

HTH HEARING

HB910, HD2

TESTIMONY



The Judiciary, State of Hawai'i

Testimony to the Senate Committee on Health

Senator Josh Green, M.D., Chair
Senator Rosalyn Baker, Vice Chair

Wednesday, March 20, 2013, 2:15 p.m.
State Capitol, Conference Room 229

By

Cheryl Marlow
Adult Client Services Branch Administrator

Bill No. and Title: House Bill No. 910, H.D. 2, RELATING TO FORENSIC MENTAL HEALTH

Purpose: To make statutory changes to establish limits on the length of time an individual may remain on conditional release if charged with a misdemeanor, petty misdemeanor, or violation. To clarify under what circumstances the one-year conditional release status may be tolled. It also would require public agencies in possession of information about the defendant to provide that information to the court. These amendments are to assist in reducing the census at the Hawaii State Hospital. Requires report to the Legislature. (HB910 HD2)

Judiciary's Position:

The Judiciary is in support of H.B. No. 910, H.D. 2 that included the recommended change proposed by the Judiciary in the House. This amendment appears in Section 5 of H.D. 2 at page 14, lines 12-20 to further clarify circumstances under which the one-year conditional release status may be tolled, by specifying that the tolling period shall apply during a period of forensic hospitalization and during the pendency of a motion to revoke conditional release.

Thank you for the opportunity to testify on House Bill No. 910, H.D. 2.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2013**

ON THE FOLLOWING MEASURE:

H.B. NO. 910, H.D. 2, RELATING TO FORENSIC MENTAL HEALTH.

BEFORE THE:

SENATE COMMITTEE ON HEALTH

DATE: Wednesday, March 20, 2013

TIME: 2:15 p.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): David M. Louie, Attorney General, or
Andrea J. Armitage, Deputy Attorney General

Chair Green and Members of the Committee:

As a member of the Governor's Special Action Team on the Hawaii State Hospital census, and a member of its Legal/Judicial subcommittee, the Department of the Attorney General would like to take this opportunity to explain the provisions of this bill.

This measure would amend chapter 704, Hawaii Revised Statutes (HRS) (the mental health forensic chapter), to promote shorter stays in the Hawaii State Hospital for patients awaiting forensic examinations, and by putting time limits on state oversight of persons on conditional release for relatively minor crimes. This bill would accomplish this in the following ways:

1. It would amend section 704-404, HRS, to require all public agencies in possession of health, police, and other pertinent records of defendants ordered to be evaluated for fitness or penal responsibility, to provide those records to the court irrespective of any other state confidentiality statute. This will clearly assist court examiners by giving them the background documents on a defendant to be evaluated without undue delay. Currently, the state mental health confidentiality statute, section 334-5, HRS, allows disclosure of mental health records only by consent, court order, or as required by law. This amendment would require by law the disclosure of records necessary for the evaluations.
2. The measure would correct a drafting problem in Act 99, Session Laws of Hawaii (SLH) 2011, which amended section 704-411, HRS, to limit to a maximum of one year the length of conditional release for defendants charged with petty misdemeanors,

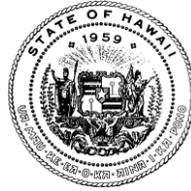
misdemeanors, or violations and acquitted by reason of physical or mental disease, disorder, or defect excluding responsibility. The intent of this 2011 amendment was to create parity with similarly situated defendants who are convicted of the same offense. Those convicted defendants may be sentenced to a maximum of only one year of prison or probation. However, under the Act 99 amendment, the current statute applies the one-year limitation only to defendants who are put on conditional release at the same hearing at which they are acquitted of the charge. Any person acquitted and committed to the Hawaii State Hospital and then later placed on conditional release is not eligible for the one-year limitation. This bill would correct that oversight by making it clear in each section of chapter 704 that provides for an order of conditional release (along with section 704-411, sections 704-412 and 704-415, HRS, also contain provisions allowing the court to order the defendant to be placed on conditional release), that if the alleged crime was a misdemeanor, petty misdemeanor, or violation, the period of conditional release would be no longer than one year.

