



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

In reply, please refer to:
File:

Senate Committee on Judiciary and Labor

And

Senate Committee on Ways and Means

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

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

April 2 2008, 10:30 a.m.

1 **Department's Position:** The Department supports this measure, which incorporates two
2 Administration-sponsored proposals, so long as it does not adversely impact the priorities outlined in the
3 Executive Supplemental Budget. The department is also providing suggested amendments.

4 **Fiscal Implications:** There is an unspecified appropriation for the establishment of the Mental Health
5 Court.

6 **Purpose and Justification: Amendments:** In collaborating with and addressing concerns raised by the
7 Prosecutors Office and the Department of the Attorney General's Office, the department makes the
8 following recommendations:

9 ▪ Amending Section 3 (page 7, lines 9-17) by replacing the existing language with:

10 5) Except where an individual has applied for conditional release or discharge within the
11 previous year, the court shall conduct a hearing to assess any further inpatient hospitalization of a person
12 who is acquitted on the ground of physical or mental disease, disorder, or defect excluding
13 responsibility:

14 (a) one calendar year after the date of commitment; and

1 **(b) once per year after the first calendar year for the next four years and then in biennial intervals**
2 **thereafter.**

- 3 ▪ Section 4, page 8, line 5 and line 7, and page 9, line 4 - the department recommends deleting the
4 subsequent paragraph and subparagraph referrals ((1) (a) and (3)) so the reference reflects on the
5 general sections (704-411 and 704-413).
- 6 ▪ Section 4, Page 8, line 6 and Page 9, line 3 – the department recommends amending the
7 language to forty-five days, rather than thirty.

8 **Section 1:** The SCR 117 taskforce was convened in September 2006 by the Governor under the
9 joint direction of Senator Rosalyn Baker and Representative Josh Green. The taskforce included
10 members of the Department of Health (DOH), Adult Mental Health Division (AMHD), Hawaii State
11 Hospital (HSH), the judiciary, probation, community hospitals, police, sheriffs, Department of Public
12 Safety (PSD), consumer rights advocates, consumers, and others. SCR 117 was developed to identify
13 changes in statute, procedure, and public policy that could reduce the census at HSH. The department
14 refers the committee to www.amhd.org/SCR117 to review the final report that was submitted to the
15 2007-2008 Legislature. This measure was developed with some of those recommendations and has also
16 incorporated language from S.B. 3070 and S.B. 3071, two administrative proposals which were also
17 based on recommendations by the SCR 117 task force.

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

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

6 **Section 4:** This legislation simply shortens the wait for post Conditional Release (CR)
7 revocation from 90 to 45 days. The proposed legislation would let the person or the Director, DOH,
8 acting on their behalf, apply for CR up to 45 days earlier than is permitted presently. The proposed
9 legislation would provide the small number of patients whose Conditional Release has been revoked and
10 who are clinically stable and able to abide by conditions of release the opportunity to apply for CR
11 reinstatement between their 31st and 89th days of hospitalization.

12 **Section 5:** In addition to its original contents (Section 5 (5)) statutorily requiring status hearings
13 for persons on conditional release, Section 5 (1) incorporates the contents of S.B. 3070, while Section 5
14 (2) incorporates the contents of S.B. 3071.

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

18 It is important to understand that Conditional Release revocation is not the same as a 72-hour
19 hold or extended hold. Conditional Release revocation mandates the commitment of an individual back
20 to the custody of the director of health for at least ninety-days, as currently outlined in Section 704-412,
21 Hawaii Revised Statutes. A 72-hour hold mandates a maximum of 72 hours in DOH care and custody,
22 followed by a hearing at which the court may extend the hold for additional amounts of time. Any
23 extension is considered an extended hold. Courts or treatment teams that may not understand the
24 difference may recommend a CR revocation when a 72-hour hold or extended hold may have addressed

1 the clinical and supervision needs in a more timely and cost-effective manner. Creating explicit
2 language in the statute should assist in providing this clarification for treatment teams or courts.

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

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

16 In Hawaii, there is no time limit for CR. A person can, and often is, on CR for the rest of his or
17 her life. More than half of the states with CR statutes similar to Hawaii's have a time limit on CR.
18 Some states have a prescribed limit (no more than 5 years, for example) while others have a time frame
19 equivalent to the maximum time they would have otherwise served in jail or probation. However, in
20 Hawaii, CR is an indefinite commitment. For example, 3% of Hawaii's misdemeanor CR cases have
21 been on CR for more than 20 years—crimes that would have otherwise carried a sentence of no more
22 than one year. Many people remain on CR indefinitely and under unnecessary supervision.

