



The Judiciary, State of Hawaii

Testimony to the House Committee on Finance

Representative Marcus R. Oshiro, Chair
Representative Marilyn B. Lee, Vice Chair

Thursday, February 23, 2012, 6:00 p.m.
State Capitol, Conference Room 308

by

Cheryl R. Marlow
Administrator
Adult Client Services Branch
Circuit Court of the First Circuit

Bill No. and Title: House Bill No. 1797, H.D. 1, Relating to Conditional Release.

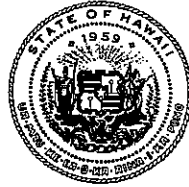
Purpose: To require tolling of one-year conditional release for a ninety day period commencing upon service of a motion for revocation of conditional release or motion to modify conditions.

Judiciary's Position:

The Judiciary strongly supports House Bill No. 1797 which is part of the Judiciary's 2012 legislative package. The bill identifies that recent amendments to the conditional release statute resulted in conditional release for petty misdemeanors and misdemeanors to be only one year long. As such, it is unclear what happens to the time period when a motion to revoke conditional release or a motion to modify conditions is filed.

Due to increased caseloads, a hearing on a motion to revoke may take anywhere from a month to up to two years to be heard, especially if the defendant cannot be served who is on bench warrant status. If the time period is not tolled the one year would quickly elapse. Conditions of probation are analogous to conditions of conditional release. 706-627, HRS expressly provides in similar language a tolling provision.

Thank you for the opportunity to testify on House Bill No. 1797.



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

In reply, please refer to:
File:

House Committee on Finance

HB 1797, HD1, Relating to Conditional Release

**Testimony of Loretta J. Fuddy, A.C.S.W., M.P.H.
Director of Health**

February 23, 2012

1 **Department's Position:** The Department of Health (DOH) opposes this measure.

2 **Fiscal Implications:** No funds are appropriated; the average cost to DOH will be \$450 per month for
each consumer extended by tolling, to provide the services mandated by the terms of conditional release.

4 **Purpose and Justification:** This measure requires tolling of the one-year conditional release period
5 upon filing of a motion for revocation of conditional release or a motion to modify conditions. The
6 provision in last year's Act 99 for a one year duration of conditional release for defendants subject to
7 HRS, section 704-411, who were charged with a petty misdemeanor, misdemeanor, or violation, was
8 intentional. The tolling provision, if enacted, would extend the term of the conditional release beyond
9 the one year time period.

10 We understand that in HRS section 706-627, there is a tolling provision which is applicable upon
11 the filing of a motion to revoke probation. It is the department's position that individuals on conditional
12 release are not equivalent to those on probation, as they have not been convicted by the criminal justice
13 system. They are individuals with mental illness, not convicted, but acquitted or found not guilty due to
14 their mental illness. Conditional release is intended to be different from probation, to assure that

1 services and treatment continue. It is not meant to be a punishment. The intent of Act 99 was to have
2 those individuals described in its provisions be on conditional release for one-year total.

3 The department is especially concerned about the impact of any tolling provision in those
4 instances where the petition to a court for modification of conditional release decreases the amount or
5 lessens the severity of the conditions placed on an individual because they have made clinical progress.
6 This may have inadvertently been left out of the bill's language, but the department especially does not
7 support tolling in these situations.

8 The department notes that HD1 contains a provision for a tolling period not to exceed 90 days.
9 However, the original provision for a one-year time duration was the department's intent, and extending
10 this time for 90 more days is not supported.

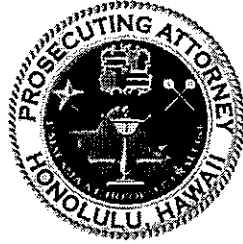
11 We also note, appreciate, and support the modification included in section 1 (b) (ii), where HD1
now reads: "If the court, following hearing, refuses to revoke the conditional release or grant the
13 requested modification, the defendant shall be granted the period of tolling of conditional release for
14 purposes of computation of the remaining conditional release, if any."

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

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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THE HONORABLE MARCUS R. OSHIRO, CHAIR
HOUSE COMMITTEE ON FINANCE
Twenty-Sixth State Legislature
Regular Session of 2012
State of Hawai`i

February 23, 2012

RE: H.B. 1797, H.D.1; RELATING TO CONDITIONAL RELEASE.

Chair Oshiro, Vice Chair Lee, and members of the House Committee on Finance, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in support of H.B. 1797, H.D. 1.

Under section 704-411, Hawaii Revised Statutes, any defendant granted conditional release pursuant to this paragraph, and who was charged with a petty misdemeanor, misdemeanor, or violation, the period of conditional release shall be no longer than one year.

Under this measure, upon the filing of a motion to revoke conditional release or a motion to modify the conditions imposed thereby, the period of conditional release shall be tolled pending the hearing upon the motion and the decision of the court. The period of tolling shall be computed from the filing date of the motion, through and including the filing date of the written order of the court concerning the motion, for purposes of computation of the remaining period of conditional release, if any. During the period of tolling of conditional release, the defendant shall remain subject to all terms and conditions of conditional release, except as otherwise provided by this chapter. If the court, following hearing, refuses to revoke the conditional release or grant the 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.

With the challenges of maneuvering numerous cases in the court process, and limited staff and resources in both the courts and the Department of the Prosecuting Attorney of the City and County of Honolulu as well as the other prosecuting attorney departments throughout the state, tolling tolling of one-year conditional release period upon filing of motion for revocation of conditional release or motion to modify conditions will help the department ensure the public is protected.

For this reason, the Department of the Prosecuting Attorney of the City and County of Honolulu strongly supports the passage of H.B. 1797, H.D. 1. Thank you.

FINTestimony

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 22, 2012 8:17 AM
To: FINTestimony
Cc: nona@pickering.net
Subject: Testimony for HB1797 on 2/23/2012 6:00:00 PM

Testimony for FIN 2/23/2012 6:00:00 PM HB1797

Conference room: 308
Testifier position: Oppose
Testifier will be present: No
Submitted by: Nona Pickering
Organization: Individual
E-mail: nona@pickering.net
Submitted on: 2/22/2012

Comments: