

JAN 20 2012

A BILL FOR AN ACT

RELATING TO PUBLIC SAFETY.

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

1 SECTION 1. The legislature finds that the overcrowded
2 conditions of the State's correctional facilities and the high
3 costs of incarceration require that the State consider
4 alternatives to incarceration. One alternative is to establish
5 a program to grant eligible inmates medical release from prison.
6 Medical release, also known as compassionate release, is the
7 granting of early release from prison because of terminal
8 illness or other compelling reasons. Medical release has gained
9 support of correctional experts because of the increasing
10 numbers of older inmates in prisons and rising health costs
11 faced by many states.

12 A number of states provide for the medical release of
13 inmates, based upon varying criteria. In North Carolina, for
14 example, to be considered for medical release, an inmate must be
15 permanently and totally disabled, terminally ill, or geriatric,
16 and incapacitated to the extent that the inmate does not pose a
17 risk to public safety. Alabama provides a medical furlough
18 program for geriatric inmates, permanently incapacitated



1 inmates, and terminally ill inmates. Given the controversy that
 2 is inherent in the concept of allowing convicted persons to
 3 spend part of their prison sentences outside of prison, and the
 4 need to balance the purposes of the criminal justice system on
 5 the one hand and humanitarian concerns on the other, the
 6 legislature finds that an approach that incorporates both
 7 correctional and medical experts is essential to the success of
 8 a medical release program.

9 The purpose of this Act is to create a medical release
 10 program for the State's ill, disabled, and geriatric inmates who
 11 no longer pose a risk to public safety.

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

15 "§353- Medical release program. The department shall
 16 assess and refer inmates to the Hawaii paroling authority
 17 pursuant to the medical release program established under
 18 subpart of part II."

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

22 "A. GENERAL PROVISIONS"



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

4 " . **MEDICAL RELEASE PROGRAM**

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

7 "Geriatric inmate" means an inmate who is at least sixty-
8 five years of age and suffers from chronic infirmity, illness,
9 or disease related to aging that has progressed to the extent
10 that the inmate does not pose a risk to public safety.

11 "Inmate" means any person sentenced to the custody of the
12 department.

13 "Licensed physician" means a physician licensed under
14 chapter 453, if the examination of an inmate occurs in the
15 State, or a physician licensed to practice medicine in the state
16 in which the inmate is incarcerated pursuant to a prisoner
17 incarceration contract executed by the department.

18 "Medical release" means a program that allows the paroling
19 authority to release from prison, any inmates who are
20 permanently and totally disabled, terminally ill, or geriatric.

1 "Medical release plan" means a comprehensive, written
2 medical and psychosocial care plan that is specific to an inmate
3 and includes but is not limited to the following:

- 4 (1) The proposed course of treatment;
- 5 (2) The proposed site for treatment and post-treatment
6 care;
- 7 (3) Documentation that qualified medical providers shall
8 provide the medical services identified in the medical
9 release plan; and
- 10 (4) A financial program to cover the cost of the medical
11 release plan for the duration of the medical release,
12 including eligibility for enrollment in commercial
13 insurance, medicare, or medicaid, or access to other
14 financial resources that are adequate for the duration
15 of the medical release.

16 "Paroling authority" means the Hawaii paroling authority.

17 "Permanently and totally disabled inmate" means an inmate
18 who, as determined by a licensed physician, suffers from
19 permanent and irreversible physical incapacitation as a result
20 of an existing physical or medical condition that was unknown at
21 the time of sentencing or, since the time of sentencing, has
22 progressed to render the inmate permanently and totally



1 disabled, to the extent that the inmate does not pose a risk to
2 public safety.

3 "Terminally ill inmate" means an inmate who, as determined
4 by a licensed physician, has an incurable condition caused by
5 illness or disease that:

6 (1) Was unknown at the time of sentencing or, since the
7 time of sentencing, has progressed to render the
8 inmate terminally ill;

9 (2) Is likely to result in the inmate's death within six
10 months; and

11 (3) Is debilitating to the extent that the inmate does not
12 pose a risk to public safety.

13 **§353-B Medical release program; establishment; rules;**
14 **referral; determination.** (a) The paroling authority shall
15 establish a medical release program for inmates that shall
16 prescribe when and under what conditions an inmate may be
17 eligible for medical release, consistent with section 353-C and
18 how a request, petition, or recommendation for release may be
19 made. The paroling authority may adopt rules in accordance with
20 chapter 91 to implement the medical release program.

21 (b) A department referral for the medical release of an
22 inmate shall include an assessment of the inmate's medical and



1 psychosocial condition and the risk that the inmate poses to
2 society, as follows:

3 (1) A licensed physician designated by the department
4 shall review the case of each inmate who meets the
5 eligibility requirements for medical release set forth
6 by the paroling authority. The physician shall
7 prepare a written diagnosis for each inmate that
8 includes:

9 (A) A description of any terminal conditions,
10 physical incapacities, and chronic conditions;
11 and

12 (B) A prognosis concerning the likelihood of recovery
13 from any terminal conditions, physical
14 incapacities, and chronic conditions; and

15 (2) The department shall assess the risk for violence and
16 recidivism that the inmate poses to society and may
17 consider factors such as the inmate's medical
18 condition, the severity of the offense for which the
19 inmate is incarcerated, the inmate's prison record,
20 and the medical release plan.

