



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

In reply, please refer to:  
File:

**House Committee on Finance**

**S.B. 2396, S.D. 1, H.D. 2 RELATING TO MENTAL HEALTH**

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

**March 31, 2008, 4:30 p.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 in its effort  
to provide clarity in the language.

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

7 **Purpose and Justification: Amendments:** In collaborating with and addressing concerns raised by the  
8 Prosecutors Office about possible redundancy and confusion in certain hearings called for in this  
9 measure, the department recommends amending Section 3 (page 7, lines 9-17) by replacing the existing  
10 language with:

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

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

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

The department also recommends deleting Section 7 as it was unique to the original content of S.B. 2396 and is not applicable to this current language.

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

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

**Section 3:** This section requires an annual judicial review (for five years and bi-annually thereafter) for an individual committed pursuant to 704-411(1) a – (Not guilty by reason of mental disease, defect or disorder). The proposed legislation will require a hearing on an annual basis which

does not currently occur. The hospital is prepared and can provide whatever clinical information is  
2 required for these hearings.

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

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

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

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

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

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

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

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

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

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

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

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

Thank you for this opportunity to provide testimony.

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



**TESTIMONY OF THE STATE ATTORNEY GENERAL  
TWENTY-FOURTH LEGISLATURE, 2008**

---

**ON THE FOLLOWING MEASURE:**

S.B. NO. 2396, S.D. 1, H.D. 2, RELATING TO HEALTH.

**BEFORE THE:**

HOUSE COMMITTEE ON FINANCE

**DATE:** Monday, March 31, 2008 **TIME:** 4:30 PM

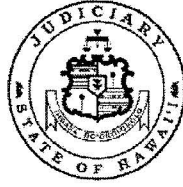
**LOCATION:** State Capitol, Room 308  
*Deliver to: State Capitol, Room 306, 2 Copies*

**TESTIFIER(S):** WRITTEN TESTIMONY ONLY.  
(For more information, contact Lari Koga, Administrator,  
Crime Prevention and Justice Assistance Division, at  
586-1151.)

---

Chair Oshiro and Members of the Committee:

The Attorney General supports the Mental Health Court, and supports the expansion of the Mental Health Court, provided that this does not adversely impact priorities as indicated in the Executive Supplemental Budget request.



*The Judiciary, State of Hawaii*

**Testimony to the Twenty-Fourth State Legislature, 2008 Session**

House Committee on Finance  
The Honorable Marcus R. Oshiro, Chair  
The Honorable Marilyn B. Lee, Vice Chair

Monday, March 31, 2008, 4:30 p.m.  
State Capitol, Conference Room 308

by

Dee Dee Letts  
First Circuit Treatment Court Coordinator

---

**Bill No. and Title:** Senate Bill No. 2396, S. D. 1, H. D. 2, Relating to Mental 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 Senate Bill No. 2396, S. D. 1, H. D. 2, 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, 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





Senate Bill No. 2396, S. D. 1, H. D. 2, Relating to Mental Health  
House Committee on Finance  
March 31, 2008  
Page 2

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".

Senate Bill No. 2396, S. D. 1, H. D. 2, 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.



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

Telephone: 808.543.0000  
Facsimile: 808.528.4059

[www.hgea.org](http://www.hgea.org)

The Twenty-Fourth Legislature, State of Hawaii  
Hawaii State House of Representatives  
Committee on Finance

Testimony by  
HGEA/AFSCME, Local 152, AFL-CIO  
March 31, 2008

**S.B. 2396, S.D. 1, H.D. 2 – RELATING  
TO MENTAL HEALTH**

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of S.B. 2396, S.D. 1, H.D. 2. We were disappointed by the amendment made by the Committee on Judiciary that deleted the provision establishing 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 to the offenses of 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 implements the recommendations from the S.C.R. 117 Task Force. There are statutory changes in the bill that we think will improve operations and working conditions at HSH. Consequently, 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 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 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



## **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](mailto:info@hawaiidisabilityrights.org) Website: [www.hawaiidisabilityrights.org](http://www.hawaiidisabilityrights.org)

### **TESTIMONY TO THE TWENTY-FOURTH STATE LEGISLATURE, 2008 SESSION**

**To:** House Committee on Finance

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

**Re:** Senate Bill 2396, SD1, HD2  
Relating to Mental Health

**Hearing:** Monday, March 31, 2008 4:30 PM  
Conference Room 308, State Capitol

Members of the Committee on Finance:

Thank you for the opportunity to provide testimony supporting Senate Bill 2396, SD1, HD2, 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.

