

LATE



**SB2248 SD1  
RELATING TO PUBLIC SAFETY**

Senate Committee on Public Safety, Government Operations and Military Affairs

February 21, 2012

2:45 p.m.

Room 224

The Office of Hawaiian Affairs (OHA) has the following COMMENTS for SB2248 SD1. The bill would clarify the medical release program for terminally ill inmates.

OHA’s 2010 report, “The Disparate Treatment of Native Hawaiians in the Criminal Justice System,” indicated that there are deficiencies in the operation of the criminal justice system in Hawai’i. Recently, OHA worked with advocate Robert Merce to assist Delbert Wakinekona, a beneficiary in dire need of medical release.

Years of neglect and inadequate medical treatment brought Mr. Wakinekona to the brink of death. In what should have been a straight forward process, Robert Merce had to struggle with endless bureaucratic barriers to obtain basic information on Mr. Wakinekona’s condition and what was needed to obtain his medical release.

Mahalo for the opportunity to testify on this important measure. OHA urges the committee to review Mr. Merce’s testimony that outlines real fixes the medical release program urgently needs. The following is proposed language to replace the existing version of SB2248 SD1:

**A BILL FOR AN ACT**

**RELATING TO PUBLIC SAFETY**

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

SECTION 1. An ever increasing number of men and women are entering prison with serious medical illnesses, and many of those in custody are at increasing risk of developing a serious illness or disability due to the long terms of incarceration that are being imposed through mandatory minimum sentencing. Longer sentences and an aging population mean that correctional facilities in Hawai’i and across the United States are housing a growing number of elderly inmates who often have extensive and costly medical needs that are driving up the cost of incarceration. Concern over how society should deal with the aging and seriously ill prison

population has led policy makers in many states to endorse early release for older and seriously ill prisoners who pose a low risk to public safety. As of 2009, the U.S. Federal Prison System and 39 states had laws governing medical or compassionate release.

Compassionate release programs function on 2 premises: It is ethically and legally justifiable to release a subset of prisoners with life-limiting illnesses, and the financial costs to society of continuing to incarcerate such persons outweigh the benefits.

Compassionate release provides physicians and other medical professionals with an opportunity to use their unique expertise and knowledge of prognosis, geriatrics, cognitive and functional decline, and palliative medicine to ensure that medical criteria for compassionate release are appropriately evidence-based. Using this medical foundation, criminal justice professionals can balance the need for punishment with an eligible individual's appropriateness for release.

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

SECTION 2. Chapter 353, part II, Hawai'i Revised Statutes, is amended by designating section 353-61 to 353-72 as subpart A and inserting a title before section 353-61 to read as follows:

#### **"A. GENERAL PROVISIONS"**

SECTION 3. Chapter 353, Hawai'i Revised Statutes, is amended by adding a new subpart to part II to be appropriately designated and to read:

#### **MEDICAL RELEASE OF ILL AND ELDERLY INMATES**

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

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

"Inmate" means any person sentenced to the custody of the Department of Public Safety.

"Medical release" means the release of an inmate before the expiration of his or her sentence due to the patient's medical condition.

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

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

“Paroling Authority” means the Hawai‘i Paroling Authority.

“Reasonable medical probability” means that a medical outcome is more likely to occur than to not occur.

**§353-B Medical release program; authority to release; rules.** (a) An inmate in the custody of the Department of Public Safety shall be eligible to be considered for medical release if the inmate:

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

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

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

(b) All requests for medical release shall be in writing and shall be made to the Hawaii Paroling Authority. Requests may be made by the Director of the Department of Public Safety or by an inmate or an inmate’s representative.

(c) If a request is made by the Department of Public Safety it shall contain the following information:

(1) A report from a Department of Public Safety physician stating whether or not the inmate meets the criteria for medical release and the basis for the physician’s opinion. The report shall state each diagnosis that applies to the inmate and the prognosis for each condition to a reasonable medical probability. Where practicable the physician shall discuss the results of any tests, studies or physical findings that support the diagnosis and prognosis and the nature and extent of the medical treatment that will most likely be required to manage the inmate’s condition in prison within the standard of care. Where appropriate, the physician shall provide citations to relevant medical literature.

(2) A report on the risk for violence and recidivism, if any, that the inmate poses to society in light of such factors as the inmate’s medical condition, the severity of the offense for which the inmate is incarcerated, the inmate’s prison record, and the medical release plan, if any.

(3) A statement as to whether or not the Department recommends medical release for the inmate and the reasons therefore; and

(4) A medical release plan that provides for continuity of care if the inmate meets the criteria for medical release.

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

All requests initiated by an inmate shall be referred to the Department of Public Safety immediately. Within 20 days of receiving such a request the Department of Public Safety shall submit a report to the Paroling Authority containing the information in sub paragraphs (1)-(3) of §353-B)(c) above. If the Director recommends release, the report shall also contain a medical release plan. The Department of Public Safety shall provide the inmate with a copy of the report it submits to the Hawai'i Paroling Authority.

(e) The Hawaii Paroling Authority shall conduct a hearing on all requests for medical release. The hearing shall be held within 5 days of receiving a medical release report from the Department of Public Safety. The inmate and the inmate's representative shall be permitted to participate in the hearing and submit medical and other evidence in support of the request. The Authority shall independently determine whether the inmate meets the criteria for medical release and shall independently assess the risk for violence and recidivism, if any, that the inmate poses to society. The Paroling Authority shall also provide the victim or victims of the inmate or the victim's or victims' family or families with the opportunity to be heard. The Authority shall not release any inmate who poses a danger to society. The Authority shall grant or deny the request within 2 days of the hearing.

(f) A denial of medical release by the Paroling Authority shall not affect an inmate's eligibility for any other form of parole or release under applicable law.

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

(h) The Director of the Department of Public Safety shall appoint an advocate for any inmate who requests compassionate release and is too incapacitated or debilitated to advocate for himself or herself.

(i) The Department of Public Safety and the Hawaii Paroling Authority shall adopt rules for a fast track procedure for the evaluation and release of rapidly dying prisoners;

(j) All rules, regulations and procedures pertaining to compassionate release shall be published on the websites of the Department of Public Safety and Hawaii Paroling Authority;

(k) The Hawaii Paroling Authority and the Department of Public Safety shall adopt rules in accordance with chapter 91 to implement the medical release program.

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

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

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

(b) The paroling authority shall promptly order an inmate returned to custody of the department to await a revocation hearing if the paroling authority receives credible information that an inmate has failed to comply with any reasonable condition set upon the inmate's release. If the paroling authority subsequently revokes an inmate's medical release for failure to comply with conditions of release, the inmate shall resume serving the balance of the sentence, with credit given only for the duration of the inmate's medical release served in compliance with all reasonable conditions set forth pursuant to subsection (a). Revocation of an inmate's medical release for violating a condition of release shall not affect an inmate's eligibility for any other form of parole or release provided by law but may be used as a factor in determining eligibility for such parole or release.