

The Judiciary, State of Hawaii

Testimony to the Twenty-Fourth State Legislature, 2008 Session

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

Monday, February 21, 2008, 9:30 a.m.
State Capitol, Conference Room 211

by

Dee Dee Letts
First Circuit Treatment Court Coordinator

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 2160, 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 Senate Bill No. 2160, S. D. 1, relating to conditional release and supports the proposed technical language changes and the inclusion of language from Senate Bill No. 3071 submitted by the Department of Health. 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.

The Judiciary supports Section 7 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.



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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".

Senate Bill No. 2160, 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 GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME LOCAL 152, AFL-CIO

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

Testimony by
HGEA/AFSCME, Local 152, AFL-CIO
February 21, 2008

S.B. 2160, S.D. 1 – RELATING TO HEALTH

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of S.B. 2160, S.D. 1, which implements recommendations of the task force formed under S.C.R. 117, S.D. 1, H.D. 1 adopted by the 2006 Hawaii State Legislature. We supported the adoption of S.C.R. 117 and participated on the task force.

The purpose of the task force was to analyze the identification, diagnosis, and treatment of mentally ill persons who are committed to the Hawaii State Hospital (HSH) by the state criminal justice system. The task force also considered initiatives to reform and improve the treatment of forensic patients sent to the hospital.

The major public policy change reported by the task force was to limit current criminal processes in mental health cases for criminal actions in which defendants are prosecuted for violent non-felony charges and all felony charges. There is a need to develop an alternative, faster process for defendants arrested for non-violent, non-felony charges such as trespass, property crimes and drug/alcohol related offenses.

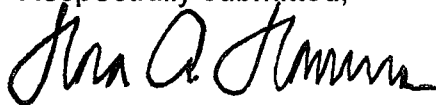
The bill contains several statutory changes that we believe are improvements to the current situation. Therefore, we support the amendments to Chapter 704, HRS, that will require the HSH to produce an annual report containing relevant data on the forensic patients admitted and discharged, including the type of forensic patients by categories of underlying crimes.

We also support the authority granted to the courts in periodically assessing 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

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of the mental health court by the Judiciary. Thank you for the opportunity to testify in support of this important bill.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nora A. Nomura". The signature is fluid and cursive, written over the printed name below it.

Nora A. Nomura
Deputy Executive Director



STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
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In reply, please refer to:
File:

Senate Committee on Ways and Means

S.B. 2160, S.D. 1 RELATING TO HEALTH

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

February 21, 2008, 9:30 a.m.

1 **Department's Position:** The department supports this measure, with amendments, so long as it does
2 not adversely impact the priorities outlined in the Executive Supplemental Budget.

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

4 **Purpose and Justification:** The SCR 117 taskforce was convened in September 2006 by the Governor
5 under the joint direction of Senator Rosalyn Baker and Representative Josh Green. The taskforce
6 included members of the Department of Health (DOH), Adult Mental Health Division (AMHD), Hawaii
7 State Hospital (HSH), the judiciary, probation, community hospitals, police, sheriffs, Department of
8 Public Safety (PSD), consumer rights advocates, consumers, and others. SCR 117 was developed to
9 identify changes in statute, procedure, and public policy that could reduce the census at HSH. SB 2160
10 was developed with some of those recommendations included.

11 The department respectfully requests a number of amendments be made to this proposal. For the
12 committee's use, in consultation with key members of the SCR117 task force and a representative from
13 the Judiciary, we have attached a proposed draft that provides for the inclusion of language from S.B.
14 3071 into section 5 of the bill which will enable the Director of Health to petition the court in

1 appropriate cases, on behalf of any individual served by the Department, for legal discharge from
2 conditional release. We have also made a number of technical changes to the measure.

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

4 Thank you for this opportunity to provide testimony.

5

SB2160, SD1, Proposed SD2

RELATING TO HEALTH.

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

SECTION 1. Senate Concurrent Resolution No. 117, S.D. 1, H.D. 1, adopted by the twenty-third Hawaii state legislature in 2006 called for the Governor to convene a task force to "evaluate and recommend possible procedural, statutory, and public policy changes to minimize the census at Hawaii State Hospital and promote community based health services for forensic patients." The purpose of this Act is to enact the recommendations made by that task force.

SECTION 2. Chapter 334, Hawaii Revised Statutes, is amended by adding one new section to be appropriately designated and to read as follows:

"§334- Annual report; forensic patient data. The department of health shall submit an annual report to the legislature no later than twenty days prior to the convening of each legislative session which shall at minimum summarize yearly data on forensic patients including:

(1) Gross admission and discharge numbers to the Hawaii state hospital;

(2) The number of admission, discharge, and lengths

of stays in the Hawaii state hospital, broken down by the following commitment categories:

- (A) Original order under section 704-411(a);
- (B) Pending examination under section 704-413(3);
- (C) Maximum seventy-two hour recommitment pending examination under section 407-413(1);
- (D) Original order under section 704-404; and
- (E) Original order under section 704-406;

(3) Number of persons committed to the Hawaii state hospital by each court and county;

(4) Gross lengths of stay in the Hawaii state hospital for:

- (A) Patients discharged during the year; and
- (B) Individuals remaining as inpatients at the end of the year;

(5) Number of patients in Hawaii state hospital on forensic statuses, broken down by categories of underlying crimes, such as by felony or by misdemeanor."