This bill will also help alleviate the census problem at the Hawaii State Hospital, so that the hospital may better serve the needs of those in the community who require mental health treatment.

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



**HAWAII'S PROTECTION AND ADVOCACY SYSTEM FOR PEOPLE WITH DISABILITIES  
HAWAII'S CLIENT ASSISTANCE PROGRAM**



To: Representative Marcus Oshiro, Chair of the Finance Committee  
and members of the House Finance Committee

March 28, 2008

Dear Members of the House Finance Committee,

I am requesting your support of Senate Bill 2396 HD 2. Please reinsert the language that will make it a class C felony when patients intentionally assault a state health care worker. My name is Lani Tsuneishi and I am a Clinical Nurse Specialist at Hawaii State Hospital. I have worked at this facility since 1992.

I know staff are committed to providing the best care possible, but often are hampered by concerns for their own safety. Staff continually must work in environments where being threatened, injured and assaulted are everyday occurrences.

You read in the newspaper that staff are assaulted and injured in this facility yet why are we not offered some legal protection for providing much needed services to Hawaii's mentally ill population?

When you compare the statistics at our hospital to the national trends, according to the Department of Justice's National Crime Victimization Survey (1993 – 1999) notes that the average annual rate of non-fatal violent crime for all occupations is 12.6 / 1000 workers. For mental health professionals **68.2/1000** and mental health custodians **69/1000!** (Report is available online at <http://www.osha.gov/Publications/OSHA3148.html>.)

This report goes on to say that "As significant as these numbers are, the actual number of incidents is probably much higher. Incidents of violence are likely to be underreported, perhaps due in part to the persistent perception within the health care industry that assaults are **part of the job.**" (Report is available online at <http://www.osha.gov/Publications/OSHA3148.html>.)

This DOJ Survey also points out risk factors where assaults will continue to escalate:

- ✓ Most of our patients come from the jail and court system. The court sends them to the hospital but often they do not have psychiatric problems, but substance abuse problems. Ice addiction and long term substance abuse masks and often mimics mental illness. These patients become assaultive and terrorize staff and vulnerable mentally ill patients.
- ✓ Low staffing levels in nursing are likely to continue since the additional incentive to work with this population (called shortage differential) has been cut for new employees.

- ✓ Patients admitted come with more violent criminal history than in the past admissions ( as noted in the most recent high profile cases)
- ✓ Sociopathic patients who know the system and know that intentionally assaulting staff has no consequences.
- ✓ Police do not want to be bothered with staff filing police reports when they are assaulted. This caused several assaulted workers to remark that "filing the police report was worse than being assaulted." Which causes less staff to want to report assaults.
- ✓ Staff mindset and belief that it is part of the job and to "just to take it." Or staff may want to minimize the assault and the impact it may have on them.

Other statistics to be aware of:

- ✓ More than half of all prison and jail inmates have a mental health problem, according to a study published by the Justice Department's Bureau of Justice Statistics (BJS). (2006)  
(available online <http://www.ojp.usdoj.gov/bjs/pub/press/mhppjipr.htm>).
- ✓ Bureau of Labor Statistics (BLS) looked at violent Acts resulting in days away from work and noted the **source of injury** was 45% by a health care patient (1992) available online <http://www.cdc.gov/niosh/violnonf.html>.
- ✓ Mental health problems were primarily associated with violence and past criminal activity. <http://www.ojp.usdoj.gov/bjs/pub/press/mhppjipr.htm>).
- ✓ Inmates with a mental health problem also had high rates of substance dependence or abuse in the year before their admission - Justice Department's Bureau of Justice Statistics (BJS). (2006) (available online <http://www.ojp.usdoj.gov/bjs/pub/press/mhppjipr.htm>).

Thank you for your time in passing this important legislative bill and look forward to your response!!

Lani Tsuneishi, RN, MSN  
 808-779-2132  
[Frederici008@hawaii.rr.com](mailto:Frederici008@hawaii.rr.com)