

H.B. NO. 2901

A BILL FOR AN ACT

RELATING TO FORENSIC MENTAL HEALTH.

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

1 SECTION 1. In the spring of 2012, the Hawaii state
2 hospital experienced a significant and unprecedented increase in
3 the number of admissions. In June 2012, a special action team
4 was commissioned by the governor to analyze causes and identify
5 ideas to address the systemic factors that contribute to the
6 increased rate of admissions to the Hawaii State Hospital, and
7 factors that increase the length of stay at the Hawaii state
8 hospital. Further the team was tasked with considering possible
9 solutions, and making recommendations to the governor and the
10 legislature. The special action team comprised representatives
11 from the office of the governor, the department of health's
12 adult mental health division, the department of public safety,
13 the department of human services, the department of the attorney
14 general, the department of human resource development, the
15 department of budget and finance, the offices of the prosecuting
16 attorneys of each county, the office of the public defender, and
17 the chiefs of police from each county. They joined together to
18 examine data and to develop a plan to revitalize adult mental

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1 health services in the community, and more effectively address
2 the rate of increase in the census of the Hawaii state hospital.

3 The special action team determined that statutory changes
4 should be proposed to the legislature. The proposed changes are
5 intended to improve services and efficiency of operations, but
6 not compromise public safety, nor impinge on defendants' rights.

7 Analysis of the Hawaii state hospital admission status
8 statistics reveals that the second most common category of
9 admissions to the Hawaii state hospital is persons who were
10 placed by the court on conditional release and who then
11 violated the requirement of their conditional release. The
12 court will place a person on conditional release when the person
13 has been acquitted of the crime on the ground of physical or
14 mental disease, or disorder, or defect excluding responsibility,
15 the person presents a danger to self or others, but the person
16 can be controlled adequately in the community given proper care,
17 supervision, and treatment under specified conditions. If the
18 supervising probation officer has probable cause to believe the
19 person on conditional release is in violation of those
20 conditions, the probation officer may order the person to be
21 hospitalized. In fiscal year 2012-2013, there were 122 persons
22 placed in the hospital for violating conditional release. Of
23 those, forty-six had been acquitted by reason of mental

1 condition of a misdemeanor, petty misdemeanor, or violation.
2 Moreover, eighty per cent of the individuals admitted to the
3 hospital do not require inpatient hospital level of care, based
4 on utilization management illness severity indexes.

5 Further discussion revealed that Act 99, Session Laws of
6 Hawaii, 2011, was intended to amend the law to establish a one-
7 year time limit for an order of post-acquittal conditional
8 release when the defendant is charged with a petty misdemeanor,
9 misdemeanor, or violation. However, an inadvertent drafting
10 error resulted in the effect that only defendants placed on
11 conditional release at the same hearing in which the defendants
12 are acquitted, are eligible for the one-year time limit. Once
13 the defendants are committed to the Hawaii state hospital, under
14 Act 99 they are no longer eligible for the limited conditional
15 release.

16 Moreover, if the same person, as a defendant in a
17 criminal case, either pled or was found guilty of the charge,
18 that person would receive a prison sentence or a period of
19 probation that would be limited to one year or less. During the
20 special action team meetings, some members expressed concerns
21 that, if conditional release ends in one year, the person will
22 no longer receive needed treatment and services. These
23 concerns are unfounded. The department of health's adult mental

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1 health division's policy is to continue the same services for
2 the person's post-conditional release status for six months.
3 Thereafter, if the person meets eligibility requirements, those
4 services will continue; but, if not, the individual will be
5 transitioned to the insurance plan's services, which are often
6 provided by MedQUEST and are similar to the services provided by
7 the department. The only factor that changes is that a
8 probation officer will no longer follow the person or return the
9 person to the Hawaii state hospital.

10 Accordingly, the purpose of this Act is to limit the length
11 of conditional release to one year for all defendants acquitted
12 by reason of mental disease, disorder, or defect of a
13 misdemeanor, petty misdemeanor, or violation, not involving
14 violence or attempted violence. It also clarifies when the one-
15 year conditional release may be tolled and the consequences of
16 its being revoked. This Act is intended to create parity of
17 state involvement between the criminal justice system and the
18 mental health system. Limitations on the length of the
19 conditional release in this manner will focus the resources of
20 the Hawaii state hospital on those who pose a greater risk to
21 public safety and who need inpatient hospital services most.