3. This bill would clarify that if a person placed on a one-year limited conditional release is returned to the Hawaii State Hospital due to violations of that conditional release or if a motion to revoke conditional release is filed, the one-year period would be tolled while the person is hospitalized or until the motion is decided by the court. In other words, the clock stops pending the person's time in the hospital or when a motion to revoke is filed, and will start up again at the point at which it stopped when the person is released back to the community.
4. The measure would clarify that if a person violates conditional release and is placed back at the Hawaii State Hospital, and subsequently the person's conditional release is revoked, the one-year period ends (it is not tolled). If that person is put on conditional release again in the future, a new one-year period will start to run at that time.
5. This bill requires the Department of Health to provide a report to the Legislature prior to the beginning of the 2015 legislative session, detailing the number, frequency, and types of criminal offenses and violations alleged to have been committed by defendants discharged from conditional release from January 2013 through December 2014. We would recommend an amendment to this wording to change "committed by defendants"

to “**alleged to have been** committed by defendants” because the defendants were acquitted of the crimes by reason of mental illness. We would also recommend that the wording make clear that the report is with respect to defendants whose conditional release was limited to one year, as opposed to all persons discharged from conditional release. Further, if the report is due twenty days prior to the start of the 2015 legislative session, the period discussed in the report should end on December 1, 2014. Therefore, we recommend that section 7, page 16, lines 14 - 20, be amended to provide:

The department of health shall submit to the legislature a report detailing the number, frequency, and types of criminal offenses and violations alleged to have been committed by defendants discharged from conditional release after one year pursuant to the requirements of this measure, during the period beginning with the commencement of the 2013 legislative session through December 1, 2014. The report shall be submitted to the legislature no later than twenty days prior to the convening of the 2015 legislative session.

Thank you for the opportunity to testify. We would be happy to answer any questions you may have on this measure.



STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

Senate Committee on Health

H.B. 910, HD2, Relating to Forensic Mental Health

**Testimony of Loretta J. Fuddy, A.C.S.W., M.P.H.
Director of Health**

March 20, 2013, 2:15 p.m.

1 **Department's Position:** The Department of Health (DOH) strongly supports this bill.

2 **Fiscal Implications:** Although positive fiscal impacts are not the primary focus of this bill, a
3 continuation in the increased rate of admissions to the Hawaii State Hospital (HSH) is possible if this
4 measure is not adopted, and concomitant increased expenditures and pressure on the HSH budget.

5 **Purpose and Justification:** This bill proposes four statutory changes. One proposed change is a new
6 amendment to HRS §704-404 and three proposed changes are housekeeping measures to correct a
7 drafting problem in Act 99, Session Laws of Hawaii (SLH) 2011, which amended section
8 HRS §704-411.

9 The proposed changes are the result of the Governor's Special Action Team (SAT)
10 recommendations, which was convened by Governor Abercrombie in the summer of 2012 in response to
11 an increase in the rate of admissions to the HSH. The SAT met over the course of three months, with
12 participation by a statewide panel comprised of representatives from the Governor's office, executive
13 branch departments (Attorney General, Health, Human Services, Public Safety, Human Resources
14 Development, Budget and Finance) the Judiciary, the offices of the Prosecutors of each county, the

1 office of the Public Defender, Chiefs of Police of each county, community mental health consumers,
2 providers and advocates. The work of the group was focused on three areas:
3 1) Personnel/Finance/Procurement; 2) Program Capacity/Clinical Operations; 3) Legal/Judicial. In
4 addition to community based service delivery and interagency collaboration actions, the SAT has four
5 recommendations for statutory changes. One proposed change is a new amendment to HRS §704-404
6 and three proposed changes are housekeeping measures intended to clarify an amendment made to HRS
7 §704-411, during the 2011 Legislative session by Act 99.

