

HB466

PROPOSED

SD1

Measure Title:
RELATING TO HEALTH.

Description:

Proposed SD1: Requires the department of health to submit an annual report on forensic patients; requires yearly court status hearings for individuals ordered to be conditionally released or hospitalized as an inpatient by the mental health court; reduces the minimum length of hospitalization from ninety to thirty days for individuals who are recommitted after conditional release; makes appropriation for mental health court operations. (SD1)

Current Referral:
HTH, JDL



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. 466, H.D. 1, Proposed S.D. 1, RELATING TO HEALTH

**Testimony of Chiyome Leinaala Fukino, M.D.
Director of Health**

March 19, 2008, 1:15 p.m.

1 **Department's Position:** The Department supports this measure, so long as it does not adversely
2 impact the priorities outlined in the Executive Supplemental Budget. The Department extends its
3 appreciation to the Chair and this committee for consideration of this proposed draft. However, the
4 department respectfully suggests that the committee fully incorporate the language contained in S.B.
5 2160, S.D.2 which includes language from S.B. 3071 and legal, technical amendments.

6 **Fiscal Implications:** Unspecified appropriation for the establishment of the Mental Health Court.

7 **Purpose and Justification:** The SCR 117 taskforce was convened in September 2006 by the Governor
8 under the joint direction of Senator Rosalyn Baker and Representative Josh Green. The taskforce
9 included members of the Department of Health (DOH), Adult Mental Health Division (AMHD), Hawaii
10 State Hospital (HSH), the judiciary, probation, community hospitals, police, sheriffs, Department of
11 Public Safety (PSD), consumer rights advocates, consumers, and others. SCR 117 was developed to
12 identify changes in statute, procedure, and public policy that could reduce the census at HSH. The
13 department refers the committee to www.amhd.org/SCR117 to review the final report that was
14 submitted to the 2007-2008 Legislature.

1 The department respectfully suggests that the committee fully incorporate the language
2 contained in S.B. 2160, S.D.2 which includes language from S.B. 3071 as well as other legal technical
3 amendments.

4 **Section 2:** This section statutorily requires an annual report to the Legislature on forensic data
5 as it relates to the Hawaii State Hospital. The department has continued to highlight how utilization of
6 the hospital is or is not changing over time. This information has assisted decision makers to determine
7 how best to allocate resources and may provide an objective basis for policy review and revision. There
8 is, however, currently no consistently available, comprehensive description of this important aspect of
9 our mental health and forensic system. The department is supportive of this new report requirement.

10 **Section 3:** This section requires an annual judicial review (for five years and bi-annually
11 thereafter) for an individual committed pursuant to 704-411(1) a – (Not guilty by reason of mental
12 disease, defect or disorder). The proposed legislation will require a hearing on an annual basis which
13 does not currently occur. The hospital is prepared and can provide whatever clinical information is
14 required for these hearings.

15 **Section 4:** This legislation simply shortens the wait for post Conditional Release (CR)
16 revocation from 90 to 30 days. The proposed legislation would let the person or the Director, DOH,
17 acting on their behalf, apply for CR up to 60 days earlier than is permitted presently. The proposed
18 legislation would provide the small number of patients whose Conditional Release has been revoked and
19 who are clinically stable and able to abide by conditions of release the opportunity to apply for CR
20 reinstatement between their 31st and 89th days of hospitalization.

21 **Section 5:**

22 **Section 5 (1)** provides statutory guidance and clarification on the seventy-hour (72) hour hold
23 and extended hold process as it relates to patients under Conditional Release from the Hawaii State
24 Hospital or related facility.

1 It is important to understand that Conditional Release revocation is not the same as a 72-hour
2 hold or extended hold. Conditional Release revocation mandates the commitment of an individual back
3 to the custody of the director of health for at least ninety-days, as currently outlined in Section 704-412,
4 Hawaii Revised Statutes. A 72-hour hold mandates a maximum of 72 hours in DOH care and custody,
5 followed by a hearing at which the court may extend the hold for additional amounts of time. Any
6 extension is considered an extended hold. Courts or treatment teams that may not understand the
7 difference may recommend a CR revocation when a 72-hour hold or extended hold may have addressed
8 the clinical and supervision needs in a more timely and cost-effective manner. Creating explicit
9 language in the statute should assist in providing this clarification for treatment teams or courts.

