



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

In reply, please refer to:
File:

House Committee on Health

H.B. 0910, Relating to Forensic Mental Health

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

February 13, 2013, 8:30 a.m.

1 **Department's Position:** The Department of Health (DOH) strongly supports this bill.

2 **Fiscal Implications:** Although positive fiscal impacts are not the primary focus of this bill, a
3 continuation in the increased rate of admissions to the Hawaii State Hospital (HSH) is possible if this
4 measure is not adopted, and concomitant increased expenditures and pressure on the HSH budget.

5 **Purpose and Justification:** This bill proposes statutory changes, which are the result of the Governor's
6 Special Action Team (SAT) recommendations. The SAT was convened by Governor Abercrombie in
7 the summer of 2012 in response to an increase in the rate of admissions to the HSH. The SAT met over
8 the course of three months, with participation by a statewide panel comprised of representatives from the
9 governor's office, executive branch departments (Attorney General, Health, Human Services, Public
10 Safety, Human Resources Development, Budget and Finance) the judiciary, the offices of the
11 prosecutors of each county, the office of the public defender, chiefs of police of each county, community
12 mental health consumers, providers and advocates. The work of the group was focused on three areas:
13 1) Personnel/Finance/Procurement; 2) Program Capacity/Clinical Operations; 3) Legal/Judicial. In
14 addition to community based service delivery and interagency collaboration actions, the SAT has four
15 recommendations for statutory changes. One proposed change is a new amendment to 704-404 and

1 three proposed changes are housekeeping measures intended to clarify an amendment made to HRS 704-
2 411, during the 2011 Legislative session by Act 99. The four proposed changes are included and
3 incorporated into this single bill.

4 The new proposed change amends §704-404 to mandate that all public agencies provide records
5 to the court regarding individuals undergoing fitness examinations ordered by that court. The
6 amendment should result in helping to shorten the length of hospitalization at HSH due to delays in
7 receiving required information in a timely manner needed by the courts. Most providers of medical care
8 currently cannot provide their records without a consent from the defendant and many defendants do not
9 consent. This amendment would make the disclosure required by law, and therefore, eliminate other
10 confidentiality legal impediments to releasing the information. This proposal will make the Judge's
11 order for evaluation to also be an order requiring and assembling information relevant to the evaluation;
12 the impact of this change will be to shorten the length of legal proceedings as the necessary records will
13 be submitted to court in a timely manner, and thereby shorten lengths of stay for patients at HSH.

14 The first of three housekeeping measures intended to clarify the statutes is an amendment of
15 §704-411 and §704-412, to specify the time duration of conditional release in cases of misdemeanors,
16 petty misdemeanors, and violations. Hawaii is unusual compared to other states in providing conditional
17 release, at all, given a misdemeanor or more minor charge. This aligns the length of time on conditional
18 release with the maximum length of time an individual could be on probation, given a misdemeanor or
19 more minor charge and a finding of guilt.

20 The second of three housekeeping measures amends §704-413 to include a tolling provision to
21 be in effect during a hospitalization subsequent to a violation of conditional release in cases of
22 misdemeanors, petty misdemeanors, and violations; time spent in the hospital will not count towards the
23 one year limit. This part of the measure is in the interest of fairness and equitable treatment, and to

1 provide assurance that an individual on conditional release, who is not complying with the terms, will
2 have their conditional release extended, for the period of time they are in the hospital.

3 And the third of three housekeeping measures would clarify that when a person's conditional
4 release is revoked due to noncompliance, the one year is terminated. If that person is subsequently
5 placed back on conditional release, the length of that conditional release will be one year.

6 Thank you for the opportunity to testify on this bill.



The Judiciary, State of Hawai‘i

Testimony to the House Committee on Health

Representative Della Au Belatti, Chair
Representative Dee Morikawa, Vice Chair

Wednesday, February 13, 2013, 8:30 a.m.
State Capitol, Conference Room 329

By

Cheryl Marlow
Adult Client Services Branch Administrator

Bill No. and Title: House Bill No. 910, RELATING TO FORENSIC MENTAL HEALTH

Purpose: To make statutory changes to establish limits on the length of time an individual may remain on conditional release if charged with a misdemeanor, petty misdemeanor, or violation. To clarify under what circumstances the one-year conditional release status may be tolled. It also would require public agencies in possession of information about the defendant to provide that information to the court. These amendments are to assist in reducing the census at the Hawaii State Hospital.

