
A BILL FOR AN ACT

RELATING TO MEDICAL RELEASE.

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

1 PART I

2 SECTION 1. Section 346-29, Hawaii Revised Statutes, is
3 amended by amending subsection (b) to read as follows:

4 "(b) No applicant or recipient who is found guilty of
5 fraudulently misrepresenting residence to obtain assistance in
6 two or more states shall be entitled to public assistance under
7 this chapter for ten years from date of conviction. No
8 applicant or recipient shall be entitled to public assistance
9 under this chapter who is a fugitive felon or who is in
10 violation of a condition of probation or parole or has
11 sufficient income or other resources to provide a standard above
12 that provided in this chapter, or who is an inmate of any public
13 institution, except that any inmate of a public institution who
14 is otherwise eligible for medical assistance and who has been
15 determined by the medical director of the institution as having
16 a major illness or medical condition requiring the provision of
17 medical care outside of the institution may receive assistance



1 under this chapter. An inmate of a public institution or
2 resident of a medical institution may apply for assistance to
3 begin after the inmate's discharge from the institution. An
4 inmate of a public institution who is on medical release
5 pursuant to subpart B of part II of chapter 353 shall be
6 presumed eligible to receive medical assistance. To enforce
7 this subsection, the department shall examine each list of
8 inmates within, or newly admitted to, a correctional facility in
9 the State that is submitted to the department by the director of
10 public safety pursuant to section 353-12.5, regardless of the
11 nature of the offense for which an inmate is incarcerated or the
12 duration of incarceration, to determine whether an inmate is
13 eligible for public assistance under this chapter."

14 PART II

15 SECTION 2. An ever increasing number of men and women are
16 entering prison with serious medical illnesses, and many face
17 the risk of developing a serious illness or disability,
18 particularly prisoners with long mandatory sentences. Long
19 sentences and an aging prison population mean that correctional
20 facilities in this State and across the United States are
21 housing a growing number of elderly inmates who often have



1 extensive medical needs. Concern over how society should deal
2 with the aging and seriously ill prison population has led
3 policy makers in many states to endorse early release for older
4 and seriously ill prisoners who pose a low risk to public
5 safety. Presently, the United States federal prison system and
6 many states grant some kind of medical or compassionate release.

7 Compassionate release provides physicians and other medical
8 professionals an opportunity to use their unique expertise and
9 knowledge of prognosis, geriatrics, cognitive and functional
10 decline, and palliative medicine to ensure that medical criteria
11 for compassionate release are appropriately evidence-based.
12 With this information, criminal justice professionals are able
13 to better determine whether or not an inmate should be granted
14 medical release.

15 Compassion is an integral part of the aloha spirit. The
16 purpose of this part is to create a medical or compassionate
17 release program for certain ill, disabled, and geriatric inmates
18 who pose a low risk to public safety.

19 SECTION 3. Chapter 353, Hawaii Revised Statutes, is
20 amended by adding a new section to part I to be appropriately
21 designated and to read as follows:



1 "§353- Medical release program. The department shall
2 assess and refer inmates to the Hawaii paroling authority for
3 possible medical release as provided in subpart B of part II."

4 SECTION 4. Chapter 353, part II, Hawaii Revised Statutes,
5 is amended by designating sections 353-61 to 353-72 as subpart
6 A, entitled "Hawaii Paroling Authority; General Provisions".

7 SECTION 5. Chapter 353, Hawaii Revised Statutes, is
8 amended by adding a new subpart to part II to be appropriately
9 designated and to read as follows:

10 **"B. Medical Release Program**

11 **§353- Definitions.** For the purpose of this subpart:

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

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

18 "Medical release" means the release of an inmate before the
19 expiration of the inmate's sentence due to the inmate's medical
20 condition.



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

- 4 (1) A recommended course of treatment for the inmate; and
5 (2) A plan to provide continuity of care as the inmate
6 transitions from prison to the community.