22 SECTION 2. Section 704-411, Hawaii Revised Statutes, is
23 amended by amending subsection (1) to read as follows:

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1 "(1) When a defendant is acquitted on the ground of
2 physical or mental disease, disorder, or defect excluding
3 responsibility, the court, on the basis of the report made
4 pursuant to section 704-404, if uncontested, or the medical or
5 psychological evidence given at the trial or at a separate
6 hearing, shall order that:

7 (a) The defendant shall be committed to the custody of the
8 director of health to be placed in an appropriate
9 institution for custody, care, and treatment if the
10 court finds that the defendant:

- 11 (i) Is affected by a physical or mental disease,
12 disorder, or defect;
- 13 (ii) Presents a risk of danger to self or others; and
- 14 (iii) Is not a proper subject for conditional release;
15 provided that the director of health shall place
16 defendants charged with misdemeanors or felonies
17 not involving violence or attempted violence in
18 the least restrictive environment appropriate in
19 light of the defendant's treatment needs and the
20 need to prevent harm to the person confined and
21 others. The county police departments shall
22 provide to the director of health and the
23 defendant copies of all police reports from cases

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1 filed against the defendant that have been
2 adjudicated by the acceptance of a plea of guilty
3 or nolo contendere, a finding of guilt,
4 acquittal, acquittal pursuant to section 704-400,
5 or by the entry of a plea of guilty or nolo
6 contendere made pursuant to chapter 853, so long
7 as the disclosure to the director of health and
8 the defendant does not frustrate a legitimate
9 function of the county police departments;
10 provided that expunged records, records of or
11 pertaining to any adjudication or disposition
12 rendered in the case of a juvenile, or records
13 containing data from the United States National
14 Crime Information Center shall not be provided.
15 The county police departments shall segregate or
16 sanitize from the police reports information that
17 would result in the likelihood or actual
18 identification of individuals who furnished
19 information in connection with the investigation
20 or who were of investigatory interest. Records
21 shall not be re-disclosed except to the extent
22 permitted by law;

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1 (b) The defendant shall be granted conditional release
2 with conditions as the court deems necessary if the
3 court finds that the defendant is affected by physical
4 or mental disease, disorder, or defect and that the
5 defendant presents a danger to self or others, but
6 that the defendant can be controlled adequately and
7 given proper care, supervision, and treatment if the
8 defendant is released on condition. For any defendant
9 granted conditional release pursuant to this
10 [~~paragraph,~~] section, and who was charged with a petty
11 misdemeanor, misdemeanor, or violation, not involving
12 violence or attempted violence, the period of
13 conditional release shall be no longer than one year;
14 or

15 (c) The defendant shall be discharged if the court finds
16 that the defendant is no longer affected by physical
17 or mental disease, disorder, or defect or, if so
18 affected, that the defendant no longer presents a
19 danger to self or others and is not in need of care,
20 supervision, or treatment."

21 SECTION 3. Section 704-412, Hawaii Revised Statutes, is
22 amended by amending subsection (3) to read as follows:

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1 "(3) Upon application to the court by either the director
2 of health or the person committed, the court shall complete the
3 hearing process and render a decision within sixty days of the
4 application; provided that for good cause the court may extend
5 the sixty-day time frame upon the request of the director of
6 health or the person committed. For any defendant granted
7 conditional release pursuant to this section, and who was
8 charged with a petty misdemeanor, misdemeanor, or violation, not
9 involving violence or attempted violence, the period of
10 conditional release shall be no longer than one year."

