

SB2260

Measure Title:
RELATING TO HEALTH.

Report Title:
Director of Health; Conditional Release; Discharge

Description:
Authorizes the director of health to apply for the discharge, or modification, of an order granting conditional release to a person who is no longer affected by a physical or mental disease, disorder, or defect.

Introducer(s):
BAKER, Fukunaga, Ige

Current Referral:
HTH, JDL



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TESTIMONY TO THE TWENTY-FOURTH STATE LEGISLATURE, 2008 SESSION

To: Senate Committee on Health

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

Re: Senate Bill 2260
Relating to Health

Hearing: Monday, February 11, 2008 1:15PM
Conference Room 016, State Capitol

Members of the Committee on Health:

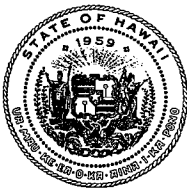
Thank you for the opportunity to provide testimony supporting Senate Bill 2260, Relating to Health.

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 the Health Director's ability to file for the discharge 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 allowing the Health Director the ability to file for discharge on behalf of these individuals 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.





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

In reply, please refer to:
File:

Senate Committee on Health

S.B. 2260, RELATING TO HEALTH

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

February 11, 2008, 1:15 p.m.

1 **Department's Position:** The department supports this measure, but prefers the language contained in
2 S.B. 3071.

3 **Fiscal Implications:** No general fund expenditure.

4 **Purpose and Justification:** This proposal is based on a recommendation by the task force organized
5 as a result of Senate Concurrent Resolution 117, Session Laws of Hawaii 2006.

6 This measure will enable the Director of the Department of Health (DOH) 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 more consumers total on
15 CR than Hawaii.

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

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

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

23 There are substantive differences between S.B. 2260 versus S.B. 3071. S.B. 3071 includes
24 section 704-712, HRS, a section of law that addresses application for conditional release for committed

1 person, as part of the options for the court to consider. S.B. 3071 also has a number of additional
2 community-based conditions and the requirement that a copy of the application also be submitted to the
3 individual's treating mental health professional. Again, the department respectfully suggests that the
4 language contained in S.B. 3071 be advanced as the preferred vehicle.

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