



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

Tuesday, February 26, 2008, 9:45 a.m.
State Capitol, Conference Room 016

by
Janice Yamada
Adult Client Services Branch Administrator

Bill No. and Title: Senate Bill No. 3070, S.D. 1, Relating to Conditional Release

Purpose: Provides statutory guidance and clarification on the seventy-two (72) hour hold and extended hold process, especially as it relates to patients under Conditional Release (CR) from the State Hospital or related facility.

Judiciary's Position:

The Judiciary supports Senate Bill No. 3070, S.D. 1, which allows the court to order further temporary hospitalization (not to exceed ninety days and subject to extension for no longer than one year) for conditionally-released individuals committed to the hospital for seventy-two hours pursuant to HRS Section 704-413. Many conditionally-released individuals experience the need for re-stabilization in a hospital setting. Adoption of the proposed change would allow the individual to remain in the hospital as long as necessary but would provide the flexibility to hold a hearing whenever appropriate. This flexibility would benefit the mental health consumer, as well as allow the Department of Health to avoid unnecessary utilization of expensive and limited hospital resources. The extended hospitalization would avoid the need for revocation of conditional release in many cases, thereby providing significant time savings for the Judiciary's Adult Client Services Division which must submit affidavits and reports for those revocations. It would also avoid the time and considerable expense of the three-panel (felony) or one-panel (misdemeanor) evaluations required for release following a revocation of Conditional Release. The process still allows for revocation in those cases where extended hospitalization is considered appropriate.

Thank you for the opportunity to provide testimony on this matter.



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

S.B. 3070, S.D. 1, RELATING TO CONDITIONAL RELEASE

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

February 26, 2008, 9:45 a.m.

1 **Department's Position:** The Department strongly supports this Administration-sponsored measure.

2 **Fiscal Implications:** No general fund expenditure. However, there may be impact on Judiciary
3 personnel and expenses.

4 **Purpose and Justification:** This proposal is based on a recommendation by the task force
5 organized as a result of Senate Concurrent Resolution No. 117, Regular Session of 2006. In
6 consultation with key members of the SCR 117 task force, for the committee's consideration, the
7 Department has attached a proposed draft containing various technical amendments for consistency
8 purposes.

9 This measure provides statutory guidance and clarification on the seventy-hour (72) hour hold
10 and extended hold process as it relates to patients under Conditional Release (CR) from the Hawaii State
11 Hospital (HSH) or related facility.

12 It is important to understand that Conditional Release revocation is not the same as a 72-hour
13 hold or extended hold. Conditional Release revocation mandates the commitment of an individual back
14 to the custody of the director of health for at least ninety-days, as outlined in Section 704-412, Hawaii
15 Revised Statutes. A 72-hour hold mandates a maximum of 72 hours in DOH care and custody, followed
16 by a hearing at which the court may extend the hold for additional amounts of time. Any extension is

1 considered an extended hold. Courts or treatment teams that may not understand the difference may
2 recommend a CR revocation when a 72-hour hold or extended hold may have addressed the clinical and
3 supervision needs in a more timely and cost-effective manner. Creating explicit language in the statute
4 should assist in providing this clarification for treatment teams or courts.

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

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

S.B. 3070, S.D. 2 - Proposed

Relating to Conditional Release

SECTION 1. 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 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 granted conditional release. The probation officer may order the [~~conditionally released~~] 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) ~~[-]~~; provided that at 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 (3) should be conducted.

(2) Any person ~~[released]~~ granted conditional release pursuant to section 704-411 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, to the person's treating mental health professionals, and to ~~[any persons]~~ the probation officer supervising the conditional 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) If, at any time after the order pursuant to section 704□411 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~~[r]~~i; 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."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME LOCAL 152, AFL-CIO
888 MILILANI STREET, SUITE 601 • HONOLULU, HAWAII 96813-2991



Randy Perreira *Executive Director*
Tel: 808 543-0011 Fax: 808 528-0922

Nora A. Nomura *Deputy Executive Director*
Tel: 808 543-0003 Fax: 808 528-0922

Derek M. Mizuno *Deputy Executive Director*
Tel: 808 543-0055 Fax: 808 523-6879



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

Testimony by
HGEA/AFSCME, Local 152, AFL-CIO
February 26, 2008

**S.B. 3070 (SD1) - RELATING
TO CONDITIONAL RELEASE**

The Hawaii Government Employees Association, Local 152, AFL-CIO supports S.B. 3070 (SD1). This bill proposes to provide guidance and clarification of the seventy-two (72) hour hold and extended hold process related to patients under conditional release from the Hawaii State Hospital or a related facility.

Currently, a person granted a conditional release is required to follow all prescribed treatments. If this individual's probation officer determines the plan is not be adhered to, the probation officer may order that the person be hospitalized for a period not to exceed seventy-two (72) hours. This bill allows the court the ability to conduct a hearing at or before the expiration of the seventy-two (72) hour limit to determine if the patient would benefit from further hospitalization. If the court is satisfied, the court may order additional hospitalization for a period not to exceed ninety (90) days. This ninety (90) day period may be further extended but shall not exceed one year.

The language in this bill would protect the public from patients who may need additional hospitalized care after being conditionally released. This bill would also provide the patient additional medical care as needed.

We urge passage of S.B. 3070 (SD1) from your committee. Thank you for the opportunity to submit our testimony in support of this bill.

Respectfully Submitted,

Nora A. Nomura
Deputy Executive Director