SECTION 3. Section 704-411, Hawaii Revised Statutes, is amended to read as follows:

"§704-411 Legal effect of acquittal on the ground of physical or mental disease, disorder, or defect excluding responsibility; commitment; conditional release; discharge; procedure for separate post-acquittal hearing. (1) When a

defendant is acquitted on the ground of physical or mental disease, disorder, or defect excluding responsibility, the court, on the basis of the report made pursuant to section 704□404, if uncontested, or the medical or psychological evidence given at the trial or at a separate hearing, shall make an order as follows:

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

- (i) Is affected by a physical or mental disease, disorder, or defect;
- (ii) Presents a risk of danger to self or others;
and
- (iii) Is not a proper subject for conditional release;

provided that the director of health shall place defendants charged with misdemeanors or felonies not involving violence or attempted violence in the least restrictive environment appropriate in light of the defendant's treatment needs and the need to prevent harm to the person confined and others;

(b) The court shall order the defendant to be ~~[released on such conditions]~~ granted conditional release

with conditions as the court deems necessary if the court finds that the defendant is affected by physical or mental disease, disorder, or defect and that the defendant presents a danger to self or others, but that the defendant can be controlled adequately and given proper care, supervision, and treatment if the defendant is released on condition; or

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

(2) The court, upon its own motion or on the motion of the prosecuting attorney or the defendant, shall order a separate post-acquittal hearing for the purpose of taking evidence on the issue of physical or mental disease, disorder, or defect and the risk of danger that the defendant presents to self or others.

(3) When ordering a hearing pursuant to subsection (2):

(a) In nonfelony cases, the court shall appoint a qualified examiner to examine and report upon the physical and mental condition of the defendant. The court may

appoint either a psychiatrist or a licensed psychologist. The examiner may be designated by the director of health from within the department of health. The examiner shall be appointed from a list of certified examiners as determined by the department of health. The court, in appropriate circumstances, may appoint an additional examiner or examiners; and

(b) In felony cases, the court shall appoint three qualified examiners to examine and report upon the physical and mental condition of the defendant. In each case, the court shall appoint at least one psychiatrist and at least one licensed psychologist. The third member may be a psychiatrist, a licensed psychologist, or a qualified physician. One of the three shall be a psychiatrist or licensed psychologist designated by the director of health from within the department of health. The three examiners shall be appointed from a list of certified examiners as determined by the department of health.

To facilitate the examination and the proceedings thereon, the court may cause the defendant, if not then confined, to be committed to a hospital or other suitable facility for the purpose of examination for a period not exceeding thirty days or such longer period as the court determines to be necessary for the purpose upon written findings for

good cause shown. The court may direct that qualified physicians or psychologists retained by the defendant be permitted to witness the examination. The examination and report and the compensation of persons making or assisting in the examination shall be in accord with section 704-404(3), (4)(a) and (b), (6), (7), (8), and (9). As used in this section, the term "licensed psychologist" includes psychologists exempted from licensure by section 465-3(a)(3).

(4) Whether the court's order under subsection (1) is made on the basis of the medical or psychological evidence given at the trial, or on the basis of the report made pursuant to section 704-404, or the medical or psychological evidence given at a separate hearing, the burden shall be upon the State to prove, by a preponderance of the evidence, that the defendant is affected by a physical or mental disease, disorder, or defect and may not safely be discharged and that the defendant should be either committed or conditionally released as provided in subsection (1).

(5) For each individual who is acquitted of a felony on the ground of physical or mental disease, disorder, or defect excluding responsibility, and is the subject of inpatient hospitalization, the court shall conduct hearings

to assess any need for further inpatient hospitalization beginning one calendar year after the date of commitment. If the person remains subject to inpatient hospitalization, a status hearing shall be held once per year for the next four years, and then in biennial intervals thereafter.

(6) In any proceeding governed by this section, the defendant's fitness shall not be an issue."

SECTION 4. Section 704-412, Hawaii Revised Statutes, is amended to read as follows:

"§704-412 Committed person; application for conditional release or discharge; by the director of health; by the person. (1) After the expiration of at least ninety days following ~~[the]~~ an original order of commitment pursuant to [section 704-411,] section 704-411(1)(a), or after the expiration of at least thirty-days following the revocation of conditional release pursuant to section 704-413(3), if the director of health is of the opinion that the person committed ~~[to the director's custody]~~ is still affected by a physical or mental disease, disorder, or defect and may be ~~[released on condition]~~ granted conditional release or discharged without danger to self or to the person or property of others or that the person is no longer affected by a physical or mental disease, disorder, or defect, the director shall make

application for either [~~the discharge or conditional release of the person in~~] the conditional release or the discharge of the person, as appropriate. In such a case, the director shall submit a report to the court [~~from~~] by which the person was ordered committed and shall transmit [~~a copy~~] copies of the application and report to the prosecuting attorney of the county from which the person was committed[~~.—The~~] and to the person [~~shall be given notice of such application.~~] committed.

