 expected to require costly or complex care, treatment,  
12 or management.
- 13 (b) All requests for medical release shall be in writing  
14 and shall be made to the paroling authority. Requests may be  
15 made by the director, an inmate, or an inmate's representative.
- 16 (c) If a request for medical release is made by the  
17 director, the request shall contain the following information:
- 18 (1) A report from a department physician stating whether  
19 or not the inmate meets the criteria for medical  
20 release and the basis for the physician's opinion;  
21 provided that the report shall state each diagnosis  
22 that applies to the inmate and the prognosis for each



1 condition to a reasonable medical probability;  
2 provided further that where practicable the physician  
3 shall discuss the results of any tests, studies, or  
4 physical findings that support the diagnosis and  
5 prognosis and the nature and extent of the medical  
6 treatment that will most likely be required to manage  
7 the inmate's condition while in prison within the  
8 standard of care. Where appropriate, the physician  
9 shall provide citations to relevant medical  
10 literature;

11 (2) A written evaluation prepared by the director on the  
12 risk for violence and recidivism, if any, that the  
13 inmate poses to society in light of such factors as  
14 the inmate's medical condition, the severity of the  
15 offense for which the inmate is incarcerated, the  
16 inmate's prison record, and the medical release plan;  
17 and

18 (3) A report from the department stating whether or not  
19 the department recommends medical release for the  
20 inmate and the reasons therefore; provided that if the  
21 department recommends release, the report shall also  
22 contain a medical release plan that provides for



1 continuity of care. The department shall provide the  
2 inmate with a copy of the report.

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

8 All requests initiated by an inmate shall be referred to  
9 the director immediately. Within twenty days of receiving the  
10 request the department shall submit a medical release report to  
11 the paroling authority containing the information under  
12 subsection (c).

13 (e) The paroling authority shall conduct a hearing on all  
14 requests for medical release. The hearing shall be held within  
15 ten days of receiving a medical release report from the  
16 department. The inmate and the inmate's representative shall be  
17 permitted to participate in the hearing and submit medical and  
18 other evidence in support of the request. The paroling  
19 authority shall independently determine whether the inmate meets  
20 the criteria for medical release and shall independently assess  
21 the risk for violence and recidivism, if any, that the inmate



1 poses to society. The paroling authority shall also provide the  
2 victim of the inmate's criminal act for which the inmate was  
3 sentenced or the victim's family with the opportunity to be  
4 heard. The paroling authority shall grant or deny the request  
5 within two days following the hearing.

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

8 (g) A denial of medical release by the paroling authority  
9 shall not affect an inmate's eligibility for any other form of  
10 parole or release under applicable law; provided that the inmate  
11 may not reapply or be reconsidered for medical release unless  
12 there is a demonstrated change in the inmate's medical  
13 condition.

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

18 (i) The department shall adopt procedures for a fast track  
19 procedure for the evaluation and release of rapidly dying  
20 prisoners; provided that the procedures shall be posted on the  
21 website of the department and the paroling authority.



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

3 **§353- Conditions of a medical release.** The paroling  
4 authority shall set reasonable conditions on an inmate's medical  
5 release that shall apply through the date upon which the  
6 inmate's sentence would have expired. The conditions shall  
7 include the following:

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

10 (2) Personnel of the department shall be allowed to visit  
11 the inmate at reasonable times at the inmate's home or  
12 elsewhere; and

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

15 **§353- Return of inmate to custody.** (a) The paroling  
16 authority shall promptly order an inmate to be returned to the  
17 custody of the department to await a revocation hearing if the  
18 paroling authority receives credible information that an inmate  
19 has failed to comply with any reasonable condition set upon the  
20 inmate's release.

21 (b) If the paroling authority revokes an inmate's medical  
22 release for failure to comply with conditions of release, the





1 inmate shall resume serving the remaining balance of the  
2 inmate's sentence, with credit given only for the duration of  
3 the inmate's medical release served in compliance with all  
4 reasonable conditions. Revocation of an inmate's medical  
5 release for violating a condition of release shall not affect an  
6 inmate's eligibility for any other form of parole or release  
7 provided by law; provided that revocation of an inmate's medical  
8 release may be used as a factor in determining eligibility  
9 for future parole or release."

10 SECTION 5. New statutory material is underscored.

11 SECTION 6. This Act shall take effect upon its approval.



**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. (SD2)

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