

JAN 17 2014

A BILL FOR AN ACT

RELATING TO CORRECTIONS.

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

1 SECTION 1. The legislature finds that an ever increasing
2 number of men and women are entering prison with serious medical
3 illnesses, many of whom suffer from an increasing risk of
4 developing a serious illness or disability which becomes
5 exponentially more likely for those prisoners with long
6 mandatory sentences. Longer sentences and an aging population
7 mean that correctional facilities in Hawaii and across the
8 United States are housing a growing number of elderly inmates
9 who often have extensive medical needs. Concern over how
10 society should deal with the aging and seriously ill prison
11 population has led policy makers in many states to endorse early
12 release for older and seriously ill prisoners who pose a low
13 risk to public safety. As of 2009, the United States federal
14 prison system and thirty-nine states had laws governing medical
15 or compassionate release.

16 Compassionate release provides physicians and other medical
17 professionals with an opportunity to use their unique expertise
18 and knowledge of prognosis, geriatrics, cognitive and functional



1 decline, and palliative medicine to ensure that medical criteria
2 for compassionate release are appropriately evidence-based.
3 Using this medical foundation, criminal justice professionals
4 can balance the need for punishment with an eligible
5 individual's appropriateness for release.

6 Compassion is an integral part of the Aloha spirit. The
7 purpose of this Act is to require medical or "compassionate"
8 release for certain ill, disabled, and geriatric inmates who
9 pose a low risk to public safety.

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

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

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

19 "A. General Provisions"

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



1 **"B. Medical Release**

2 §353- **Definitions.** For the purpose of this subpart:

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

7 "Department" means the department of public safety.

8 "Director" means the director of public safety.

9 "Inmate" means any person sentenced to the custody of the
10 department of public safety.

11 "Medical release" means the release of an inmate before the
12 expiration of the inmate's sentence due to the inmate's medical
13 condition.

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

17 (1) A recommended course of treatment for the inmate; and

18 (2) A plan to provide continuity of care as the inmate
19 transitions from prison to the community.

20 "Paroling authority" means the Hawaii paroling authority.

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



1 §353- **Medical release; authority to release; rules.** (a)

2 An inmate in the custody of the department shall be eligible to
3 be considered for medical release if the inmate:

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

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

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

16 (b) All requests for medical release shall be in writing
17 and shall be made to the paroling authority. Requests may be
18 made by the director, an inmate, or an inmate's representative.

19 (c) If a request for medical release is made by the
20 director, the request shall contain the following information:

21 (1) A report from a department physician stating whether
22 or not the inmate meets the criteria for medical



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

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

21 (3) A report from the department stating whether or not
22 the department recommends medical release for the



1 inmate and the reasons therefore; provided that if the
2 department recommends release, the report shall also
3 contain a medical release plan that provides for
4 continuity of care. The department shall provide the
5 inmate with a copy of the report.

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

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

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



1 the criteria for medical release and shall independently assess
2 the risk for violence and recidivism, if any, that the inmate
3 poses to society. The paroling authority shall also provide the
4 victim of the inmate's criminal act for which the inmate was
5 sentenced or the victim's family with the opportunity to be
6 heard. The paroling authority shall grant or deny the request
7 within two days following the hearing.

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

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

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

20 (i) The department shall adopt procedures for a fast track
21 procedure for the evaluation and release of rapidly dying



1 prisoners; provided that the procedures shall be posted on the
2 website of the department and the paroling authority.

3 (j) The department shall adopt rules in accordance with
4 chapter 91 to implement medical release for inmates.

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

- 10 (1) The released inmate shall be subject to supervision by
11 the paroling authority;
- 12 (2) Personnel of the department shall be allowed to visit
13 the inmate at reasonable times at the inmate's home or
14 elsewhere; and
- 15 (3) The released inmate shall comply with all conditions
16 of release set by the paroling authority.

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



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

12 SECTION 5. New statutory material is underscored.

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

14

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S.B. NO. 2306

Report Title:

Corrections; Medical Release; 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.

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