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

9 **§353- Medical release program; authority to release;**
10 **rules.** (a) An inmate may be considered for medical release if
11 the inmate:

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

15 (2) Has a seriously debilitating and irreversible mental
16 or physical condition that impairs the inmate's
17 functional ability and that can be managed more
18 appropriately in a community setting; or

19 (3) Suffers from a serious, debilitating, and irreversible
20 physical or mental condition related to aging that
21 impairs the inmate's functional ability and is



1 expected to require costly or complex care, treatment,
2 or management.

3 (b) All requests for medical release shall be in writing
4 and shall be made to the Hawaii paroling authority. Requests
5 may be made by the director, an inmate, or an inmate's
6 representative.

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

9 (1) A report from a department physician stating whether
10 the inmate meets the criteria for medical release and
11 the basis for the physician's opinion; provided that
12 the report shall state each diagnosis that applies to
13 the inmate and the prognosis for each condition to a
14 reasonable medical probability; provided further that,
15 where practicable, the physician shall discuss the
16 results of any tests, studies, or physical findings
17 that support the diagnosis and prognosis, and the
18 nature and extent of the medical treatment that will
19 most likely be required to manage the inmate's
20 condition while incarcerated within the standard of



1 care. Where appropriate, the physician shall provide
2 citations to relevant medical literature;

3 (2) A written evaluation prepared by the director on the
4 risk for violence and recidivism, if any, that the
5 inmate poses to society in light of such factors as
6 the inmate's medical condition, the severity of the
7 offense for which the inmate is incarcerated, the
8 inmate's prison record, and the medical release plan;
9 and

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

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

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

19 All requests initiated by an inmate shall be immediately
20 referred to the director. Within twenty days of receiving the
21 request, the department shall submit a medical release report to



1 the Hawaii paroling authority containing the information
2 required in subsection (c). The department shall provide the
3 inmate with a copy of the medical release report.

4 (e) The Hawaii paroling authority shall conduct a hearing
5 on all requests for medical release. The hearing shall be held
6 within ten days of receiving a medical release report from the
7 department. The inmate and the inmate's representative shall be
8 permitted to participate in the hearing and may submit medical
9 and other evidence in support of the request. The paroling
10 authority shall independently determine whether the inmate meets
11 the criteria for medical release and shall independently assess
12 the risk for violence and recidivism, if any, that the inmate
13 poses to society. The paroling authority shall also provide the
14 victim of the criminal act for which the inmate was sentenced,
15 or the victim's family, with the opportunity to be heard. The
16 paroling authority shall grant or deny the request within two
17 days following the hearing.

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

20 (g) A denial of medical release by the Hawaii paroling
21 authority shall not affect an inmate's eligibility for any other



1 form of parole or release under applicable law; provided that
2 the inmate may not reapply or be reconsidered for medical
3 release unless there is a demonstrated change in the inmate's
4 medical condition.

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

9 (i) The department shall adopt a fast track procedure for
10 the evaluation and release of rapidly dying prisoners; provided
11 that the procedure shall be posted on the website of the
12 department and the Hawaii paroling authority.

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



1 (k) The department shall adopt rules pursuant to chapter
2 91 to implement the medical release program.

3 §353- Conditions of a medical release. The Hawaii
4 paroling authority shall set reasonable conditions on an
5 inmate's medical release that shall apply through the date upon
6 which the inmate's sentence would have expired. The conditions
7 shall include the following:

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

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

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

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



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JAN 18 2019



H.B. NO. 629

Report Title:

Corrections; Medical Release Program; Compassionate Release;
Medical Assistance

Description:

Requires the Department of Public Safety to assess and refer inmates to the Hawaii Paroling Authority (HPA) for possible medical release. Allows an inmate to be considered for medical release at the request of the director, the inmate, or the inmate's representative, if the inmate meets specified criteria. Requires the HPA to grant or deny the request after a hearing, to set reasonable conditions on an inmate's medical release, and to promptly order an inmate returned to custody to await a revocation hearing if the HPA receives credible information that an inmate has failed to comply with any reasonable conditions of medical release. Makes inmates on medical release presumptively eligible to receive medical assistance from the Department of Human Services.

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