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## 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. Requests may be made by  
19 the director, an inmate, or an inmate's representative.

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



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



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

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

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

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

17          (e) The Hawaii paroling authority shall conduct a hearing  
18 on all requests for medical release. The hearing shall be held  
19 within ten days of receiving a medical release report from the  
20 department. The inmate and the inmate's representative shall be  
21 permitted to participate in the hearing and may submit medical



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

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

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

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



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

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

14 (k) The department shall adopt rules pursuant to chapter  
15 91 to implement the medical release program.

16 **§353- Conditions of a medical release.** The Hawaii  
17 paroling authority shall set reasonable conditions on an  
18 inmate's medical release that shall apply through the date upon  
19 which the inmate's sentence would have expired. The conditions  
20 shall include the following:





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

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

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

8 §353- Revocation of medical release; return of inmate  
9 to custody. (a) The Hawaii paroling authority shall promptly  
10 order an inmate to be returned to the custody of the director to  
11 await a revocation hearing if the paroling authority receives  
12 credible information that an inmate has failed to comply with  
13 any reasonable condition set upon the inmate's medical release.

14 (b) If the Hawaii paroling authority revokes an inmate's  
15 medical release for failure to comply with a reasonable  
16 condition of release, the inmate shall resume serving the  
17 remaining balance of the inmate's sentence, with credit given  
18 only for the duration of the inmate's medical release served in  
19 compliance with all reasonable conditions. Revocation of an  
20 inmate's medical release for violating a reasonable condition of  
21 release shall not affect an inmate's eligibility for any other



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1 form of parole or release provided by law; provided that  
2 revocation of an inmate's medical release may be used as a  
3 factor in determining eligibility for future parole or release."

4 SECTION 5. New statutory material is underscored.

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

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INTRODUCED BY:

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JAN 17 2020



# H.B. NO. 1972

**Report Title:**

Corrections; Medical Release Program; Compassionate Release;  
Medical Assistance

**Description:**

Creates a medical release program within the Department of Public Safety for certain ill, disabled, or impaired inmates who pose a low risk to public safety.

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