Judiciary's Position:

The Judiciary is in support of this bill pending modification of the bill language to further clarify under what circumstances the one-year conditional release status may be tolled. There is one other circumstance that warrants tolling other than hospitalization that was left out of the bill that needs to be added. The following language below is recommended to replace the SECTION 5 language beginning on page 13 and continuing to page 15 of the bill:

SECTION 5. Section 704-413, Hawai‘i Revised Statutes, is amended
(1) By amending subsection (1) to read as follows:

“(1) Any person granted conditional release pursuant to this chapter 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 a mental health professional who is treating a person granted conditional release believes that 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 person granted conditional release. The probation officer may order the 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 (4); provided that on 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 of conditional release 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 (4) should be conducted. For any defendant charged with a petty misdemeanor, misdemeanor, or violation and granted conditional release pursuant to section 704-411(1)(b), the one-year term of conditional release shall be tolled:

- (a) During any period of hospitalization ordered pursuant to this section; and
- (b) In the case of a motion to revoke conditional release, from the filing date of the motion to the date of its determination by the court."

Thank you for the opportunity to testify on House Bill No. 910.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2013**

ON THE FOLLOWING MEASURE:

H.B. NO. 910, RELATING TO FORENSIC MENTAL HEALTH.

BEFORE THE:

HOUSE COMMITTEE ON HEALTH

DATE: Wednesday, February 13, 2013 **TIME:** 8:30 a.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): David M. Louie, Attorney General, or
Andrea J. Armitage, Deputy Attorney General

Chair Belatti and Members of the Committee:

As a member of the Governor's Special Action Team on the Hawaii State Hospital census, and a member of its Legal/Judicial subcommittee, the Department of the Attorney General would like to take this opportunity to explain the provisions of this bill.

This measure would amend chapter 704, Hawaii Revised Statutes (HRS) (the mental health forensic chapter), to promote shorter stays in the Hawaii State Hospital for patients awaiting forensic examinations, and by putting time limits on state oversight of persons on conditional release for relatively minor crimes. The bill would accomplish this in the following ways:

1. It would amend section 704-404, HRS, to require all public agencies in possession of health, police, and other pertinent records of defendants ordered to be evaluated for fitness or penal responsibility, to provide those records to the court irrespective of any other state confidentiality statute. This will clearly assist court examiners by giving them the background documents on a defendant to be evaluated without undue delay. Currently, the state mental health confidentiality statute, section 334-5, HRS, allows disclosure of mental health records only by consent, court order, or as required by law. This amendment would require by law the disclosure of records necessary for the evaluations.
2. The measure would correct a drafting error in Act 99, Session Laws of Hawaii (SLH) 2011, which amended section 704-411, HRS, to limit to a maximum of one year the length of conditional release for defendants charged with petty misdemeanors,

misdemeanors, or violations and acquitted by reason of physical or mental disease, disorder, or defect excluding responsibility. The intent of this 2011 amendment was to create parity with similarly situated defendants who are convicted of the same offense. Those convicted defendants may be sentenced to a maximum of only one year of prison or probation. However, under the Act 99 amendment, the current statute applies the one-year limitation only to one specific paragraph, the one that pertains to defendants who are put on conditional release at the same hearing at which they are acquitted of the charge. Any person acquitted and committed to the Hawaii State Hospital and then later placed on conditional release is not eligible for the one-year limitation. This bill would correct that oversight by making it clear in each section of chapter 704 that provides for an order of conditional release (along with section 704-411, sections 704-412 and 704-415, HRS, also contain provisions allowing the court to order the defendant to be placed on conditional release), that if the alleged crime was a misdemeanor, petty misdemeanor, or violation, the period of conditional release would be no longer than one year.