21 (c) If the department determines that the inmate meets the
22 criteria for medical release, the department shall complete the



1 risk assessment and forward the risk assessment and medical
2 release plan for the inmate to the paroling authority within
3 forty-five days of receiving the request, petition, or
4 recommendation for release.

5 (d) The paroling authority shall determine whether to
6 grant a medical release within fifteen days of receiving a
7 referral from the department for the release of a terminally ill
8 inmate and within twenty days of receiving a referral from the
9 department for the release of a permanently and totally disabled
10 inmate or geriatric inmate. In making the determination, the
11 paroling authority shall independently assess the risk for
12 violence and recidivism that the inmate poses to society and
13 shall also provide the victim or victims of the inmate or the
14 victim's or victims' family or families with the opportunity to
15 be heard.

16 (e) A denial of medical release by the paroling authority
17 shall not affect an inmate's eligibility for any other form of
18 parole or release under applicable law.

19 (f) If the department determines that an inmate should not
20 be considered for medical release or the paroling authority
21 denies medical release, the inmate may not reapply or be
22 reconsidered for medical release unless there is a significant



1 change in the inmate's medical condition, as determined by a
2 licensed physician.

3 **§353-C Conditions of a medical release.** (a) The paroling
4 authority shall set reasonable conditions on an inmate's medical
5 release that shall apply through the date of the expiration of
6 the inmate's sentence. The conditions shall require that:

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

12 (2) The released inmate shall comply with any conditions
13 of release set by the paroling authority.

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



1 during which the inmate was in compliance with the conditions
2 set pursuant to subsection (a). Revocation of an inmate's
3 medical release for violating a condition of release shall not
4 affect an inmate's eligibility for any other form of parole or
5 release provided by law, but may be used as a factor to
6 determine eligibility for the parole or release.

7 **§353-D Change in medical status.** (a) If a medical
8 assessment reveals that an inmate on medical release has
9 improved to the extent that the inmate would no longer be
10 eligible for medical release, the paroling authority shall order
11 the inmate returned to the custody of the department to await a
12 revocation hearing. In determining whether to revoke medical
13 release, the paroling authority shall consider the most recent
14 medical assessment of the inmate and a risk assessment of the
15 inmate conducted pursuant to section 353-B(b)(2). If the
16 paroling authority revokes the inmate's medical release, the
17 inmate shall resume serving the balance of the inmate's
18 sentence, with credit given for the period of the inmate's
19 medical release during which the inmate was in compliance with
20 the conditions of the medical release.

21 (b) Revocation of an inmate's medical release due to a
22 change in the inmate's medical condition shall not affect an



1 inmate's eligibility for medical release in the future or for
2 any other form of parole or release provided by law."

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

5 "(a) In addition to any other responsibility or duty
6 prescribed by law for the Hawaii paroling authority, the
7 paroling authority shall:

8 (1) Serve as the central paroling authority for the State;

9 (2) In selecting individuals for parole, consider for
10 parole all committed persons, except in cases where
11 the penalty of life imprisonment not subject to parole
12 has been imposed, regardless of the nature of the
13 offense committed;

14 (3) Determine the time at which parole shall be granted to
15 any eligible individual as that time at which maximum
16 benefits of the correctional institutions to the
17 individual have been reached and the element of risk
18 to the community is minimal;

19 (4) Establish rules of operation to determine conditions
20 of parole applicable to any individual granted parole;

21 (5) Provide continuing custody, control, and supervision
22 of paroled individuals;



1 (6) Revoke or suspend parole and provide for the
 2 authorization of return to a correctional institution
 3 for any individual who violates parole or any
 4 condition of parole when, in the opinion of the Hawaii
 5 paroling authority, the violation presents a risk to
 6 community safety or a significant deviation from any
 7 condition of parole;

8 (7) Discharge an individual from parole when supervision
 9 is no longer needed;

10 (8) Interpret the parole program to the public [~~in order~~]
 11 to develop a broad base of public understanding and
 12 support; [~~and~~]

13 (9) Establish the medical release program under
 14 subpart ; and

15 [~~(9)~~] (10) Recommend to the legislature sound parole
 16 legislation and recommend to the governor sound parole
 17 administration."

18 SECTION 6. In codifying the new sections added by section
 19 4 of this Act, the revisor of statutes shall substitute
 20 appropriate section numbers for the letters used in designating
 21 the new sections in this Act.



S.B. NO. 2251

1 SECTION 7. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

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

4

INTRODUCED BY: Will Eyrw



S.B. NO. 2251

Report Title:

Public Safety; Medical Release Program For Inmates

Description:

Requires the Hawaii paroling authority to establish a program for the medical release from prison of ill, disabled, and geriatric inmates.

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

