

JAN 20 2012

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# A BILL FOR AN ACT

RELATING TO PUBLIC SAFETY.

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

1           SECTION 1. Chapter 353, part II, Hawaii Revised Statutes,  
2 is amended by designating sections 353-61 to 353-72 as subpart A  
3 and inserting a title before section 353-61 to read as follows:

4                                   **"A. GENERAL PROVISIONS"**

5           SECTION 2. Chapter 353, Hawaii Revised Statutes, is  
6 amended by adding a new subpart to part II to be appropriately  
7 designated and to read as follows:

8                   "       **MEDICAL RELEASE OF ILL AND DISABLED INMATES**

9           **§353-A Definitions.** For the purposes of this subpart,  
10 unless the context clearly requires otherwise:

11           "Geriatric" means an inmate who is at least sixty-five  
12 years of age and suffers from chronic infirmity, illness, or  
13 disease related to aging that has progressed such that the  
14 inmate is incapacitated to the extent that the inmate does not  
15 pose a risk to public safety.

16           "Inmate" means any person sentenced to the custody of the  
17 department.



1 "Medical release" means a program enabling the paroling  
2 authority to release inmates who are permanently and totally  
3 disabled, terminally ill, or geriatric.

4 "Medical release plan" means a comprehensive written  
5 medical and psychosocial care plan that is specific to the  
6 inmate and includes, at a minimum:

- 7 (1) The proposed course of treatment;
- 8 (2) The proposed site for treatment and post-treatment  
9 care;
- 10 (3) Documentation that medical providers who are qualified  
11 to provide the medical services identified in the  
12 medical release plan are prepared to provide those  
13 services; and
- 14 (4) The financial program in place to cover the cost of  
15 the plan for the duration of the medical release,  
16 which shall include eligibility for enrollment in  
17 commercial insurance, medicare, or medicaid, or access  
18 to other adequate financial resources for the duration  
19 of the medical release.

20 "Paroling authority" means the Hawaii paroling authority.

21 "Permanently and totally disabled" means an inmate who, as  
22 determined by a licensed physician, suffers from permanent and



1 irreversible physical incapacitation as a result of an existing  
2 physical or medical condition that was unknown at the time of  
3 sentencing or, since the time of sentencing, has progressed to  
4 render the inmate permanently and totally disabled, to the  
5 extent that the inmate does not pose a risk to public safety.

6 "Prescriptive plan update" means the document provided to  
7 the paroling authority that provides information on the inmate's  
8 adjustment to incarceration, institutional misconduct history,  
9 institutional programs completed, facility work line history,  
10 efforts made to pay fines and restitution, tentative parole  
11 plan, future residence address, and any other information  
12 requested by the paroling authority.

13 "Terminally ill" means an inmate who, as determined by a  
14 licensed physician, has an incurable condition caused by illness  
15 or disease that:

- 16 (1) Was unknown at the time of sentencing or, since the  
17 time of sentencing, has progressed to render the  
18 inmate terminally ill;
- 19 (2) Will likely produce death within six months; and
- 20 (3) Is debilitating to the extent that the inmate does not  
21 pose a risk to public safety.



1           **§353-B Medical release program; authority to release;**  
2 **rules.** The paroling authority and the department of public  
3 safety shall establish a medical release program for inmates and  
4 prescribe when and under what conditions an inmate may be  
5 eligible for medical release, consistent with section 353-E.  
6 The paroling authority may adopt rules in accordance with  
7 chapter 91 to implement the medical release program.

8           **§353-C Eligibility.** (a) Notwithstanding any other law to  
9 the contrary and except as otherwise provided in this section,  
10 an inmate is eligible to be considered for medical release if  
11 the department determines that the inmate is:

- 12           (1) Not currently serving a sentence of a term of life  
13           without the possibility of parole;
- 14           (2) Not currently serving any portion of a court ordered  
15           or statutorily required mandatory minimum sentence;
- 16           (3) Diagnosed as permanently and totally disabled,  
17           terminally ill, or geriatric under the procedure  
18           described in section 353-D(b)(1); and
- 19           (4) Incapacitated to the extent that the inmate does not  
20           pose a risk to public safety.

