

**LATE**

LINDA LINGLE  
GOVERNOR OF HAWAII



CHIYOME LEINAALA FUKINO, M.D.  
DIRECTOR OF HEALTH

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. 3071, 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.

3 **Purpose and Justification:** This proposal is based on a recommendation by the task force  
4 organized as a result of Senate Concurrent Resolution 117, Session Laws of Hawaii 2006. In  
5 consultation with key members of the SCR 117 task force, for the committee's consideration, the  
6 Department has attached a proposed draft containing various technical amendments for consistency  
7 purposes.

8 This measure will enable the Director of the Department of Health (DOH) to petition the court in  
9 appropriate cases, on behalf of any individual served by the DOH, for legal discharge from conditional  
10 release (CR). Persons on CR are released by the courts to be discharged from the custody of the DOH,  
11 including but not limited to Hawaii State Hospital, back into the community. In the community, persons  
12 on CR continue to be supervised jointly by both the Adult Mental Health Division of the DOH and the  
13 Adult Client Services Branch of the Judiciary. Currently, the State of Hawaii has more than 400 people  
14 in the community on CR. To include CR consumers who are in a hospital setting, the number balloons  
15 to more than 500. This is the largest number of CR consumers per capita in the nation. Only one other  
16 state, Ohio with 550, has been identified with more consumers on 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 their  
2 life. More than half of the states with CR statutes similar to Hawaii's have a time limit on CR. Some  
3 states have a prescribed limit (no more than 5 years, for example) while others have a time frame  
4 equivalent to the maximum time that the individual would have otherwise served in jail or probation.  
5 However, in Hawaii, CR is an indefinite commitment. For example, 3% of Hawaii's misdemeanor CR  
6 cases have been on CR for more than 20 years—crimes that would have otherwise carried a sentence of  
7 no more 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 are no longer 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) An individual's exposure to court-directed hospitalization is limited. Under current  
16 practice, many cases results in extended hospitalization considerably beyond what is  
17 clinically determined to be necessary. When a person is on conditional release, it is  
18 possible for the individual to be readmitted to inpatient care based on violations of  
19 conditional release orders which are no longer clinically necessary. In such instances,  
20 individuals do not need, nor meet clinical criteria for, inpatient hospital care, but will  
21 remain hospitalized for the duration of the legal proceedings. The hospitalization of  
22 these individuals thereby contributes to a higher inpatient census.

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

## S.B. 3071, 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)-.]~~ (4).

(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, or section 704-412, 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)~~] (4) If, at any time after the order pursuant to section 704-411, or section 704-412, 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[~~τ~~];  
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.