



EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 9, 2019

GOV. MSG. NO. 1374

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Thirtieth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Thirtieth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

I am transmitting herewith HB629 HD2 SD2, without my approval and with the statement of objections relating to the measure.

HB629 HD2 SD2

RELATING TO MEDICAL RELEASE.

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

EXECUTIVE CHAMBERS

HONOLULU

July 9, 2019

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 629

Honorable Members
Thirtieth Legislature
State of Hawai'i

Pursuant to Section 16 of Article III of the Constitution of the State of Hawai'i, I am returning herewith, without my approval, House Bill No. 629, entitled "A Bill for an Act Relating to Medical Release."

The purpose of this bill is to create a medical release program within the Hawai'i Paroling Authority (HPA) to allow inmates with terminal or debilitating diseases or illnesses to be released from custody before the expiration of their sentence. The Director of Public Safety, an inmate or an inmate's representative may submit a written request for medical release. The bill also sets forth specific requirements for both HPA and the Public Safety Department (PSD) to follow when establishing and implementing the medical release program.

This bill is objectionable because it is unnecessary. A medical release program has been in existence since December 2014 under PSD and HPA policies.

Further, the bill requires PSD and HPA to complete certain tasks within short periods of time but does not provide for necessary resources. For example, the bill allows referrals for medical release from inmates and inmate representatives, who may not be medically trained. PSD's Health Care Division would be required to provide a detailed, comprehensive medical assessment within twenty days of receipt of each referral. The bill does not, however, provide funding for additional healthcare or other staff required to perform the comprehensive assessments.

STATEMENT OF OBJECTIONS
HOUSE BILL NO. 629
Page 2

For the foregoing reasons, I am returning House Bill No. 629 without my approval.

Respectfully,

A handwritten signature in black ink that reads "David Y. Ige". The signature is written in a cursive, flowing style.

DAVID Y. IGE
Governor of Hawai'i

A BILL FOR AN ACT

RELATING TO MEDICAL RELEASE.

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 prison 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



1 for compassionate release are appropriately evidence-based.
2 With this information, criminal justice professionals are able
3 to better determine whether or not an inmate should be granted
4 medical release.

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

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

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

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

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

21 "B. Medical Release Program



1 §353- Definitions. For the purpose of this subpart:

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

6 "Debilitating disease or illness" means a persistent or
7 progressive illness that impedes a patient's mental or physical
8 capacities and compromises that patient's quality of life.

9 "Inmate" means any person committed to the custody of the
10 director.

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 that, at a minimum, shall include:

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



1 "Terminal illness" means a progressive and incurable
2 medical condition that is expected to result in death.

3 §353- Medical release program; authority to release;
4 rules. (a) An inmate may be considered for medical release if
5 the inmate:

- 6 (1) Has a terminal illness with a predictably poor
7 prognosis;
- 8 (2) Has a seriously debilitating and irreversible mental
9 or physical condition that impairs the inmate's
10 functional ability to the extent that the inmate would
11 be more appropriately managed in a community setting;
- 12 (3) Is too ill or cognitively impaired to participate in
13 rehabilitation or to be aware of punishment; or
- 14 (4) Has a disease or condition that requires a complexity
15 of treatment or a level of care that the department is
16 unable to provide on a long-term basis.

17 (b) All requests for medical release shall be in writing
18 and shall be made to the department of public safety. Requests
19 may be made by the director, an inmate, or an inmate's
20 representative.



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

- 3 (1) A report from a department physician stating whether
4 the inmate meets the criteria for medical release and
5 the basis for the physician's opinion; provided that
6 the report shall state each diagnosis that applies to
7 the inmate and the prognosis for each condition to a
8 reasonable medical probability; provided further that,
9 where practicable, the physician shall discuss the
10 results of any tests, studies, or physical findings
11 that support the diagnosis and prognosis, and the
12 nature and extent of the medical treatment that will
13 most likely be required to manage the inmate's
14 condition while incarcerated within the standard of
15 care. Where appropriate, the physician shall provide
16 citations to relevant medical literature;
- 17 (2) A written evaluation prepared by the director on the
18 risk for violence and recidivism, if any, that the
19 inmate poses to society in light of such factors as
20 the inmate's medical condition, the severity of the



1 offense for which the inmate is incarcerated, and the
2 inmate's prison record; and

3 (3) A medical release plan that provides for continuity of
4 care.

