

JAN 17 2013

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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, and many face  
3 the risk of developing a serious illness or disability,  
4 particularly prisoners with long mandatory sentences. Long  
5 sentences and an aging population mean that correctional  
6 facilities in this State and across the United States are  
7 housing a growing number of elderly inmates who often have  
8 extensive medical needs. Concern over how society should deal  
9 with the aging and seriously ill prison population has led  
10 policy makers in many states to endorse early release for older  
11 and seriously ill prisoners who pose a low risk to public  
12 safety. Presently, the United States federal prison system and  
13 many states grant some kind of medical or compassionate release.  
14           Compassionate release provides physicians and other medical  
15 professionals an opportunity to use their unique expertise and  
16 knowledge of prognosis, geriatrics, cognitive and functional  
17 decline, and palliative medicine to ensure that medical criteria  
18 for compassionate release are appropriately evidence-based.



1 With this information, criminal justice professionals are able  
2 to better determine whether or not an inmate should be granted  
3 medical release.

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

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

11 "§353- Medical release program. The department shall  
12 assess and refer inmates to the Hawaii paroling authority for  
13 possible medical release as provided in subpart B of part II."

14 SECTION 3. Chapter 353, part II, Hawaii Revised Statutes,  
15 is amended by designating sections 353-61 to 353-72 as subpart  
16 A, entitled "General Provisions".

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

20 **"B. Medical Release Program**

21 **§353- Definitions.** For the purpose of this subpart:



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

5 "Inmate" means any person committed to the custody of the  
6 director.

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

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

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

16 "Paroling authority" means the Hawaii paroling authority.

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

19 **§353- Medical release program; authority to release;**  
20 **rules.** (a) An inmate may be considered for medical release if  
21 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; and  
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 incarcerated 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 factors such 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 medical release plan that provides for continuity of  
19 care.

20 The department shall provide the inmate with a copy of the  
21 director's medical release request.



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

6 All requests initiated by an inmate shall be referred to  
7 the director immediately. Within twenty days of receiving the  
8 request, the department shall submit a medical release report to  
9 the paroling authority containing the information required in  
10 subsection (c). The department shall provide the inmate with a  
11 copy of the medical release report.

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



1 or the victim's family, with the opportunity to be heard. The  
2 paroling authority shall grant or deny the request within two  
3 days following the hearing.

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

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

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

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

20 (j) Medical release shall not be considered a reduction of  
21 a minimum sentence and the sixty-day notice requirement of  
22 section 706-669(5) shall not apply to any medical release;



1 provided, however, that the department shall give the  
2 prosecuting attorney of the appropriate county notice of all  
3 requests for medical release as soon as practicable after a  
4 request is initiated, and the prosecuting attorney shall be  
5 permitted to participate in any medical release hearing  
6 conducted by the paroling authority.

7 (k) The department shall adopt rules pursuant to chapter  
8 91 to implement the medical release program.

9 **§353- Conditions of a medical release.** The paroling  
10 authority shall set reasonable conditions on an inmate's medical  
11 release that shall apply through the date upon which the  
12 inmate's sentence would have expired. The conditions shall  
13 include the following:

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

16 (2) Personnel of the department shall be allowed to visit  
17 the inmate at reasonable times at the inmate's home or  
18 elsewhere; and

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

21 **§353- Revocation of medical release; return of inmate**

22 **to custody.** (a) The paroling authority shall promptly order an





1 inmate to be returned to the custody of the director to await a  
 2 revocation hearing if the paroling authority receives credible  
 3 information that an inmate has failed to comply with any  
 4 reasonable condition set upon the inmate's medical release.

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

16 SECTION 5. New statutory material is underscored.

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

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INTRODUCED BY: Will Enger

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# S.B. NO. 72

**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. Allows an inmate to be considered for medical release at the request of the director, the inmate, or the inmate's representative, if the inmate meets specified criteria. Requires the HPA to grant or deny the request after a hearing, to set reasonable conditions on an inmate's medical release, and to promptly order an inmate returned to custody to await a revocation hearing if the HPA receives credible information that an inmate has failed to comply with any reasonable conditions of medical release.

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

