

---

---

# A BILL FOR AN ACT

RELATING TO PUBLIC SAFETY.

**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 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  
18 for compassionate release are appropriately evidence-based.



1 With this information, criminal justice professionals are able  
2 to better determine whether or not an inmate should be granted  
3 medical release.

4 Compassion is an integral part of the aloha spirit. The  
5 purpose of this Act is to create a medical or compassionate  
6 release program for certain ill, disabled, and geriatric inmates  
7 who pose a low risk to public safety.

8 SECTION 2. The department of public safety shall assess  
9 and refer inmates to the Hawaii paroling authority under a  
10 medical release pilot program for possible medical release as  
11 provided in this Act.

12 SECTION 3. (a) For the purpose of this Act:

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

17 "Department" means the department of public safety.

18 "Director" means the director of public safety.

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



1 "Medical release" means the release of an inmate before the  
2 expiration of the inmate's sentence due to the inmate's medical  
3 condition.

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

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

10 "Paroling authority" means the Hawaii paroling authority.

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

13 (b) An inmate may be considered for medical release if the  
14 inmate:

- 15 (1) Has an illness, disease, or medical condition with a  
16 prognosis to a reasonable medical probability that  
17 death will occur within one year;  
18 (2) Has a seriously debilitating and irreversible mental  
19 or physical condition that impairs the inmate's  
20 functional ability and that can be managed more  
21 appropriately in a community setting; or



1           (3) Suffers from a serious, debilitating, and irreversible  
2           physical or mental condition related to aging that  
3           impairs the inmate's functional ability and is  
4           expected to require costly or complex care, treatment,  
5           or management.

6           (c) All requests for medical release shall be in writing  
7           and shall be made to the paroling authority. Requests may be  
8           made by the director, an inmate, or an inmate's representative.

9           (d) If a request for medical release is made by the  
10          director, the request shall contain the following information:

11          (1) A report from a department physician stating whether  
12          or not the inmate meets the criteria for medical  
13          release and the basis for the physician's opinion;  
14          provided that the report shall state each diagnosis  
15          that applies to the inmate and the prognosis for each  
16          condition to a reasonable medical probability; and  
17          provided further that where practicable, the physician  
18          shall discuss the results of any tests, studies, or  
19          physical findings that support the diagnosis and  
20          prognosis, and the nature and extent of the medical  
21          treatment that will most likely be required to manage  
22          the inmate's condition while incarcerated within the



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

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

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

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

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

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



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

4 (f) The paroling authority shall conduct a hearing on all  
5 requests for medical release. The hearing shall be held within  
6 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 (g) The paroling authority shall not grant medical release  
19 to an inmate who poses a danger to society.

20 (h) A denial of medical release by the paroling authority  
21 shall not affect an inmate's eligibility for any other form of  
22 parole or release under applicable law; provided that the inmate



1 may not reapply or be reconsidered for medical release unless  
2 there is a demonstrated change in the inmate's medical  
3 condition.

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

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

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



1           (1) The department shall adopt rules pursuant to chapter  
2 91, Hawaii Revised Statutes, to implement the medical release  
3 program.

4           SECTION 4. The paroling authority shall set reasonable  
5 conditions on an inmate's medical release that shall apply  
6 through the date upon which the inmate's sentence would have  
7 expired. The conditions 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          SECTION 5. (a) The paroling authority shall promptly  
16 order an inmate to be returned to the custody of the director to  
17 await a revocation hearing if the paroling authority receives  
18 credible information that an inmate has failed to comply with  
19 any reasonable condition set upon the inmate's medical release.

20          (b) If the paroling authority revokes an inmate's medical  
21 release for failure to comply with a condition of release, the  
22 inmate shall resume serving the remaining balance of the



1 inmate's sentence, with credit given only for the duration of  
2 the inmate's medical release served in compliance with all  
3 reasonable conditions. Revocation of an inmate's medical  
4 release for violating a condition of release shall not affect an  
5 inmate's eligibility for any other form of parole or release  
6 provided by law; provided that revocation of an inmate's medical  
7 release may be used as a factor in determining eligibility for  
8 future parole or release.

9 SECTION 6. The medical release pilot program shall cease  
10 to exist on June 30, 2016.

11 SECTION 7. This Act shall take effect on July 1, 2013.

12



**Report Title:**

Corrections; Medical Release Pilot Program; Compassionate Release

**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. Sunsets on 6/30/2016. (SD1)

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