8 The four proposed changes are included and incorporated into this single bill.

9 The new proposed change amends HRS §704-404 to mandate that all public agencies provide
10 records to the court regarding individuals undergoing fitness examinations ordered by that court. The
11 amendment should result in helping to shorten the length of hospitalization at HSH due to delays in
12 receiving required information in a timely manner needed by the courts. Most providers of medical care
13 currently cannot provide their records without consent from the defendant and many defendants do not
14 consent. This amendment would make the disclosure required by law, and therefore, eliminate other
15 confidentiality legal impediments to releasing the information. This proposal will make the Judge's
16 order for evaluation to also be an order requiring and assembling information relevant to the evaluation;
17 the impact of this change will be to shorten the length of legal proceedings as the necessary records will
18 be submitted to court in a timely manner, and thereby shorten lengths of stay for patients at HSH.

19 The first of three housekeeping measures intended to clarify the statutes is an amendment of
20 HRS §704-411 and HRS §704-412, to specify the time duration of conditional release in cases of
21 misdemeanors, petty misdemeanors, and violations. Hawaii is unusual compared to other states in
22 providing conditional release, at all, given a misdemeanor or more minor charge. This aligns the length
23 of time on conditional release with the maximum length of time an individual could be held in jail or on
24 probation, given a misdemeanor or more minor charge and a finding of guilt.

1 The second of three housekeeping measures amends HRS §704-413 to include a tolling
2 provision to be in effect during a hospitalization subsequent to a violation of conditional release in cases
3 of misdemeanors, petty misdemeanors, and violations; time spent in the hospital will not count towards
4 the one year limit. This part of the measure is in the interest of fairness and equitable treatment, and to
5 provide assurance that an individual on conditional release, who is not complying with the terms, will
6 have their conditional release extended, for the period of time they are in the hospital.

7 And the third of three housekeeping measures would clarify that when a person's conditional
8 release is revoked due to noncompliance, the one year is terminated. If that person is subsequently
9 placed back on conditional release, the length of that conditional release will be one year.

10 The House Committee on Health (HB910.HD1) amended the bill at the Health Committee
11 hearing on February 15, 2013 to 1) clarify that tolling provisions apply only to defendants charged with
12 petty misdemeanors, misdemeanors, or violations, and 2) specify that the tolling period shall apply
13 during a period of forensic hospitalization and during pendency of a motion to revoke conditional
14 release. Further, the House Committee on Judiciary (HB910.HD2) amended the bill at the Judiciary
15 Committee hearing on March 1, 2013 to require the department to submit a report prior to the 2015
16 Legislative Session detailing the number, frequency, and type of criminal offenses by defendants
17 discharged from conditional release during the period beginning with the commencement at the 2013
18 Legislative session through the end of 2014.

19 The department supports the amendments made on February 15, 2013 and March 1, 2013 and
20 will comply with their provisions should the measure be enacted to include these.

21 Thank you for the opportunity to testify on this bill.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 547-7400 • FAX: (808) 547-7515

KEITH M. KANESHIRO
PROSECUTING ATTORNEY

ARMINA A. CHING
FIRST DEPUTY PROSECUTING ATTORNEY



**THE HONORABLE JOSH GREEN, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawai`i**

March 20, 2013

RE: H.B. 910, H.D. 2; RELATING TO FORENSIC MENTAL HEALTH.

Chair Green, Vice Chair Baker and members of the Senate Committee on Health, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in opposition to House Bill 910, H.D. 2.

One of the primary purposes of H.B. 910, H.D. 2 is to limit conditional release to a maximum of one year, for anyone granted conditional release after he or she was:

- (1) committed to the custody of the Director of Health, following an acquittal for physical or mental disease, disorder, or defect excluding penal responsibility; or
- (2) placed on conditional release pursuant to Chapter 704, then had such conditional release revoked

if the original charge against that person was a misdemeanor, petty misdemeanor, or violation.

When conditional release is granted, the court makes a specific determination that conditional release is necessary, as the defendant is still affected by physical or mental disease, disorder, or defect and still a danger to self or others. The court grants a conditional release because it feels that the defendant can be safely released only if he or she is adequately monitored and given proper care, supervision, and treatment. Without such supervision and treatment, the defendant will continue to be a danger to self or others.