21           (b) Persons convicted of any offense requiring  
22 registration under chapter 846E shall not be eligible for

1 release under this subpart unless they have completed the  
2 required sex offender treatment program under chapter 353E, or  
3 the department's competent medical authorities have determined  
4 that due to the inmate's medical condition, the inmate is unable  
5 participate or it is determined that their terminal illness does  
6 not permit the completion of the sex offender treatment program  
7 while incarcerated. The paroling authority may require, at  
8 inmate's expense, that the inmate participate in a community-  
9 based sex offender treatment program as a term of the inmate's  
10 condition of release.

11 (c) The paroling authority may waive an inmate's  
12 participation in a community-based sex offender treatment  
13 program if it is determined by the department's medical  
14 authorities or the inmate's community-based treating physician  
15 that the inmate's medical condition renders the inmate unable to  
16 participate. The paroling authority may also waive  
17 participation in a community-based sex offender treatment  
18 program for inmates being paroled for medical reasons in Hawaii  
19 or another jurisdiction, or those who will begin or complete a  
20 term of incarceration in any jurisdiction, this includes  
21 paroling inmates for final orders of deportation and into the  
22 custody of the United States Department of Homeland Security for



1 proceedings for removal from the United States. In these cases,  
2 the paroled offender shall not be relieved of any requirement  
3 within the State or any other jurisdiction within the United  
4 States to register as a sex offender or to comply with all  
5 requirements associated with registration as a sex offender.

6 **§353-D Procedure for medical release.** (a) The paroling  
7 authority shall consider an inmate for medical release upon  
8 referral by the department. The department may base its  
9 referral upon a recommendation from within the department by  
10 competent medical authorities or it may endorse the  
11 recommendation of competent medical authorities outside the  
12 department. The department's medical director shall determine  
13 whether the department will endorse a recommendation from an  
14 outside medical authority.

15 (b) The referral shall include an assessment of the  
16 inmate's medical and psychosocial condition and the risk the  
17 inmate poses to society, as follows:

18 (1) A licensed physician designated by the department  
19 shall review the case of each inmate who meets the  
20 eligibility requirements for medical release set forth  
21 in section 353-C. The physician shall prepare a  
22 written diagnosis that includes:



1 (A) A description of any terminal conditions,  
2 physical incapacities, and chronic conditions;  
3 and

4 (B) A prognosis concerning the likelihood of recovery  
5 from any terminal conditions, physical  
6 incapacities, and chronic conditions; and

7 (2) The department shall assess the risk for violence and  
8 recidivism that the inmate poses to society and may  
9 consider such factors as the inmate's medical  
10 condition, the severity of the offense for which the  
11 inmate is incarcerated, the inmate's prison record,  
12 and the medical release plan.

13 (c) If the department determines that the inmate meets the  
14 criteria for release, the department shall complete the risk  
15 assessment and forward its referral and medical release plan for  
16 the inmate to the paroling authority within forty-five days of  
17 receiving a request, petition, or recommendation for release.

18 (d) The paroling authority shall determine whether to  
19 grant medical release within thirty days of receiving a referral  
20 from the department for release of a terminally ill or  
21 permanently and totally disabled inmate or a geriatric inmate.

22 In making the determination, the paroling authority shall



1 independently assess the risk for violence and recidivism that  
2 the inmate poses to society. The paroling authority shall also  
3 provide the victim or victims of the inmate or the victim's or  
4 victims' family or families and the respective county  
5 prosecutor's office with an opportunity to be heard via a  
6 written statement if such a request was previously made to the  
7 paroling authority.

8 (e) A denial of medical release by the paroling authority  
9 shall not affect an inmate's eligibility for any other form of  
10 parole or release under applicable law.

11 (f) If the department determines that an inmate should not  
12 be considered for release under this subpart or the paroling  
13 authority denies medical release under this subpart, the inmate  
14 may not reapply or be reconsidered unless there is a  
15 demonstrated change in the inmate's medical condition.

