



The Judiciary, State of Hawaii

Testimony to the House Committee on Judiciary

Representative Karl Rhoads, Chair
Representative Sharon E. Har, Vice Chair

Thursday, April 04, 2013, 2:00 p.m.
State Capitol, Conference Room 325

By

Cheryl Marlow
Adult Client Services Branch Administrator

Bill No. and Title: Senate Bill No. 1141, S.D. 2, H.D. 1, Relating to Forensic Mental Health.

Purpose: This bill amends the Penal Code to establish limits to the length of conditional release for certain charges, clarify circumstances under which conditional release may be tolled and requires information-sharing among public agencies. A report to the Legislature is also required.

Judiciary's Position:

The Judiciary supports Senate Bill No. 1141, S.D. 2, H.D. 1, as it incorporates the requested modifications to the language proposed by the Judiciary pertaining to tolling. The bill now further clarifies circumstances under which the one-year conditional release status may be tolled. It specifies that the tolling period shall apply during a period of forensic hospitalization and during the pendency of a motion to revoke conditional release. This is addressed in Section 5 of the bill.

Thank you for the opportunity to testify on Senate Bill No. 1141, S.D. 2, H.D.1.



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

ON THE FOLLOWING MEASURE:

S.B. NO. 1141, S.D. 2, H.D. 1, RELATING TO FORENSIC MENTAL HEALTH.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Thursday, April 04, 2013

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 325

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

Chair Rhoads 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. This 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 problem 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 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. This 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, or a motion is filed to revoke conditional release, the one-year period would be tolled while the person is hospitalized or pending resolution of the motion, respectively. In other words, the clock stops pending the person's time in the hospital or when a motion to revoke conditional release is filed, and will start up again at the point at which it stopped when the person is released back to the community or the motion is denied.
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.
5. This bill requires the Department of Health to provide a report to the Legislature prior to the beginning of the 2015 legislative session, detailing the number, frequency, and types of criminal offenses and violations alleged to have been committed by defendants discharged from conditional release from January 2013 through December 2014. We would recommend an amendment to this wording to change "committed by defendants" to "**alleged to have been** committed by defendants" because the defendants were

acquitted of the crimes by reason of mental illness. We would also recommend that the wording make clear that the report is with respect to defendants whose conditional release was limited to one year, as opposed to all persons discharged from conditional release. Further, if the report is due twenty days prior to the start of the 2015 legislative session, the period discussed in the report should end on December 1, 2014. Therefore, we recommend that section 7, page 16, lines 14 - 20, be amended to provide:

The department of health shall submit to the legislature a report detailing the number, frequency, and types of criminal offenses and violations alleged to have been committed by defendants discharged from conditional release after one year pursuant to the requirements of this measure, during the period beginning with the commencement of the 2013 legislative session through December 1, 2014. The report shall be submitted to the legislature no later than twenty days prior to the convening of the 2015 legislative session.

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

**Testimony of the Office of the Public Defender
State of Hawaii
to the House Committee on Judiciary**

April 4, 2013

S.B. No. 1141 SD2: RELATING TO FORENSIC MENTAL HEALTH

Chair Rhoads and Members of the Committee:

We support passage of S.B. No. 1141, SD2. This measure is a product of a special action team commissioned by the Governor to address the problem of increased lengths of stay at the Hawaii State Hospital ['HSH']. The committee determined that the cause that contributed the most to overpopulation at HSH was criminal commitments from the court. Many of those court commitments take place upon a revocation of conditional release status.

S.B. No. 1141, SD2 is a housekeeping measure that clarifies the length of conditional release terms for violations, petty misdemeanors, and misdemeanors. In 2011, the legislature amended H.R.S. § 704-411 to limit the term of conditional release to one year on violations, petty misdemeanors, and misdemeanors. However, the changes failed to address the situation where a person is first committed to HSH then subsequently applies for conditional release. The 2011 changes also failed to address situations where a defendant already on conditional release is hospitalized on a 72-hour emergency hospitalization.

S.B. No. 1141, SD2 clarifies the length of the term of conditional release in these situations. We support its passage.

Thank for the opportunity to comment on this measure.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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KEITH M. KANESHIRO
PROSECUTING ATTORNEY

ARMINA A. CHING
FIRST DEPUTY PROSECUTING ATTORNEY



**THE HONORABLE KARL RHOADS, CHAIR
HOUSE COMMITTEE ON JUDICIARY
Twenty-Seventh State Legislature
Regular Session of 2013
State of Hawai'i**

April 4, 2013

RE: S.B. 1141, S.D. 2, H.D. 1; RELATING TO FORENSIC MENTAL HEALTH.

Chair Rhoads, Vice Chair Har and members of the House Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in opposition to S.B. 1141, S.D. 2, H.D. 1.

One of the primary purposes of S.B. 1141, S.D. 2 is to limit conditional release to a maximum of one year, for anyone granted conditional release after he or she was:

- (1) committed to the custody of the Director of Health, following an acquittal for physical or mental disease, disorder, or defect excluding penal responsibility; or
- (2) placed on conditional release pursuant to Chapter 704, then had such conditional release revoked

if the original charge against that person was a misdemeanor, petty misdemeanor, or violation.