Rather than apply a set one-year limitation on all conditional releases granted under HRS §704-412, in which the defendant was charged with a petty misdemeanor, misdemeanor, or violation, the Department would strongly recommend a case-by-case review by the court, involving a thorough review of all relevant facts and circumstances. Inevitably, some cases will

call for supervision and treatment beyond one-year, particularly in cases under HRS §704-412, where the defendant was previously committed and/or had their conditional release revoked.

Public safety is the Department's highest priority, and proper supervision and treatment of defendants is critical to preventing future violence or criminal activity. Instead of placing a set time limit on conditional release, the Department respectfully suggests a standardized schedule for court review. When a court finds that the defendant may be released into the community without being a danger to self or others, then it is within the court's powers to discharge him or her at that time.

For all the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes H.B. 910, H.D. 2. Thank you for the opportunity to testify on this matter.



HAWAII DISABILITY RIGHTS CENTER

1132 Bishop Street, Suite 2102, Honolulu, Hawaii 96813

Phone/TTY: (808) 949-2922 Toll Free: 1-800-882-1057 Fax: (808) 949-2928

E-mail: info@hawaiidisabilityrights.org Website: www.hawaiidisabilityrights.org

THE SENATE THE TWENTY-SEVENTH LEGISLATURE REGULAR SESSION OF 2013

Committee on Health Testimony in Support of H.B. 910, HD2 Relating to Forensic Mental Health

**Wednesday, March 20, 2013, 2:15 P.M.
Conference Room 229**

Chair Green and Members of the Committee:

The Hawaii Disability Rights Center testifies in support of this bill.

The purpose of the bill is to establish a one year limit that an individual could remain on a post acquittal conditional release when the offense charged was a petty misdemeanor, misdemeanor or violation. Conditional release occurs for defendants found not guilty by reason of mental disease, disorder or defect. After such an acquittal, defendants can either be confined to an institution or placed in the community on "conditional release", which, as the term implies, requires that they adhere to a variety of conditions pertaining to mental health treatment, medications and conduct.

In Hawaii, "conditional release" tends to become a lifetime status because it is ordered for an indefinite period and for any level of offense. The result is that many such individuals remain subject to the terms of the conditional release and at risk of being in violation of its terms (and therefore subject to confinement at the state hospital) for a period of time far in excess of the maximum penalty allowed for the offense charged. This results in a disproportionate infringement upon their liberty, as well as an inefficient allocation of resources in the penal system and at the state hospital.

We feel this bill takes a sound approach. Since many of the crimes for which these individuals are placed on conditional release are minor in nature, and since data from the Department of Health indicates that most of these individuals actually pose little risk to the public, there is no reason to retain and monitor these individuals on conditional release for prolonged periods of time. Certainly it is unfair to the individual and represents both a needlessly punitive approach to addressing that individual, as well



as a poor use of resources otherwise needed to address mental health needs as well as public safety in our community. For all those reasons, this bill is very sensible from the perspective of conserving penal resources as well as appropriate, humane treatment towards individuals with disabilities.

We would also like to point out that this provision passed the Legislature as Act 99 of the 2011 session and but for a “technical” defect in the bill would be implemented as the current law. For that reason, we would hope that this Legislature might view this portion of the bill as a “housekeeping” measure, as opposed to completely revisiting the underlying policy issue.

Thank you for the opportunity to testify in support of this measure.



Community Alliance *for* Mental Health

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To: The Hawai'i State Senate Committee on Health
Re: HB910 HD2

To: The Honorable Senator Green and the members of the committee.

Aloha,

The Community Alliance for Mental Health along with United Self Help supports HB 910 HD2. We feel that this bill will ease the recovery of consumers, free up beds at the State Hospital, and reduce the burden of the taxpayers of Hawai'i.

Mahalo,
Robert Scott Wall
Vice-President