



The Judiciary, State of Hawaii

Testimony to the Twenty-Fourth State Legislature, 2008 Session

House Committee on Health
The Honorable Josh Green, M.D., Chair
The Honorable John Mizuno, Vice Chair

Friday, March 14, 2008, 8:30 a.m.
State Capitol, Conference Room 329

by

Dee Dee Letts
First Circuit Treatment Court Coordinator

Bill No. and Title: Senate Bill No. 2396, S. D. 1, Relating to Mental Health.

Purpose: Makes assault of a person employed at a state-operated or contracted mental health facility a class C felony.

Judiciary's Position:

The Judiciary takes no position on Senate Bill No. 2396, S. D. 1.

However, the Judiciary understands that the House Committee on Health may be inserting the substantive language from Senate Bill No. 2160, S. D. 2 to this bill. If this is correct, the Judiciary would like to provide the following comments on Senate Bill No. 2160, S.D.2.

The Judiciary takes no position on the sections of Senate Bill No. 2160, S. D. 2, relating to conditional release and supports the technical language changes and the inclusion of language from Senate Bill No. 3071 submitted by the Department of Health as made by the Senate Committee on Ways and Means. 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.

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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. 2160, S. 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.

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

In reply, please refer to:
File:

House Committee on Health

ADDENDUM TESTIMONY to S.B. 2396, S.D.1

On Substantive Contents of S.B. 2160, S.D. 2

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

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.

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

5 **Purpose and Justification:** The SCR 117 taskforce was convened in September 2006 by the Governor
6 under the joint direction of Senator Rosalyn Baker and Representative Josh Green. The taskforce
7 included members of the Department of Health (DOH), Adult Mental Health Division (AMHD), Hawaii
8 State Hospital (HSH), the judiciary, probation, community hospitals, police, sheriffs, Department of
9 Public Safety (PSD), consumer rights advocates, consumers, and others. SCR 117 was developed to
10 identify changes in statute, procedure, and public policy that could reduce the census at HSH. The
11 department refers the committee to www.amhd.org/SCR117 to review the final report that was
12 submitted to the 2007-2008 Legislature. SB 2160 was developed with some of those recommendations
13 included. The department is supportive of the S.D. 2 amendments made by the Senate to this measure,
14 which has incorporated language from S.B. 3070 and S.B. 3071, two administrative proposals which
15 were also based on recommendations by the SCR 117 task force.

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

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

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

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

21 **Section 5 (1)** provides statutory guidance and clarification on the seventy-hour (72) hour hold
22 and extended hold process as it relates to patients under Conditional Release from the Hawaii State
23 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)** will enable the Director of the Department of Health to petition the court in
14 appropriate cases, on behalf of any individual served by the DOH, for legal discharge from Conditional
15 Release (CR). Persons on CR are released by the courts to be discharged from the custody of the
16 Department of Health, including but not limited to Hawaii State Hospital, back into the community. In
17 the community, persons on CR continue to be supervised jointly by both the Adult Mental Health
18 Division of the DOH and the Adult Client Services Branch of the Judiciary. Currently, the State of
19 Hawaii has more than 400 people in the community on CR. To include CR consumers who are in a
20 hospital setting, the number balloons to more than 500. This is the largest number of CR consumers per
21 capita in the nation. Only one other state, Ohio with 550, has been identified as having more consumers
22 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.

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HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME LOCAL 152, AFL-CIO

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

Testimony by
HGEA/ AFSCME, Local 152, AFL-CIO
March 14, 2008

**S.B. 2396, SD 1 (SSCR2880) -
RELATING TO MENTAL HEALTH**

The Hawaii Government Employees Association, Local 152, AFL-CIO supports S.B. 2396, SD 1 (SSCR2880). This bill proposes to make it a Class C Felony to assault a health care worker.

HGEA represents members of various classifications at the Hawaii State Hospital (HSH). Approximately 90 percent of patients admitted to HSH are forensic patients who had been referred from the correctional facilities. They are violent and have a propensity to assault others. Recently several of our members employed at the hospital have sustained injuries while performing their duties and responsibilities at work. This law would assist in providing our employees a safer working environment as the perpetrators would now be subject to a stiff penalty, a Class C Felony.

