

MAR 13 2013

SENATE RESOLUTION

REQUESTING THE DEPARTMENT OF PUBLIC SAFETY AND THE HAWAII
PAROLING AUTHORITY TO CREATE A TWO-YEAR PILOT PROGRAM FOR
MEDICAL OR COMPASSIONATE RELEASE OF CERTAIN ILL, DISABLED,
AND GERIATRIC INMATES WHO POSE A LOW RISK TO PUBLIC SAFETY.

1 WHEREAS, 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; and
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6 WHEREAS, reports of the Bureau of Justice Statistics found
7 that between 1995 and 2010 the number of state and federal
8 prisoners age fifty-five or older nearly quadrupled (increasing
9 282 percent), while the number of all prisoners grew by less
10 than half (increasing forty-two percent); and
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12 WHEREAS, lengthy sentences and an aging population mean
13 that correctional facilities in this State and across the United
14 States are housing a growing number of elderly inmates who often
15 have extensive medical needs; and
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17 WHEREAS, life in prison can be challenging to anyone, but
18 it can be particularly hard for people whose bodies and minds
19 are being whittled away by age; and
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21 WHEREAS, concerns over how society should deal with the
22 aging and seriously ill prison population has led policy makers
23 in many states to endorse early release on parole for older and
24 seriously ill prisoners who pose a low risk to public safety;
25 and
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27 WHEREAS, compassionate release consists of two entwined but
28 distinct elements: eligibility based on medical evidence and
29 approval based on legal and correctional evidence; and
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31 WHEREAS, by age fifty, people are far less likely to commit
32 serious crimes, as stated by one retired federal warden that
33 arrest rates drop to two percent and arrest rates are almost nil
34 at the age of sixty-five; and



1
2 WHEREAS, the Department of Public Safety Compassionate
3 Release Statistics for 2009-2011 show that thirty-seven
4 compassionate releases were recommended, twenty-two
5 compassionate releases were approved, and only fourteen
6 individuals were released under the Compassionate Release
7 Program, which means that sick and elderly inmates are dying
8 alone in prison; and
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10 WHEREAS, compassionate release provides physicians and
11 other medical professionals an opportunity to use their unique
12 expertise and knowledge of prognosis, geriatrics, cognitive and
13 functional decline, and palliative medicine to ensure that
14 medical criteria for compassionate release are appropriately
15 evidence-based; and
16

17 WHEREAS, the Department of Public Safety and the Hawaii
18 Paroling Authority should initiate a compassionate release
19 program with the following requirements and guidelines as
20 described below:
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- 22 (1) A written medical and psychosocial care plan that is
23 specific to the inmate that includes, at a minimum, a
24 recommended course of treatment for the inmate and a
25 plan to provide continuity of care as the inmate
26 transitions from prison to the community;
27
- 28 (2) An inmate may be considered for medical release if the
29 inmate: has an illness, disease, or medical condition
30 with a prognosis to a reasonable medical probability
31 that death will occur within one year; has a seriously
32 debilitating and irreversible mental or physical
33 condition that impairs the inmate's functional ability
34 and that can be managed more appropriately in a
35 community setting; or suffers from a serious,
36 debilitating, and irreversible physical or mental
37 condition related to aging that impairs the inmate's
38 functional ability and is expected to require costly
39 or complex care, treatment, or management;
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- 41 (3) All requests for medical release shall be in writing
42 and shall be made to the Hawaii Paroling Authority.
43 Requests may be made by the Director of Public Safety,
44 an inmate, or an inmate's representative;



- 1
2 (4) If a request for medical release is made by the
3 Director of Public Safety, the request shall contain
4 the following information:
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6 (A) A report from a Department of Public Safety
7 physician stating whether or not the inmate meets
8 the criteria for medical release and the basis
9 for the physician's opinion; provided that the
10 report shall state each diagnosis that applies to
11 the inmate and the prognosis for each condition
12 to a reasonable medical probability; provided
13 further that where practicable, the physician
14 shall discuss the results of any tests, studies,
15 or physical findings that support the diagnosis
16 and prognosis, and the nature and extent of the
17 medical treatment that will most likely be
18 required to manage the inmate's condition while
19 incarcerated within the standard of care and
20 where appropriate, the physician shall provide
21 citations to relevant medical literature;
22
23 (B) A written evaluation prepared by the Director of
24 Public Safety on the risk for violence and
25 recidivism, if any, that the inmate poses to
26 society in light of factors such as the inmate's
27 medical condition, the severity of the offense
28 for which the inmate is incarcerated, the
29 inmate's prison record, and the medical release
30 plan; and
31
32 (C) A medical release plan that provides for
33 continuity of care;
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35 (5) If a request for medical release is made by an inmate
36 or the inmate's representative, the request shall
37 state the grounds for the requested release and shall
38 contain a statement as to where the inmate will reside
39 if released, who will care for the inmate, and how the
40 inmate plans to obtain medical care;
41
42 (6) All requests initiated by an inmate shall be referred
43 to the Director of Public Safety immediately and
44 within twenty days of receiving the request, the