11 SECTION 4. Section 704-413, Hawaii Revised Statutes, is
12 amended as follows:

13 (1) By amending subsection (1) to read as follows:

14 "(1) Any person granted conditional release pursuant to
15 this chapter shall continue to receive mental health or other
16 treatment and care deemed appropriate by the director of health
17 until discharged from conditional release. The person shall
18 follow all prescribed treatments and take all prescribed
19 medications according to the instructions of the person's
20 treating mental health professional. If a mental health
21 professional who is treating a person granted conditional
22 release believes that either the person is not complying with
23 the requirements of this section or there is other evidence that

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1 hospitalization is appropriate, the mental health professional
2 shall report the matter to the probation officer of the person
3 granted conditional release. The probation officer may order
4 the person granted conditional release to be hospitalized for a
5 period not to exceed seventy-two hours if the probation officer
6 has probable cause to believe the person has violated the
7 requirements of this subsection. No person shall be
8 hospitalized beyond the seventy-two-hour period, as computed
9 pursuant to section 1-29, unless a hearing has been held
10 pursuant to subsection (4); provided that on or before the
11 expiration of the seventy-two-hour period, a court may conduct a
12 hearing to determine whether the person would benefit from
13 further hospitalization, which may render a revocation of
14 conditional release unnecessary. If satisfied, the court may
15 order further temporary hospitalization for a period not to
16 exceed ninety days, subject to extension as appropriate, but in
17 no event for a period longer than one year. For any person
18 ordered to be hospitalized pursuant to this section, who was
19 placed on a one-year limited conditional release pursuant to
20 this chapter, the one year shall be tolled pending the person's
21 time of hospitalization. At any time within that period, the
22 court may determine that a hearing pursuant to subsection (4)
23 should be conducted."

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1 (2) By amending subsection (4) to read as follows:

2 "(4) If, at any time after the order pursuant to this
3 chapter granting conditional release, the court determines,
4 after hearing evidence, that:

5 (a) The person is still affected by a physical or mental
6 disease, disorder, or defect, and the conditions of
7 release have not been fulfilled; or

8 (b) For the safety of the person or others, the person's
9 conditional release should be revoked,

10 the court may forthwith modify the conditions of release or
11 order the person to be committed to the custody of the director
12 of health, subject to discharge or release in accordance with
13 the procedure prescribed in section 704-412. If the person's
14 conditional release is revoked, the period of conditional
15 release is terminated. If the person who was charged with a
16 petty misdemeanor, misdemeanor, or violation, not involving
17 violence or attempted violence, is placed on conditional release
18 subsequently, the period of conditional release shall be no
19 longer than one year."

20 SECTION 5. Section 704-415, Hawaii Revised Statutes, is
21 amended by amending subsection (2) to read as follows:

22 "(2) Any such hearing shall be deemed a civil proceeding
23 and the burden shall be upon the applicant to prove that the

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1 person is no longer affected by a physical or mental disease,
2 disorder, or defect or may safely be either released on the
3 conditions applied for or discharged. According to the
4 determination of the court upon the hearing the person shall be:

5 (a) Discharged;

6 (b) Released on such conditions as the court determines to
7 be necessary; provided that for any defendant granted
8 conditional release pursuant to this section, and who
9 was charged with a petty misdemeanor, misdemeanor, or
10 violation, not involving violence or attempted
11 violence, the period of conditional release shall be
12 no longer than one year; or

13 (c) Recommitted to the custody of the director of health,
14 subject to discharge or release only in accordance
15 with the procedure prescribed in section 704-412."

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

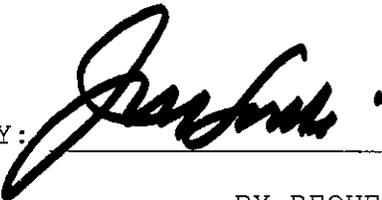
18 SECTION 7. This Act shall take effect upon its approval.

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INTRODUCED BY:  _____

BY REQUEST

JAN 21 2014

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Report Title:

Forensic Mental Health

Description:

Amends the penal code to establish limits on the length of conditional release for certain charges not involving violence, and to specify the circumstances under which the time limited conditional release may be tolled, as well as what happens if the time limited conditional release is revoked.

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

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JUSTIFICATION SHEET

DEPARTMENT: Health

TITLE: A BILL FOR AN ACT RELATING TO FORENSIC MENTAL HEALTH.

PURPOSE: The purpose of this bill is to establish limits on the length of time an individual may remain on conditional release if charged with a misdemeanor, petty misdemeanor, or violation, not involving violence or attempted violence. The bill also clarifies under what circumstances the one-year conditional release status may be tolled and revoked. These amendments are to assist in reducing the census at the Hawaii State Hospital.

MEANS: Amend sections 704-411(1), 704-412(3), 704-413(1) and (4), and 704-415(2), Hawaii Revised Statutes.