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

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

12 All requests initiated by an inmate or an inmate's
13 representative shall be immediately referred to the director.
14 Within twenty days of receiving the request, the department
15 shall submit a medical release report to the Hawaii paroling
16 authority containing the information required in subsection (c).
17 The department shall provide the inmate with a copy of the
18 medical release report.

19 (e) The Hawaii paroling authority shall conduct a hearing
20 on all requests for medical release. The hearing shall be held
21 within ten days of receiving a medical release report from the



1 department. The inmate and the inmate's representative shall be
2 permitted to participate in the hearing and may submit medical
3 and other evidence in support of the request. The paroling
4 authority shall independently determine whether the inmate meets
5 the criteria for medical release and shall independently assess
6 the risk for violence and recidivism, if any, that the inmate
7 poses to society. The paroling authority shall also provide the
8 victim of the criminal act for which the inmate was sentenced,
9 or the victim's family, with the opportunity to be heard. The
10 paroling authority shall grant or deny the request within two
11 days following the hearing.

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

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

20 (h) The director shall appoint an advocate for any inmate
21 who requests medical release and is unable, due to



1 incapacitation or debilitation, to advocate on the inmate's own
2 behalf.

3 (i) The department shall adopt a fast track procedure for
4 the evaluation and release of rapidly dying prisoners; provided
5 that the procedure shall be posted on the website of the
6 department and the Hawaii paroling authority.

7 (j) Medical release shall not be considered a reduction of
8 a minimum sentence, and the sixty-day notice requirement of
9 section 706-669(5) shall not apply to any medical release;
10 provided, however, that the department shall give the
11 prosecuting attorney of the appropriate county notice of all
12 requests for medical release as soon as practicable after a
13 request is initiated, and the prosecuting attorney shall be
14 permitted to participate in any medical release hearing
15 conducted by the Hawaii paroling authority.

16 (k) The department shall adopt rules pursuant to chapter
17 91 to implement the medical release program.

18 §353- Conditions of a medical release. The Hawaii
19 paroling authority shall set reasonable conditions on an
20 inmate's medical release that shall apply through the date upon



1 which the inmate's sentence would have expired. The conditions
2 shall include the following:

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

5 (2) Personnel of the department shall be allowed to visit
6 the inmate at reasonable times at the inmate's home or
7 elsewhere; and

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

10 §353- Revocation of medical release; return of inmate to
11 custody. (a) The Hawaii paroling authority shall promptly
12 order an inmate to be returned to the custody of the director to
13 await a revocation hearing if the paroling authority receives
14 credible information that an inmate has failed to comply with
15 any reasonable condition set upon the inmate's medical release.

16 (b) If the Hawaii paroling authority revokes an inmate's
17 medical release for failure to comply with a reasonable
18 condition of release, the inmate shall resume serving the
19 remaining balance of the inmate's sentence, with credit given
20 only for the duration of the inmate's medical release served in
21 compliance with all reasonable conditions. Revocation of an



1 inmate's medical release for violating a reasonable condition of
2 release shall not affect an inmate's eligibility for any other
3 form of parole or release provided by law; provided that
4 revocation of an inmate's medical release may be used as a
5 factor in determining eligibility for future parole or release."

6 SECTION 5. New statutory material is underscored.

7 SECTION 6. This Act shall take effect on March 1, 2020.

APPROVED this day of , 2019

GOVERNOR OF THE STATE OF HAWAII



HB No. 629, HD 2, SD 2

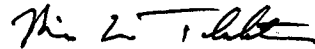
THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: April 30, 2019
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirtieth Legislature of the State of Hawaii, Regular Session of 2019.



Scott K. Saiki
Speaker
House of Representatives

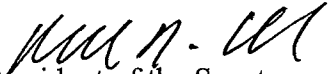



Brian L. Takeshita
Chief Clerk
House of Representatives

THE SENATE OF THE STATE OF HAWAI'I

Date: April 9, 2019
Honolulu, Hawai'i 96813

We hereby certify that the foregoing Bill this day passed Third Reading in the
Senate of the Thirtieth Legislature of the State of Hawai'i, Regular Session of 2019.


President of the Senate


Clerk of the Senate