
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:



1 **"B. Medical Release Program**

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

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

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

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

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

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

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



1 §353- **Medical release program; authority to release;**
2 **rules.** (a) An inmate may be considered for medical release if
3 the inmate:

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

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

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

- 20 (1) A report from a department physician stating whether
21 the inmate meets the criteria for medical release and



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

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



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

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

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

15 (e) The Hawaii paroling authority shall conduct a hearing
16 on all requests for medical release. The hearing shall be held
17 within ten days of receiving a medical release report from the
18 department. The inmate and the inmate's representative shall be
19 permitted to participate in the hearing and may submit medical
20 and other evidence in support of the request. The paroling
21 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 criminal act for which the inmate was sentenced,
5 or the victim's family, with the opportunity to be heard. The
6 paroling authority shall grant or deny the request within two
7 days following the hearing.

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

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

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

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



1 that the procedure shall be posted on the website of the
2 department and the Hawaii paroling authority.

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

12 (k) The department shall adopt rules pursuant to chapter
13 91 to implement the medical release program.

14 **§353- Conditions of a medical release.** The Hawaii
15 paroling authority shall set reasonable conditions on an
16 inmate's medical release that shall apply through the date upon
17 which the inmate's sentence would have expired. The conditions
18 shall include the following:

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



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

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

6 §353- Revocation of medical release; return of inmate
7 to custody. (a) The Hawaii paroling authority shall promptly
8 order an inmate to be returned to the custody of the director to
9 await a revocation hearing if the paroling authority receives
10 credible information that an inmate has failed to comply with
11 any reasonable condition set upon the inmate's medical release.

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



1 revocation of an inmate's medical release may be used as a
2 factor in determining eligibility for future parole or release."

3 SECTION 5. New statutory material is underscored.

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



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. (HD1)

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not legislation or evidence of legislative intent.*

