

MAR 13 2013

SENATE CONCURRENT RESOLUTION

REQUESTING THE DEPARTMENT OF PUBLIC SAFETY AND THE HAWAII
PAROLING AUTHORITY TO CREATE A TWO-YEAR PILOT PROGRAM FOR
MEDICAL OR COMPASSIONATE RELEASE OF CERTAIN ILL, DISABLED,
AND GERIATRIC INMATES WHO POSE A LOW RISK TO PUBLIC SAFETY:

1 WHEREAS, 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; and
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6 WHEREAS, reports of the Bureau of Justice Statistics found
7 that between 1995 and 2010 the number of state and federal
8 prisoners age fifty-five or older nearly quadrupled (increasing
9 282 percent), while the number of all prisoners grew by less
10 than half (increasing forty-two percent); and
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12 WHEREAS, lengthy sentences and an aging population mean
13 that correctional facilities in this State and across the United
14 States are housing a growing number of elderly inmates who often
15 have extensive medical needs; and
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17 WHEREAS, life in prison can be challenging to anyone, but
18 it can be particularly hard for people whose bodies and minds
19 are being whittled away by age; and
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21 WHEREAS, concerns over how society should deal with the
22 aging and seriously ill prison population has led policy makers
23 in many states to endorse early release on parole for older and
24 seriously ill prisoners who pose a low risk to public safety;
25 and
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27 WHEREAS, compassionate release consists of two entwined but
28 distinct elements: eligibility based on medical evidence and
29 approval based on legal and correctional evidence; and
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1 WHEREAS, by age fifty, people are far less likely to commit
2 serious crimes, as stated by one retired federal warden that
3 arrest rates drop to two percent and arrest rates are almost nil
4 at the age of sixty-five; and

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6 WHEREAS, the Department of Public Safety Compassionate
7 Release Statistics for 2009-2011 show that thirty-seven
8 compassionate releases were recommended, twenty-two
9 compassionate releases were approved, and only fourteen
10 individuals were released under the Compassionate Release
11 Program, which means that sick and elderly inmates are dying
12 alone in prison; and

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14 WHEREAS, compassionate release provides physicians and
15 other medical professionals an opportunity to use their unique
16 expertise and knowledge of prognosis, geriatrics, cognitive and
17 functional decline, and palliative medicine to ensure that
18 medical criteria for compassionate release are appropriately
19 evidence-based; and

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21 WHEREAS, the Department of Public Safety and the Hawaii
22 Paroling Authority should initiate a compassionate release
23 program with the following requirements and guidelines as
24 described below:

- 25
26 (1) A written medical and psychosocial care plan that is
27 specific to the inmate that includes, at a minimum, a
28 recommended course of treatment for the inmate and a
29 plan to provide continuity of care as the inmate
30 transitions from prison to the community;
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32 (2) An inmate may be considered for medical release if the
33 inmate: has an illness, disease, or medical condition
34 with a prognosis to a reasonable medical probability
35 that death will occur within one year; has a seriously
36 debilitating and irreversible mental or physical
37 condition that impairs the inmate's functional ability
38 and that can be managed more appropriately in a
39 community setting; or suffers from a serious,
40 debilitating, and irreversible physical or mental
41 condition related to aging that impairs the inmate's
42 functional ability and is expected to require costly
43 or complex care, treatment, or management;
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- 1 (3) All requests for medical release shall be in writing
2 and shall be made to the Hawaii Paroling Authority.
3 Requests may be made by the Director of Public Safety,
4 an inmate, or an inmate's representative;
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- 6 (4) If a request for medical release is made by the
7 Director of Public Safety, the request shall contain
8 the following information:
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 - 10 (A) A report from a Department of Public Safety
11 physician stating whether or not the inmate meets
12 the criteria for medical release and the basis
13 for the physician's opinion; provided that the
14 report shall state each diagnosis that applies to
15 the inmate and the prognosis for each condition
16 to a reasonable medical probability; provided
17 further that where practicable, the physician
18 shall discuss the results of any tests, studies,
19 or physical findings that support the diagnosis
20 and prognosis, and the nature and extent of the
21 medical treatment that will most likely be
22 required to manage the inmate's condition while
23 incarcerated within the standard of care and
24 where appropriate, the physician shall provide
25 citations to relevant medical literature;
26
 - 27 (B) A written evaluation prepared by the Director of
28 Public Safety on the risk for violence and
29 recidivism, if any, that the inmate poses to
30 society in light of factors such as the inmate's
31 medical condition, the severity of the offense
32 for which the inmate is incarcerated, the
33 inmate's prison record, and the medical release
34 plan; and
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 - 36 (C) A medical release plan that provides for
37 continuity of care;
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- 39 (5) If a request for medical release is made by an inmate
40 or the inmate's representative, the request shall
41 state the grounds for the requested release and shall
42 contain a statement as to where the inmate will reside
43 if released, who will care for the inmate, and how the
44 inmate plans to obtain medical care;