1 Department of Public Safety shall submit a medical
2 release report to the Hawaii Paroling Authority
3 containing the aforementioned information;
4

5 (7) The Hawaii Paroling Authority shall conduct a hearing
6 on all requests for medical release within ten days of
7 receiving a medical release report from the Department
8 of Public Safety and the inmate and the inmate's
9 representative is permitted to participate in the
10 hearing and may submit medical and other evidence in
11 support of the request;
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13 (8) The Hawaii Paroling Authority shall independently
14 determine whether the inmate meets the criteria for
15 medical release and independently assesses the risk
16 for violence and recidivism, if any, that the inmate
17 poses to society;
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19 (9) The Hawaii Paroling Authority shall provide the victim
20 of the criminal act for which the inmate was
21 sentenced, or the victim's family, with the
22 opportunity to be heard; the Hawaii Paroling Authority
23 shall grant or deny the request within two days
24 following the hearing;
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26 (10) The Hawaii Paroling Authority shall not grant medical
27 release to an inmate who poses a danger to society;
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29 (11) A denial of medical release by the Hawaii Paroling
30 Authority shall not affect an inmate's eligibility for
31 any other form of parole or release under applicable
32 law; provided that the inmate may not reapply or be
33 reconsidered for medical release unless there is a
34 demonstrated change in the inmate's medical condition;
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36 (12) The Director of Public Safety shall appoint an
37 advocate for any inmate who requests medical release
38 and is unable because of incapacitation or
39 debilitation to advocate on the inmate's own behalf;
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41 (13) The Department of Public Safety shall adopt a fast
42 track procedure for the evaluation and release of
43 rapidly dying prisoners; provided that the procedure



1 shall be posted on the website of the Department of
2 Public Safety and the Hawaii Paroling Authority;

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4 (14) The medical release shall not be considered as a
5 reduction of a minimum sentence; however, the
6 Department of Public Safety is required to give the
7 Prosecuting Attorney of the appropriate county notice
8 of all requests for medical release as soon as
9 practicable after a request is initiated, and the
10 Prosecuting Attorney shall be permitted to participate
11 in any medical release hearing conducted by the Hawaii
12 Paroling Authority;

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14 (15) The Hawaii Paroling Authority shall set reasonable
15 conditions on an inmate's medical release that shall
16 apply through the date upon which the inmate's
17 sentence would have expired. The conditions shall
18 include the following:

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20 (A) The released inmate shall be subject to
21 supervision by the Hawaii Paroling Authority;

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23 (B) Personnel of the Department of Public Safety
24 shall be allowed to visit the inmate at
25 reasonable times at the inmate's home or
26 elsewhere; and

27
28 (C) The released inmate shall comply with all
29 conditions of release set by the Hawaii Paroling
30 Authority;

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32 (16) The Hawaii Paroling Authority shall promptly order an
33 inmate to be returned to the custody of the Director
34 of Public Safety to await a revocation hearing if the
35 Hawaii Paroling Authority receives credible
36 information that an inmate has failed to comply with
37 any reasonable condition set upon the inmate's medical
38 release; and if the Hawaii Paroling Authority revokes
39 an inmate's medical release for failure to comply with
40 a condition of release, the inmate shall resume
41 serving the remaining balance of the inmate's
42 sentence, with credit given only for the duration of
43 the inmate's medical release served in compliance with
44 all reasonable conditions; and



(17) Revocation of an inmate's medical release for violating a condition of release does not affect an inmate's eligibility for any other form of parole or release provided by law; provided that revocation of an inmate's medical release may be used as a factor in determining eligibility for future parole or release; and

WHEREAS, with the foregoing procedures, criminal justice professionals are able to better determine whether or not an inmate should be granted medical release; and

WHEREAS, compassion is an integral part of the Aloha spirit; now, therefore,

BE IT RESOLVED by the Senate of the Twenty-seventh Legislature of the State of Hawaii, Regular Session of 2013, that the Department of Public Safety and the Hawaii Paroling Authority are requested to create a two-year pilot program for medical or compassionate release of certain ill, disabled, and geriatric inmates who pose a low risk to public safety in accordance with the aforementioned requirements and guidelines; and

BE IT FURTHER RESOLVED that the Department of Public Safety and the Hawaii Paroling Authority shall report to the Legislature no later than twenty days prior to the convening of the Regular Session of 2016 on findings and recommendations of the two-year pilot program for medical or compassionate release of certain ill, disabled, and geriatric inmates who pose a low risk to public safety; and

BE IT FURTHER RESOLVED that certified copies of this Resolution be transmitted to the Director of Public Safety and the Chairperson of the Hawaii Paroling Authority.

OFFERED BY:



S.R. NO. 147

Margaret C.
Amundson

