

Justice Reinvestment

An Act to Increase Neighborhood Safety and Opportunity



SECTION IV – Compassionate Release

Summary: This bill enables state and county correctional authorities to seek community placement of prisoners with terminal, debilitating or incapacitating medical conditions, bringing the Commonwealth into line with other states.

Why This Matters: The prison population is aging. DOC prisoners age 50 or older, who comprised 13 percent of the DOC population in 2002, now total over 20 percent of the population (almost 2,500 prisoners). As of 2011, nearly 600 DOC prisoners were over 60 years old. Older prisoners have higher rates of health problems and greater need for special medical services, housing, and daily assistance within the prison, along with repeated visits to hospitals outside the prison. The demands on medical and correctional resources are substantial. The National Institute of Corrections estimated annual incarceration costs for the elderly at \$60,000 – 70,000, over twice the cost of incarcerating other general population prisoners.

The demands of this population are particularly taxing given the serious overcrowding at the county and state level. According to the Division of Capital Asset Management's Corrections Master Plan, by 2020 the Commonwealth will be short some 12,100 prison beds. (Creating the necessary additional bed space will require a capital outlay of at least 1.2 billion dollars, with additional annual operating costs of \$120 million per year.) Within this massive shortfall, DCAM anticipates the need for 600 "sub-acute" medical beds, specially tailored to the elderly, disabled, or chronically ill prisoners whose vulnerability and disproportionate consumption of staff resources necessitate housing apart from the general population.

Among the elderly and infirm are men and women who are terminally ill, or so debilitated or incapacitated that they do not pose a threat to public safety. Their continued incarceration is expensive and difficult to manage. In light of their condition, their criminal sanction may be equally served by a placement at home or in a long-term care facility, with continuing supervision by the correctional authority under terms it imposes.

What this Bill Would Do: This bill would allow correctional authorities to move out of their facilities some of their most resource-intensive prisoners, when such placement is consistent with public safety. The DOC Commissioner, or a court in the case of a county prisoner serving a mandatory minimum sentence, could issue a medical release, setting the terms for a community placement and maintaining supervision over him or her, as is already done for other prisoners (such as those on work release). A medical release would issue only after a licensed physician's review of the prisoner's condition, and after a placement in the community is secured. The placement could be at home with family, or in a hospital or long-term care setting, where medical needs can be met more efficiently than in a prison setting.

This bill offers a responsible approach to a problem that can no longer be ignored. In passing this bill, Massachusetts would join the majority of other states. A consultant to the DOC, recommending action on this issue in 2011, found that at least 30 states had legislation allowing for some form of medical release, and that all but five states have a vehicle for releasing dying prisoners.

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