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

21 (1) The released inmate's care shall be consistent with  
22 the care specified in the medical release plan





- 1 provided by the department and approved by the  
2 paroling authority;
- 3 (2) The released inmate shall cooperate with and comply  
4 with the prescribed medical release plan and with  
5 reasonable requirements of medical providers to whom  
6 the released inmate is to be referred for continued  
7 treatment;
- 8 (3) The released inmate shall be subject to supervision by  
9 the paroling authority and shall permit officers from  
10 the paroling authority to visit the inmate at  
11 reasonable times at the inmate's home or elsewhere;
- 12 (4) The released inmate shall comply with any conditions  
13 of release set by the paroling authority; and
- 14 (5) The paroling authority shall receive periodic  
15 assessments from the inmate's treating physician.
- 16 (b) The paroling authority shall promptly order an inmate  
17 returned to the custody of the department to await a revocation  
18 hearing if the paroling authority receives credible information  
19 that an inmate has failed to comply with any reasonable  
20 condition set upon the inmate's release. If the paroling  
21 authority subsequently revokes an inmate's medical release for  
22 failure to comply with conditions of release, the inmate shall



1 resume serving the balance of the sentence, with credit given  
2 only for the duration of the inmate's medical release served in  
3 compliance with all reasonable conditions set forth pursuant to  
4 subsection (a). Revocation of an inmate's medical release for  
5 violating a condition of release shall not affect an inmate's  
6 eligibility for any other form of parole or release provided by  
7 law but may be used as a factor in determining eligibility for  
8 such parole or release."

9 SECTION 3. 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 under  
14 the medical release program established by the department and  
15 the Hawaii paroling authority under subpart of part II."

16 SECTION 4. Section 353-62, Hawaii Revised Statutes, is  
17 amended by amending subsection (a) to read as follows:

18 "(a) In addition to any other responsibility or duty  
19 prescribed by law for the Hawaii paroling authority, the  
20 paroling authority shall:

21 (1) Serve as the central paroling authority for the State;



# S.B. NO. 2248

- 1           (2) In selecting individuals for parole, consider for  
2           parole all committed persons, except in cases where  
3           the penalty of life imprisonment not subject to parole  
4           has been imposed, regardless of the nature of the  
5           offense committed;
- 6           (3) Determine the time at which parole shall be granted to  
7           any eligible individual as that time at which maximum  
8           benefits of the correctional institutions to the  
9           individual have been reached and the element of risk  
10          to the community is minimal;
- 11          (4) Establish rules of operation to determine conditions  
12          of parole applicable to any individual granted parole;
- 13          (5) Provide continuing custody, control, and supervision  
14          of paroled individuals;
- 15          (6) Revoke or suspend parole and provide for the  
16          authorization of return to a correctional institution  
17          for any individual who violates parole or any  
18          condition of parole when, in the opinion of the Hawaii  
19          paroling authority, the violation presents a risk to  
20          community safety or a significant deviation from any  
21          condition of parole;



# S.B. NO. 2248

- 1 (7) Discharge an individual from parole when supervision
- 2 is no longer needed;
- 3 (8) Interpret the parole program to the public [~~in order~~]
- 4 to develop a broad base of public understanding and
- 5 support; [~~and~~]
- 6 (9) In cooperation with the department, establish the
- 7 medical release program under subpart ; and
- 8 ~~[(9)]~~ (10) Recommend to the legislature sound parole
- 9 legislation and recommend to the governor sound parole
- 10 administration."

11 SECTION 5. In codifying the new sections added by section  
 12 2 of this Act, the revisor of statutes shall substitute  
 13 appropriate section numbers for the letters used in designating  
 14 the new sections in this Act.

15 SECTION 6. Statutory material to be repealed is bracketed  
 16 and stricken. New statutory material is underscored.

17 SECTION 7. This Act shall take effect upon its approval.

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# S.B. NO. 2248

**Report Title:**

Paroling Authority; Medical Release of Ill and Disabled Inmates

**Description:**

Requires the Hawaii paroling authority to establish a medical release program for inmates who are permanently and totally disabled, terminally ill, or geriatric and pose no public safety risk. Request the department of public safety to assess and refer inmates to the Hawaii paroling authority. Sets conditions for medical release.

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