10 By promoting the use of 72-hour holds or extended holds, this measure will likely result in
11 decreasing the utilization of bed space at Hawaii State Hospital by those mental health consumers who
12 do not require prolonged hospitalization otherwise mandated by CR revocation.

13 **Section 5 (2):** As suggested by the Department, by incorporating the contents of S.B. 3071 into
14 this section, this will enable the Director of the Department of Health to petition the court in appropriate
15 cases, on behalf of any individual served by the DOH, for legal discharge from Conditional Release
16 (CR). Persons on CR are released by the courts to be discharged from the custody of the Department of
17 Health, including but not limited to Hawaii State Hospital, back into the community. In the community,
18 persons on CR continue to be supervised jointly by both the Adult Mental Health Division of the DOH
19 and the Adult Client Services Branch of the Judiciary. Currently, the State of Hawaii has more than 400
20 people in the community on CR. To include CR consumers who are in a hospital setting, the number
21 balloons to more than 500. This is the largest number of CR consumers per capita in the nation. Only
22 one other state, Ohio with 550, has been identified as having more consumers on CR than Hawaii.

23 In Hawaii, there is no time limit for CR. A person can, and often is, on CR for the rest of his or
24 her life. More than half of the states with CR statutes similar to Hawaii's have a time limit on CR.

1 Some states have a prescribed limit (no more than 5 years, for example) while others have a time frame
2 equivalent to the maximum time they would have otherwise served in jail or probation. However, in
3 Hawaii, CR is an indefinite commitment. For example, 3% of Hawaii's misdemeanor CR cases have
4 been on CR for more than 20 years—crimes that would have otherwise carried a sentence of no more
5 than one year. Many people remain on CR indefinitely and under unnecessary supervision.

6 There is no mechanism for the director to petition the courts when the clinical staff determines
7 that an individual is clinically ready for discharge from conditional release. By allowing the Director of
8 Health to apply for discharge from conditional release for those who no longer are appropriate for
9 conditional release:

- 10 1) The effectiveness of forensic coordinators and available community resources is
11 enhanced as time and energies are focused on appropriate individuals who need higher
12 levels of support and supervision;
- 13 2) An individual's exposure to court-directed hospitalization is limited. In many cases
14 court-directed hospitalization results in extended hospitalization considerably beyond
15 what is clinically determined to be necessary. When a person is on conditional release,
16 it is possible for the individual be readmitted to inpatient care based on violations of
17 conditional release orders which are no longer clinically necessary. In such instances,
18 individuals do not need, nor meet clinical criteria for, inpatient hospital care, but will
19 remain hospitalized for the duration of the legal proceedings. The hospitalization of
20 these individuals thereby contributes to a higher inpatient census.

21 **Section 5 (5)** addresses the need for the courts to hear all Conditional Release cases at least once
22 a year. Overall, the CR process is a very positive and progressive system to aid in the recovery of
23 mentally ill individuals. The downside to this process is the back end. Very few individuals are ever
24 legally discharged from their CR, even though state statute allows for it. This results in a

1 disproportionately high number of mentally ill consumers in the community who may be doing quite
2 well, but still have outstanding court-ordered requirements. It is incompatible with a consumer's
3 recovery goals to remain under court jurisdiction if no longer clinically required. In the worst case
4 scenarios, people on CR may be involuntarily committed to HSH as a result of minor infractions of their
5 CR, which may often be heavy-handed or out of step with clinical need, simply as an artifact of their
6 continuing legal status. We believe that one of the most salient reasons is that the courts do not have a
7 process in place to hear the CR cases regularly. The language highlighted in this portion of the bill
8 attempts to ensure that the court hears all CR cases on a regular basis, to ensure that appropriate cases
9 are continued on CR and other cases are legally discharged from CR.