- 1
- 2 (6) All requests initiated by an inmate shall be referred
- 3 to the Director of Public Safety immediately and
- 4 within twenty days of receiving the request, the
- 5 Department of Public Safety shall submit a medical
- 6 release report to the Hawaii Paroling Authority
- 7 containing the aforementioned information;
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- 9 (7) The Hawaii Paroling Authority shall conduct a hearing
- 10 on all requests for medical release within ten days of
- 11 receiving a medical release report from the Department
- 12 of Public Safety and the inmate and the inmate's
- 13 representative is permitted to participate in the
- 14 hearing and may submit medical and other evidence in
- 15 support of the request;
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- 17 (8) The Hawaii Paroling Authority shall independently
- 18 determine whether the inmate meets the criteria for
- 19 medical release and independently assesses the risk
- 20 for violence and recidivism, if any, that the inmate
- 21 poses to society;
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- 23 (9) The Hawaii Paroling Authority shall provide the victim
- 24 of the criminal act for which the inmate was
- 25 sentenced, or the victim's family, with the
- 26 opportunity to be heard; the Hawaii Paroling Authority
- 27 shall grant or deny the request within two days
- 28 following the hearing;
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- 30 (10) The Hawaii Paroling Authority shall not grant medical
- 31 release to an inmate who poses a danger to society;
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- 33 (11) A denial of medical release by the Hawaii Paroling
- 34 Authority shall not affect an inmate's eligibility for
- 35 any other form of parole or release under applicable
- 36 law; provided that the inmate may not reapply or be
- 37 reconsidered for medical release unless there is a
- 38 demonstrated change in the inmate's medical condition;
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- 40 (12) The Director of Public Safety shall appoint an
- 41 advocate for any inmate who requests medical release
- 42 and is unable because of incapacitation or
- 43 debilitation to advocate on the inmate's own behalf;
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- 1 (13) The Department of Public Safety shall adopt a fast
2 track procedure for the evaluation and release of
3 rapidly dying prisoners; provided that the procedure
4 shall be posted on the website of the Department of
5 Public Safety and the Hawaii Paroling Authority;
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- 7 (14) The medical release shall not be considered as a
8 reduction of a minimum sentence; however, the
9 Department of Public Safety is required to give the
10 Prosecuting Attorney of the appropriate county notice
11 of all requests for medical release as soon as
12 practicable after a request is initiated, and the
13 Prosecuting Attorney shall be permitted to participate
14 in any medical release hearing conducted by the Hawaii
15 Paroling Authority;
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- 17 (15) The Hawaii Paroling Authority shall set reasonable
18 conditions on an inmate's medical release that shall
19 apply through the date upon which the inmate's
20 sentence would have expired. The conditions shall
21 include the following:
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 - 23 (A) The released inmate shall be subject to
24 supervision by the Hawaii Paroling Authority;
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 - 26 (B) Personnel of the Department of Public Safety
27 shall be allowed to visit the inmate at
28 reasonable times at the inmate's home or
29 elsewhere; and
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 - 31 (C) The released inmate shall comply with all
32 conditions of release set by the Hawaii Paroling
33 Authority;
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- 35 (16) The Hawaii Paroling Authority shall promptly order an
36 inmate to be returned to the custody of the Director
37 of Public Safety to await a revocation hearing if the
38 Hawaii Paroling Authority receives credible
39 information that an inmate has failed to comply with
40 any reasonable condition set upon the inmate's medical
41 release; and if the Hawaii Paroling Authority revokes
42 an inmate's medical release for failure to comply with
43 a condition of release, the inmate shall resume
44 serving the remaining balance of the inmate's



1 sentence, with credit given only for the duration of
2 the inmate's medical release served in compliance with
3 all reasonable conditions; and
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5 (17) Revocation of an inmate's medical release for
6 violating a condition of release does not affect an
7 inmate's eligibility for any other form of parole or
8 release provided by law; provided that revocation of
9 an inmate's medical release may be used as a factor in
10 determining eligibility for future parole or release;
11 and
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13 WHEREAS, with the foregoing procedures, criminal justice
14 professionals are able to better determine whether or not an
15 inmate should be granted medical release; and
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17 WHEREAS, compassion is an integral part of the Aloha
18 spirit; now, therefore,
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20 BE IT RESOLVED by the Senate of the Twenty-seventh
21 Legislature of the State of Hawaii, Regular Session of 2013, the
22 House of Representatives concurring, that the Department of
23 Public Safety and the Hawaii Paroling Authority are requested to
24 create a two-year pilot program for medical or compassionate
25 release of certain ill, disabled, and geriatric inmates who pose
26 a low risk to public safety in accordance with the
27 aforementioned requirements and guidelines; and
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29 BE IT FURTHER RESOLVED that the Department of Public Safety
30 and the Hawaii Paroling Authority shall report to the
31 Legislature no later than twenty days prior to the convening of
32 the Regular Session of 2016 on findings and recommendations of
33 the two-year pilot program for medical or compassionate release
34 of certain ill, disabled, and geriatric inmates who pose a low
35 risk to public safety; and
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1 BE IT FURTHER RESOLVED that certified copies of this
 2 Concurrent Resolution be transmitted to the Director of Public
 3 Safety and the Chairperson of the Hawaii Paroling Authority.
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OFFERED BY: Will Eyo

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