23 There is no mechanism for the director to petition the courts when the clinical staff determines
24 that an individual is clinically ready for discharge from conditional release. By allowing the Director of

1 Health to apply for discharge from conditional release for those who no longer are appropriate for
2 conditional release:

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

14 **Section 5 (5)** addresses the need for the courts to hear all Conditional Release cases at least once
15 a year. Overall, the CR process is a very positive and progressive system to aid in the recovery of
16 mentally ill individuals. The downside to this process is the back end. Very few individuals are ever
17 legally discharged from their CR, even though state statute allows for it. This results in a
18 disproportionately high number of mentally ill consumers in the community who may be doing quite
19 well, but still have outstanding court-ordered requirements. It is incompatible with a consumer's
20 recovery goals to remain under court jurisdiction if no longer clinically required. In the worst case
21 scenarios, people on CR may be involuntarily committed to HSH as a result of minor infractions of their
22 CR, which may often be heavy-handed or out of step with clinical need, simply as an artifact of their
23 continuing legal status. We believe that one of the most salient reasons is that the courts do not have a
24 process in place to hear the CR cases regularly. The language highlighted in this portion of the bill

1 attempts to ensure that the court hears all CR cases on a regular basis, to ensure that appropriate cases
2 are continued on CR and other cases are legally discharged from CR.

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

14 We look forward to continuing the dialog and collaborating with the legislature on this measure.

15 Thank you for this opportunity to provide testimony.

16 Thank you for the opportunity to testify on this important measure.



The Judiciary, State of Hawaii

Testimony to the Twenty-Fourth State Legislature, 2008 Session

Senate Committee on Judiciary and Labor
The Honorable Brian T. Taniguchi, Chair
The Honorable Clayton Hee, Vice Chair

Senate Committee on Ways and Means
The Honorable Rosalyn H. Baker, Chair
The Honorable Shan S. Tsutsui, Vice Chair

Wednesday, April 2, 2008, 10:30 a.m.
State Capitol, Conference Room 211

by

Dee Dee Letts
First Circuit Treatment Court Coordinator

Bill No. and Title: House Bill No. 466, H. D. 1, 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 House Bill No. 466, H. D. 1, S. D. 1, relating to conditional release (CR). 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. However, the Judiciary has strong concerns regarding the implementation of mandatory annual review hearings. The Judiciary notes that currently clients affected by this bill have full access to the court system through HRS 704-412(1) and (2) and 704-413(2) and (3) which allow the director of health and/or the person committed or conditionally released to apply to the court for CR,



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Wednesday, April 2, 2008
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discharge from CR, or modification of the terms and conditions of CR. The cost of moving to a mandatory review process was not studied as part of the work of the SCR117 task force and thus is unknown. Should the provision for yearly review hearings become law, the Judiciary would need time to assess and determine 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.

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, 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.



HAWAII DISABILITY RIGHTS CENTER

900 Fort Street Mall, Suite 1040, 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

TESTIMONY TO THE TWENTY-FOURTH STATE LEGISLATURE, 2008 SESSION

To: Senate Committee on Judiciary and Labor:
 Senate Committee on Ways and Means:

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

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

Hearing: Wednesday, April 2, 2008 10:30 AM
 Conference Room 211, State Capitol

Members of the Committee on Judiciary and Labor:
 Members of the Committee on Ways and Means:

Thank you for the opportunity to provide testimony supporting House Bill 466 HD1, 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.



888 Mililani Street, Suite 601
Honolulu, Hawaii 96813-2991

Telephone: 808.543.0000
Facsimile: 808.528.4059

www.hgea.org

The Twenty-Fourth Legislature, State of Hawaii
Hawaii State Senate
Committee on Judiciary and Labor
Committee on Ways and Means

Testimony by
HGEA/AFSCME, Local 152, AFL-CIO
April 2, 2008

**H.B. 466, H.D. 1, S.D. 1 – RELATING TO
HEALTH**

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of H.B. 466, H.D. 1, S.D. 1, which is to enact the recommendations of the S.C.R. 117 Task Force. However, we believe that the provisions of S.B. 2396 should be incorporated into this bill. S.B. 2396 established that a person commits a felony in the second degree if the person knowingly or intentionally causes bodily injury to an employee at a state-operated/contracted mental health facility.

Violence against health care workers deserves to be added as an assault in the second degree. Similar protection already exists for teachers, other educational workers, emergency medical technicians, and employees who work in a correctional or detention facility. Nurses are often the primary targets of nonfatal assaults and psychiatric nurses have the highest rate of assault. At Hawaii State Hospital (HSH), nurses and other workers have been the targets of serious assaults by patients.

Nevertheless, we support the remaining provisions of the bill, which implement the task force recommendations. The proposed statutory changes in the bill will improve operations and working conditions at HSH. More specifically, we support the amendments to Chapter 334, HRS that will require HSH to produce an annual report containing relevant data on the forensic patients admitted and discharged, including the type of forensic patients by types of underlying crimes and the grade of offenses committed.

We also agree granting the courts the authority to periodically assess the need for further inpatient hospitalization of individuals who are acquitted of a felony on the grounds of a physical or mental disease, and the changes to the conditional release statutes. Finally, we support the appropriation to support the expansion and operation of the mental health court by the Judiciary. We respectfully request changing the effective date of the bill to July 1, 2008. Thank you for the opportunity to testify in support of this important legislation.

Respectfully submitted,

Nora A. Nomura
Deputy Executive Director