JUSTIFICATION: In the spring of 2012, the Hawaii state hospital experienced a significant and unprecedented increase in the number of admissions. In June 2012, a special action team was commissioned by the governor to analyze causes and identify ideas to address the systemic factors that contribute to the increased rate of admissions to the Hawaii State Hospital, and factors that increase the length of stay at the Hawaii state hospital. Further the team was tasked with considering possible solutions, and making recommendations to the governor and the legislature. The special action team comprised representatives from the office of the governor, the department of health's adult mental health division, the department of public safety, the department of human services, the department of the attorney general, the department of human resource development, the department of budget and

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finance, the offices of the prosecuting attorneys of each county, the office of the public defender, and the chiefs of police from each county. They joined together to examine data and to develop a plan to revitalize adult mental health services in the community, and more effectively address the rate of increase in the census of the Hawaii state hospital.

The special action team determined that statutory changes should be proposed to the legislature. The proposed changes are intended to improve services and efficiency of operations, but not compromise public safety, nor impinge on defendants' rights. Analysis of the Hawaii state hospital admission status statistics reveals that the second most common category of admissions to the Hawaii state hospital is persons who were placed by the court on conditional release and who then violated the requirement of their conditional release. The court will place a person on conditional release when the person has been acquitted of the crime on the ground of physical or mental disease, or disorder, or defect excluding responsibility, the person presents a danger to self or others, but the person can be controlled adequately in the community given proper care, supervision, and treatment under specified conditions. If the supervising probation officer has probable cause to believe the person on conditional release is in violation of those conditions, the probation officer may order the person to be hospitalized. In fiscal year 2012-2013, there were 122 persons placed in the hospital for violating conditional release. Of those, forty-six had been acquitted by reason of mental condition of a misdemeanor, petty misdemeanor, or violation. Moreover, eighty per cent of the individuals admitted to the hospital do not require inpatient hospital level of care, based on utilization management illness severity indexes.

Further discussion revealed that Act 99, Session Laws of Hawaii, 2011, was intended to amend the law to establish a one-year time limit for an order of post-acquittal conditional release when the defendant is charged with a petty misdemeanor, misdemeanor, or violation. However, an inadvertent drafting error resulted in the effect that only defendants placed on conditional release at the same hearing in which the defendants are acquitted, are eligible for the one-year time limit. Once the defendants are committed to the Hawaii state hospital, under Act 99 they are no longer eligible for the limited conditional release.

Moreover, if the same person, as a defendant in a criminal case, either pled or was found guilty of the charge, that person would receive a prison sentence or a period of probation that would be limited to one year or less. During the special action team meetings, some members expressed concerns that, if conditional release ends in one year, the person will no longer receive needed treatment and services. These concerns are unfounded. The department of health's adult mental health division's policy is to continue the same services for the person's post-conditional release status for six months. Thereafter, if the person meets eligibility requirements, those services will continue; but, if not, the individual will be transitioned to the insurance plan's services, which are often provided by MedQUEST and are similar to the services provided by the department. The only factor that changes is that a probation officer will no longer follow the person or return the person to the Hawaii state hospital.

Accordingly, the purpose of this Act is to limit the length of conditional release to one year for all defendants acquitted by

reason of mental disease, disorder, or defect of a misdemeanor, petty misdemeanor, or violation, not involving violence or attempted violence. It also clarifies when the one-year conditional release may be tolled and the consequences of its being revoked. This Act is intended to create parity of state involvement between the criminal justice system and the mental health system. Limitations on the length of the conditional release in this manner will focus the resources of the Hawaii state hospital on those who pose a greater risk to public safety and who need inpatient hospital services most.

Impact on the public: Statutory changes would not compromise defendants' rights, mental health services or public safety. It is expected that changes to the statutes would minimize the defendants' time in the hospital.

Impact on the department and other agencies: The beneficial outcome of this bill will result in creating more bed space at the hospital, and alleviate the need for the Department of Health to monitor these individuals for lengthy period of time.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: HTH 495.

OTHER AFFECTED AGENCIES: Judiciary, County Prosecuting Attorneys; Department of the Attorney General; Office of the Public Defender; Department of Public Safety; Department of Human Services; Chiefs of Police from each county.

EFFECTIVE DATE: Upon approval.