3. The bill would clarify that if a person placed on a one-year limited conditional release is returned to the Hawaii State Hospital due to violations of that conditional release, the one-year period would be tolled while the person is hospitalized. In other words, the clock stops pending the person's time in the hospital and will start up again at the point at which it stopped when the person is released back to the community.
4. The measure would clarify that if a person violates conditional release and is placed back at the Hawaii State Hospital, and subsequently the person's conditional release is revoked, the one-year period ends (it is not tolled). If that person is put on conditional release again in the future, a new one-year period will start to run at that time.

Thank you for the opportunity to testify. We would be happy to answer any questions you may have on this measure.



HAWAII DISABILITY RIGHTS CENTER

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THE HOUSE OF REPRESENTATIVES THE TWENTY-SEVENTH LEGISLATURE REGULAR SESSION OF 2013

Committee on Health Testimony in Support of H.B. 910 Relating to Forensic Mental Health

**Wednesday, February 13, 2013, 8:30 A.M.
Conference Room 329**

Chair Belatti and Members of the Committee:

The Hawaii Disability Rights Center testifies in support of this bill.

The purpose of the bill is to establish a one year limit that an individual could remain on a post acquittal conditional release when the offense charged was a petty misdemeanor, misdemeanor or violation. Conditional release occurs for defendants found not guilty by reason of mental disease, disorder or defect. After such an acquittal, defendants can either be confined to an institution or placed in the community on "conditional release", which, as the term implies, requires that they adhere to a variety of conditions pertaining to mental health treatment, medications and conduct.

In Hawaii, "conditional release" tends to become a lifetime status because it is ordered for an indefinite period and for any level of offense. The result is that many such individuals remain subject to the terms of the conditional release and at risk of being in violation of its terms (and therefore subject to confinement at the state hospital) for a period of time far in excess of the maximum penalty allowed for the offense charged. This results in a disproportionate infringement upon their liberty, as well as an inefficient allocation of resources in the penal system and at the state hospital.

We feel this bill takes a sound approach. Since many of the crimes for which these individuals are placed on conditional release are minor in nature, and since data from the Department of Health indicates that most of these individuals actually pose little risk to the public, there is no reason to retain and monitor these individuals on conditional release for prolonged periods of time. Certainly it is unfair to the individual and represents both a needlessly punitive approach to addressing that individual, as well



HAWAII'S PROTECTION AND ADVOCACY SYSTEM FOR PEOPLE WITH DISABILITIES
HAWAII'S CLIENT ASSISTANCE PROGRAM

CAP

as a poor use of resources otherwise needed to address mental health needs as well as public safety in our community. For all those reasons, this bill is very sensible from the perspective of conserving penal resources as well as appropriate, humane treatment towards individuals with disabilities.

We would also like to point out that this provision passed the Legislature as Act 99 of the 2011 session and but for a “technical” defect in the bill would be implemented as the current law. For that reason, we would hope that this Legislature might view this portion of the bill as a “housekeeping” measure, as opposed to completely revisiting the underlying policy issue.

We do wish to comment, additionally, on the proposal contained on page 9, lines one through five, which would mandate that all records of the individual be provided to the court, notwithstanding any other law. Certainly, we support an expedited examination process. Delay serves no benefit and most of all it is not in the interest of the individual who is being examined to be in limbo. However, we do wonder if the current language of the bill may be overly broad. If the psychologist or psychiatrist is examining the individual for the purpose of determining fitness to proceed, the best evidence presumably is the individual's current condition. If the issue is mental competence at the time of the commission the offense, then certainly mental health records which are contemporaneous in time are probative. Yet, this provision would command that all records be provided, including those that may be so remote in time as to be irrelevant. We would suggest that the legislature and the administration look at whether this language needs to be clarified, so that irrelevant, outdated information, which might otherwise be precluded by existing privacy laws, will not become part of the record.

Thank you for the opportunity to testify in support of this measure.