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## A BILL FOR AN ACT

RELATING TO CONDITIONAL RELEASE.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The purpose of this Act is to establish a  
2 tolling provision when a defendant charged with a petty  
3 misdemeanor, misdemeanor, or violation is granted conditional  
4 release on grounds of physical or mental defect.

5           SECTION 2. Section 704-411, Hawaii Revised Statutes, is  
6 amended by amending subsection (1) to read as follows:

7           "(1) When a defendant is acquitted on the ground of  
8 physical or mental disease, disorder, or defect excluding  
9 responsibility, the court, on the basis of the report made  
10 pursuant to section 704-404, if uncontested, or the medical or  
11 psychological evidence given at the trial or at a separate  
12 hearing, shall order that:

13           (a) The defendant shall be committed to the custody of the  
14 director of health to be placed in an appropriate  
15 institution for custody, care, and treatment if the  
16 court finds that the defendant:

17                   (i) Is affected by a physical or mental disease,  
18                   disorder, or defect;



- 1           (ii)   Presents a risk of danger to self or others;
- 2                   and
- 3           (iii)   Is not a proper subject for conditional
- 4                   release;

5           provided that the director of health shall place  
6           defendants charged with misdemeanors or felonies not  
7           involving violence or attempted violence in the least  
8           restrictive environment appropriate in light of the  
9           defendant's treatment needs and the need to prevent  
10          harm to the person confined and others. The county  
11          police departments shall provide to the director of  
12          health and the defendant, copies of all police reports  
13          from cases filed against the defendant that have been  
14          adjudicated by the acceptance of a plea of guilty or  
15          nolo contendere, a finding of guilt, acquittal,  
16          acquittal pursuant to section 704-400, or by the entry  
17          of a plea of guilty or nolo contendere made pursuant  
18          to chapter 853, so long as the disclosure to the  
19          director of health and the defendant does not  
20          frustrate a legitimate function of the county police  
21          departments; provided that expunged records, records  
22          of or pertaining to any adjudication or disposition



1 rendered in the case of a juvenile, or records  
2 containing data from the United States National Crime  
3 Information Center shall not be provided. The county  
4 police departments shall segregate or sanitize from  
5 the police reports information that would result in  
6 the likelihood or actual identification of individuals  
7 who furnished information in connection with the  
8 investigation or who were of investigatory interest.  
9 Records shall not be re-disclosed except to the extent  
10 permitted by law;

11 (b) The defendant shall be granted conditional release  
12 with conditions as the court deems necessary if the  
13 court finds that the defendant is affected by physical  
14 or mental disease, disorder, or defect and that the  
15 defendant presents a danger to self or others, but  
16 that the defendant can be controlled adequately and  
17 given proper care, supervision, and treatment if the  
18 defendant is released on condition. For any defendant  
19 granted conditional release pursuant to this  
20 paragraph, and who was charged with a petty  
21 misdemeanor, misdemeanor, or violation, the period of



1 conditional release shall be no longer than one  
2 year[+], subject to the following tolling provisions:

3 (i) Upon the filing of a motion to revoke  
4 conditional release or a motion to modify  
5 the conditions imposed thereby, the period  
6 of conditional release shall be tolled  
7 pending the hearing upon the motion and the  
8 decision of the court. The period of  
9 tolling shall be computed from the filing  
10 date of the motion, through and including  
11 the filing date of the written order of the  
12 court concerning the motion, for purposes of  
13 computation of the remaining period of  
14 conditional release, if any. During the  
15 period of tolling of conditional release,  
16 the defendant shall remain subject to all  
17 terms and conditions of conditional release,  
18 except as otherwise provided by this  
19 chapter; and

20 (ii) If the court, following hearing, refuses to  
21 revoke the conditional release or grant the  
22 requested modification, the defendant may be



granted the period of tolling of conditional  
release for purposes of computation of the  
remaining conditional release, if any; or

(c) The defendant shall be discharged if the court finds that the defendant is no longer affected by physical or mental disease, disorder, or defect or, if so affected, that the defendant no longer presents a danger to self or others and is not in need of care, supervision, or treatment."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

INTRODUCED BY:

*Calvin K. Ay*

BY REQUEST

JAN 13 2012



# H.B. NO. 1797

**Report Title:**

Judiciary Package; Conditional Release; Tolling

**Description:**

Requires tolling of one-year conditional release period upon filing of motion for revocation of conditional release or motion to modify conditions.

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