

SB2055



The Judiciary, State of Hawaii

Testimony to the Senate Committee on Judiciary and Labor

Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

Friday, February 10, 2012, 10:00 a.m.
State Capitol, Conference Room 016

by

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Administrator
Adult Client Services Branch
Circuit Court of the First Circuit

Bill No. and Title: Senate Bill No. 2055, Relating to Conditional Release.

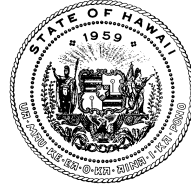
Purpose: To establish a tolling provision when a defendant has been acquitted on the grounds of physical or mental defect charged with a petty misdemeanor, misdemeanor, or violation and granted conditional release.

Judiciary's Position:

The Judiciary strongly supports Senate Bill No. 2055 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 Senate Bill No. 2055.



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. 2055, Relating to Conditional Release

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

February 10, 2012

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

2 **Fiscal Implications:** No funds are appropriated; however, the costs to the DOH would be substantial if
3 this measure is passed, due to the expense of continuing services for those affected by any extensions of
4 conditional release time.

5 **Purpose and Justification:** The purpose of this measure requires tolling of one-year conditional release
6 period upon filing of motion for revocation of conditional release or motion to modify conditions. The
7 department supported and continues to support the intent of the statutory changes made last year to
8 Hawaii Revised Statutes (HRS) section 704-411, in Act 99, which limited the time to one year on
9 conditional release. We do not support activity which might extend that term beyond one year. The
10 provision for a one year duration for conditional release of defendants subject to HRS, section 704-411,
11 who were charged with a petty misdemeanor, misdemeanor, or violation, was intentional. The tolling
12 provision, if enacted, could extend the term of the conditional release beyond the one year time period.

13 HRS section 704-413 currently provides for modification of conditional release, or termination
14 of conditional release and commitment. If conditional release is terminated and the person is committed
15 to the care and custody of the director of health, the conditional release ends until it is ordered again.

1 The one year provision will start anew when the new order is issued. Modification of conditional
2 release should not result in an extension of the term of that release, especially in those instances where a
3 modification of conditional release decreases the amount or severity of conditions placed on the
4 individual.

5 The department does not support this measure. However, if it should proceed forward, we
6 recommend the following amendment for the committee's consideration. In section 1 (b) (ii), the
7 measure states "If the court, following hearing, refuses to revoke the conditional release or grant the
8 requested modification, the defendant **may** be granted the period of tolling of conditional release for
9 purposes of computation of the remaining conditional release, if any;" we recommend that the word
10 "may" be changed to "shall."

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

**Testimony of the Office of the Public Defender, State of Hawaii,
to the Senate Committee on Judiciary and Labor**

February 10, 2012

S.B. No. 2055: RELATING TO CONDITIONAL RELEASE

Chair Hee and Members of the Committee:

We have concerns about S.B. No. 2055 which provides for the tolling of misdemeanor and petty misdemeanor conditional release periods upon the filing of a motion for revocation of conditional release. The concern is that this measure would toll the running of the conditional release period upon filing of the motion whereupon the motion could remain dormant for an indefinite period of time until the violator is apprehended and brought before the court.

It is our understanding that the district court, which has jurisdiction over misdemeanor cases currently suffers from a bench warrant service backlog in the tens of thousands. This measure is likely to simply add to that backlog because it contains no provision regarding urgency of service of the motion and apprehension of the violator. If a person is violating terms of his/her conditional release, he/she should be promptly brought before the court to answer to the violations. This bill should contain a time limitation for service of the motion to revoke on the violator and for a prompt hearing.

Thank for the opportunity to comment on this measure.