10 **Section 6:** Oahu has the state's only Mental Health Court (MHC). This court is a specialty
11 court which hears, exclusively, cases of mentally ill defendants. Very briefly, the point of the current
12 ideation of the MHC is to steer defendants out of jail and into treatment. The MHC, mirrored after
13 successful MHCs on the mainland and tailored for implementation in Hawaii, has shown encouraging
14 outcome results. However, the MHC is funded entirely by a grant, and therefore is limited in its scope
15 and influence. It continues to be a pilot project of the judiciary. Only 30 defendants can participate in
16 the MHC at any one time, for example, and only one dedicated staff position has been created to help
17 run the court. Also, current funding and staffing limits the impact of the MHC on the correctional
18 population, but the impact on the HSH census has been minimal. If the MHC is expanded, there is much
19 greater potential for including HSH consumers in the program, which would likely allow for their
20 release from HSH more quickly.

21 We look forward to continuing the dialog and collaborating with the legislature on this measure.
22 Thank you for this opportunity to provide testimony.



The Judiciary, State of Hawaii

Testimony to the Twenty-Fourth State Legislature, 2008 Session

Senate Committee on Health

The Honorable David Y. Ige, Chair

The Honorable Carol Fukunaga, Vice Chair

Wednesday, March 19, 2008, 1:15 p.m.

State Capitol, Conference Room 016

by

Dee Dee Letts

First Circuit Treatment Court Coordinator

Bill No. and Title: House Bill No. 466, H.D. 1, Proposed S. D. 1, Relating to Health.

Purpose: Requires the Department of Health to submit an annual report on forensic patients; requires yearly court status hearings for individuals ordered to be conditionally released or hospitalized as an inpatient by the mental health court; reduces the minimum length of hospitalization from ninety to thirty days for individuals who are recommitted after conditional release; makes appropriation for mental health court operations.

Judiciary's Position:

The Judiciary takes no position on the sections of House Bill No. 466, H.D. 1, Proposed S. D. 1, relating to conditional release. Generally speaking, the intent of this omnibus bill is consistent with the report of the SCR 117 Task Force (2006), in which the Judiciary participated. Should the provision for yearly review hearings become law, the Judiciary would need to assess what additional resources might be necessary to implement this requirement.

The Judiciary supports Section 6 of this bill that appropriates monies to support the operation and expansion of the mental health court. Since its inception in February 2004, the mental health court has operated entirely on federal funding provided by grants through the Office of the Attorney General. This funding will end in December 2008.



House Bill No. 466, H. D. 1, Proposed S. D. 1, Relating to Health
Senate Committee on Health
March 19, 2008
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The mental health court was started in response to statistics which showed that more than 16% of the adults incarcerated in the United States have a serious and persistent mental illness. The court is currently operating at capacity and had its first graduation on February 19, 2008. Aside from the obvious benefits of providing better outcomes for its clients, improving public safety, and significantly reducing recidivism in this population, the diversion of these clients also saves the corrections system on Oahu approximately \$90,882 per client per year. In the words of our first graduates: "I used to think of 100 reasons to use, now I think of 100 reasons not to" and "this program gives hope".

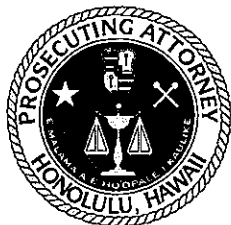
House Bill No. 466, H. D. 1, Proposed S. D.1, if funded at the level requested below will provide the Judiciary the necessary funds to continue providing Mental Health Court services at the existing level as well as provide funds to explore the expansion of the court into the area of conditional release clients. The amounts requested include \$241,522 for FY 08-09, \$327,346 each year for FY 09-10 and FY 10-11. The requested funding would allow the Judiciary to cover staffing and client services costs (i.e., assessment, training, etc.), to increase the number of clients served from 30 to 50, and to explore expanding the program to deal with the population on conditional release. We would also like to note that the Prosecuting Attorney's Office and the Public Defender's Office are partners with the Judiciary's Mental Health Court and should receive additional funding to support their continued role in providing attorneys for this court.

Thank you for the opportunity to comment on this measure.

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THE HONORABLE DAVID IGE, CHAIR
SENATE COMMITTEE ON HEALTH
Twenty-Fourth State Legislature
Regular Session of 2008
State of Hawaii

March 19, 2008

RE: H.B. 466, H.D. 1, Proposed S.D. 1; RELATING TO HEALTH.

Chair Ige 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 the proposed S.D. 1 of H.B. 466, H.D. 1.

The purpose of this bill is to require yearly status hearings for persons acquitted on a felony on the grounds of physical or mental disease, disorder or defect and who are subject to inpatient hospitalization. In addition, this bill provides that thirty days after the revocation of conditional release, the person may apply for an order of discharge or conditional release; however, if the court denies the application, the person may not file another application for discharge or conditional release until one year has elapsed from the date of the hearing on the previous application. Finally, the bill requires an annual review of each person who is subject to conditional release to assess the need to continue or modify the conditions for the first four year and then requires a biennial review thereafter.

We oppose this bill as we believe that some of the provisions may overlap and may cause redundant hearings or may be unnecessary. For example, if a defendant is acquitted due to mental disease or defect and he or she is subject to inpatient hospitalization, this bill requires a review one year from the date of commitment for the first four years and then in biennial intervals thereafter. However, after ninety days from the original order of commitment, the person can be conditionally released or discharged. If the court denies the application for either discharge or conditional release, the person may not file for another application for discharge or conditional release for one year from the date of the hearing of the prior application. Thus if the acquitted defendant files for discharge or conditional release which is denied, does he or she get an annual review pursuant to page lines 6-14 that runs from the date of commitment or is the annual review

suspended since he or she cannot be considered for discharge or conditional release for one year from the date of the hearing on the unsuccessful application filed pursuant to page 9 lines 10 to 16? We are unclear as to which provisions and timelines apply when multiple parts of this bill and the law apply.

Furthermore, it seems that annual hearings for defendants who are acquitted by reason of mental disease or defect and who are subject to inpatient hospitalization might seem superfluous as these defendants may apply for discharge or conditional release under 704-412 ninety day after the original order of commitment.

Based upon these concerns, we oppose the proposed S.D. 1 of H.B. 466 and ask that it be held.

Thank you for this opportunity to testify.

TESTIMONY TO THE TWENTY-FOURTH STATE LEGISLATURE, 2008 SESSION

To: Senate Committee on Health

From: Gary L. Smith, President
Hawaii Disability Rights Center

Re: House Bill 466, HD1, Proposed SD1
Relating to Health

Hearing: Wednesday, March 19, 2008 1:15PM
Conference Room 016, State Capitol

Members of the Committee on Health:

Thank you for the opportunity to provide testimony supporting House Bill 466 HD1, Proposed SD1, Relating to Health.

I am Gary L. Smith, President of the Hawaii Disability Rights Center, formerly known as the Protection and Advocacy Agency of Hawaii (P&A). As you may know, we are the agency mandated by federal law and designated by Executive Order to protect and advocate for the human, civil and legal rights of Hawaii's estimated 180,000 people with disabilities.

We support this bill and have a long standing interest in this issue. We were pleased to serve on the SCR 117 Task Force convened by the legislature. We believe that this bill will help to keep track of the status and the needs of the individuals who are residents at the Hawaii State Hospital. We particularly express strong support for the provision which will provide for an annual review of the individuals who are on conditional release status. We have seen that many individuals remain on conditional release for an extended ,indefinite period of time. While some of these individuals may need to remain on conditional release, we also believe that some do not. For those who do not, it represents a serious infringement upon their personal liberties. It is also difficult under the current system to obtain court review of these conditional releases. We believe that the provision for a mandatory annual will provide greater protection for these individuals and ensure that their needs are being met.

Thank you for the opportunity to provide testimony in support of this bill.