(2) After the expiration of ninety days from the date of the order of commitment pursuant to section 704-411, or after the expiration of thirty days following the revocation of conditional release pursuant to section 704-413(3), the person committed may apply to the court from which the person was committed for an order of discharge upon the ground that the person is no longer affected by a physical or mental disease, disorder, or defect. The person committed may apply for [~~discharge or conditional release~~] conditional release or discharge upon the ground that, though still affected by a physical or mental disease, disorder, or defect, the person may be released without danger to self or to the person or property of others. A copy of the application shall be transmitted to the prosecuting attorney of the county from which the

[defendant] person was committed. [~~If the determination of the court is adverse to the application,~~] If the court denies the application, the person shall not be permitted to file [~~a further~~] another application for either conditional release or discharge until one year [~~has elapsed from~~] after the date of [~~any preceding hearing on an application for the person's discharge or conditional release.~~] the hearing held on the immediate prior application."

SECTION 5. Section 704-413, Hawaii Revised Statutes, is amended to read as follows:

"§704-413 Conditional release; application for modification or discharge; termination of conditional release and commitment. (1) Any person [~~released~~] granted conditional release pursuant to [~~section 704-411~~] Chapter 704 shall continue to receive mental health or other treatment and care deemed appropriate by the director of health until discharged from conditional release. The person shall follow all prescribed treatments and take all prescribed medications according to the instructions of the person's treating mental health professional. If [~~any~~] a mental health professional who is treating [~~any~~] a [~~conditionally released~~] person granted conditional release believes either the person is not complying with the

requirements of this section or there is other evidence that hospitalization is appropriate, the mental health professional shall report the matter to the probation officer of the [~~conditionally released person~~] person granted conditional release. The probation officer may order the [~~conditionally released person~~] person granted conditional release to be hospitalized for a period not to exceed seventy-two hours if the probation officer has probable cause to believe the person has violated the requirements of this subsection. No person shall be hospitalized beyond the seventy-two hour period, as computed pursuant to section 1-29, unless a hearing has been held pursuant to subsection [~~(3)~~] (4) ; provided that on or before the expiration of the seventy-two hour period, a court may conduct a hearing to determine whether the person would benefit from further hospitalization which may render a revocation unnecessary. If satisfied, the court may order further temporary hospitalization for a period not to exceed ninety days, subject to extension as appropriate, but in no event for a period longer than one year. At any time within that period, the court may determine that a hearing pursuant to subsection (4) should be conducted.

(2) The director of health may apply to the court ordering any persons released pursuant to Chapter 704, for the person's discharge from, or modification of, the order granting conditional release; provided that the person receives community-based mental health services from or contracted by the department of health, and the director is of the opinion that the person on conditional release is no longer affected by a physical or mental disease, disorder, or defect and may be discharged or the order may be modified, without danger to the person or to others. The director shall make application for the discharge from, or modification of, the order of conditional release in a report to the court. The director shall transmit a copy of the application and report to the prosecuting attorney of the county from which the conditional release order was made, to the person's treating mental health professionals, and to the probation officer supervising the conditional release. The person on conditional release shall be given notice of such application.

~~[(2)]~~ (3) Any person [released] granted conditional release pursuant to [section 704-411] Chapter 704 may apply to the court ordering the conditional release for discharge from, or modification of, the order granting conditional release on the ground that the person is no longer affected

by a physical or mental disease, disorder, or defect and may be discharged, or the order may be modified, without danger to the person or to others. The application shall be accompanied by a letter from or supporting affidavit of a qualified physician or licensed psychologist. A copy of the application and letter or affidavit shall be transmitted to the prosecuting attorney of the circuit from which the order issued and to any persons supervising the release, and the hearing on the application shall be held following notice to such persons. If the ~~[determination of the]~~ court ~~[is adverse to]~~ denies the application, the person shall not be permitted to file ~~[further]~~ another application for either discharge or modification of conditional release until one year ~~[has elapsed from]~~ after the date of [any preceding hearing on an application for modification of conditions of release or for discharge.] the denial.

~~[(3)]~~ (4) If, at any time after the order pursuant to ~~[section 704-411]~~ Chapter 704 granting conditional release, the court determines, after hearing evidence, that:

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

(b) For the safety of the person or others, the

person's conditional release should be revoked, the court may forthwith modify the conditions of release or order the person to be committed to the custody of the director of health, subject to discharge or release [~~only~~] in accordance with the procedure prescribed in section 704-412.

(5) For each individual who is granted conditional release under Chapter 704, the court shall conduct hearings to assess any need to continue or modify the conditions beginning one calendar year after the date of the original court order for conditional release. If the person remains subject to conditional release, a status hearing shall be held once per year for the next four years, and then in biennial intervals thereafter."

SECTION 6. There is appropriated out of the general revenues of the State of Hawaii the sum of \$ or so much thereof as may be necessary for fiscal year 2008-2009 to support the operations and expansion of the mental health court.

The sum appropriated shall be expended by the judiciary for the purposes of this Act.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 8. This Act shall take effect on July 1,
2050.