We respectfully request your committee pass S.B. 2396, SD 1 (SSCR2880). Thank you for the opportunity to submit our testimony in support of this bill.

Respectfully Submitted,

Nora A. Nomura
Deputy Executive Director

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THE QUEEN'S MEDICAL CENTER

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HOUSE COMMITTEE ON HEALTH

Representative Josh Green, M.D., Chair
Representative John Mizuno, Vice Chair

Friday, March 14, 2008 – 8:30 a.m.
State Capitol, Conference Room 329
Deliver to: Room 436, 5 copies

In Support with Amendments of SB 2396 SD1, Relating to Mental Health

Chair Green, Vice Chair Mizuno, and Members of the Committee:

My name is Karen Schultz, and I am the Vice President of Patient Care/Behavioral Health Services, Surgical Services, & Trauma at The Queen's Medical Center. I am testifying for The Queen's Medical Center in support for Senate Bill 2396 SD1, which makes assault of a person employed at a state-operated or -contracted mental health facility a class C felony.

We respectfully request that the measure be amended to include assaults on persons employed at private mental health facilities. The Queen's Medical Center is the largest private, non-profit provider of mental health services in the State of Hawaii. During 2007, QMC had 1400 inpatient admissions and over 20,000 outpatient visits for patients with mental health conditions. We see these services as filling a critical need in the state and part of our mission to take care of the people of Hawaii. And we believe that our employees, and those in other private mental health facilities, deserve equal protection from assault.

I strongly urge you to support Senate Bill 2396 SD1 with the requested amendment. Thank you for this opportunity to testify.

To: Representative Josh Green, Chair of the Senate Health Committee
Representative John Mizuno, Co-Chair
Representative Karen Leinani Awana
Representative Della Au Bellatti
Representative Joe Bertram
Representative Rida T.R. Cabanilla
Representative Maile S.L. Shimabukuro
Representative James Kunane Tokioka
Representative Gene Ward

March 13, 2008

Dear Members of the House Health Committee,

I am requesting your support of Senate Bill 2396 SD 1. This bill 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 am sorry I am unable to present this in person.

Hawaii State Hospital provides innovative services to a difficult population of patients that mostly all come from our penal system because they have a mental illness and or substance abuse record. 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.

Reportable injuries have decreased at the hospital since March 2007, which are the number of assaults as well as the level of severity despite the growing patient population (that was addressed in the Senate Concurrent Resolution Task Force 117.)

I believe there are several issues here that have contributed to the decrease in staff assaults by patients:

- ✓ Administration had convened a Assault task force at the hospital to look at this issue and have included all levels of staff.
- ✓ Dept of Health administration last year has met with staff on their concerns for their own safety.
- ✓ On site cameras and alarm devices for staff
- ✓ Response teams (like a SWAT team)
- ✓ Encourage workers to promptly report incidents and suggest ways to reduce the risks.
- ✓ The hospital also has had a clinical safety committee that continues to look at the issues of violence.
- ✓ The Risk Management dept at the hospital continues to track the assault numbers.

Other statistics to be aware of:

- ✓ More than half of all prison and jail inmates, including 56% of state prisoners, 45% of federal prisoners and 65% of local jail inmates were found to 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/mhppijpr.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. An estimated 61 percent of state prisoners and 44 percent of jail inmates who had a mental health problem had a current or past **violent** offense. About a quarter of both state prisoners (25 percent) and jail inmates (26 percent) had served three or more prior sentences to incarceration. Justice Department's Bureau of Justice Statistics (BJS). (2006) (available online <http://www.ojp.usdoj.gov/bjs/pub/press/mhppijpr.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/mhppijpr.htm>).

Thank you for your time in passing this important legislative bill and look forward to your response!! We agree that HRS 707-711 that provides class c felony protection to correctional officers, educational workers, and emergency medical technicians should also include the state health care workers, who's focus is in health care and providing treatment!

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