When conditional release is granted, the court makes a specific determination that conditional release is necessary, as the defendant is still affected by physical or mental disease, disorder, or defect and still a danger to self or others. The court grants a conditional release because it feels that the defendant can be safely released only if he or she is adequately monitored and given proper care, supervision, and treatment. Without such supervision and treatment, the defendant will continue to be a danger to self or others.

Rather than apply a set one-year limitation on all conditional releases granted under HRS §704-412, in which the defendant was charged with a petty misdemeanor, misdemeanor, or violation, the Department would strongly recommend a case-by-case review by the court, involving a thorough review of all relevant facts and circumstances. Inevitably, some cases will

call for supervision and treatment beyond one-year, particularly in cases under HRS §704-412, where the defendant was previously committed and/or had their conditional release revoked.

Public safety is the Department's highest priority, and proper supervision and treatment of defendants is critical to preventing future violence or criminal activity. Instead of placing a set time limit on conditional release, the Department respectfully suggests a standardized schedule for court review. When a court finds that the defendant may be released into the community without being a danger to self or others, then it is within the court's powers to discharge him or her at that time.

For all the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes S.B. 1141, S.D. 2, H.D. 1. Thank you for the opportunity to testify on this matter.



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

In reply, please refer to:
File:

House Committee on Judiciary

S.B. 1141, HD1, Relating to Forensic Mental Health

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

April 4, 2013, 2:00 p.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,
12 community mental health consumers, providers and advocates. The work of the group was focused on
13 three areas: 1) Personnel/Finance/Procurement; 2) Program Capacity/Clinical Operations; 3)
14 Legal/Judicial. In addition to community based service delivery and interagency collaboration actions,
15 the SAT has four recommendations for statutory changes. One proposed change is a new amendment to

1 HRS §704-404 and three proposed changes are housekeeping measures intended to clarify an
2 amendment made to HRS §704-411, during the 2011 Legislative session by Act 99. The four proposed
3 changes are included and incorporated into this single bill.

4 The new proposed change amends HRS §704-404 to mandate that all public agencies provide
5 records 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 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 HRS §704-411 and HRS §704-412, to specify the time duration of conditional release in cases of
16 misdemeanors, petty misdemeanors, and violations. Hawaii is unusual compared to other states in
17 providing conditional release, at all, given a misdemeanor or more minor charge. This aligns the length
18 of time on conditional release with the maximum length of time an individual could be on probation,
19 given a misdemeanor or more minor charge and a finding of guilt.

20 The second of three housekeeping measures amends HRS §704-413 to include a tolling
21 provision to be in effect during hospitalization subsequent to a violation of conditional release only for
22 defendants charged in cases of misdemeanors, petty misdemeanors, and violations. This part of the
23 measure is in the interest of fairness and equitable treatment, and to provide assurance that an individual

1 on conditional release, who is not complying with the terms, will have their conditional release
2 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 The House Committee on Health acting on the companion measure (HB910.HD1) amended the
7 bill to 1) clarify that tolling provisions apply only to defendants charged with petty misdemeanors,
8 misdemeanors, or violations, and 2) specify that the tolling period shall apply during a period of forensic
9 hospitalization and during pendency of a motion to revoke conditional release. Further, the House
10 Committee on Judiciary (HB910.HD2) amended the bill to require the department to submit a report
11 prior to the 2015 Legislative Session detailing the number, frequency, and type of criminal offenses by
12 defendants discharged from conditional release during the period beginning with the commencement at
13 the 2013 Legislative session through the end of 2014.

14 The DOH supports these amendments and will comply with their provisions should the measure
15 enacted to include these.

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

TESTIMONY OF THE HAWAI`I POLICE DEPARTMENT
SENATE BILL 1141, SD2, HD1
RELATING TO FORENSIC MENTAL HEALTH

BEFORE THE COMMITTEE ON JUDICIARY

DATE : Thursday, April 4, 2013

TIME : 2:00 P.M.

PLACE : Conference Room 325
State Capitol
415 South Beretania Street

PERSON TESTIFYING:

Police Chief Harry S. Kubojiri
Hawai`i Police Department
County of Hawai`i

(Written Testimony Only)

William P. Kenoi
Mayor



Harry S. Kubojiri
Police Chief

Paul K. Ferreira
Deputy Police Chief

County of Hawai`i

POLICE DEPARTMENT

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April 2, 2013

Representative Karl Rhoads
Chairperson and Committee Members
Committee on Judiciary
415 South Beretania Street, Room 325
Honolulu, Hawai`i 96813

RE: SENATE BILL 1141, SD2, HD1, RELATING TO FORENSIC MENTAL HEALTH

Dear Representative Rhoads:

The Hawai`i Police Department opposes passage of Senate Bill 1141, SD2, HD1, relating to Forensic Mental Health. The intent of the appropriation is to establish a one-year length of time in which an individual may remain on conditional release if charged with a misdemeanor, petty misdemeanor or violation, amongst other requirements.

Our Department is opposed to this measure as it limits the amount of time that conditions can be placed upon a defendant acquitted of a misdemeanor on the grounds of mental disease, disorder or defect. We believe premature release from conditions for such a defendant may fail to adequately deal with the mental disease, disorder or defect.

We understand this Bill attempts to link the amount of time this type of defendant can be placed on conditional release to the maximum jail time of a misdemeanor (one year); however it fails to address the problem. A defendant, who is not afflicted with a mental disease or disorder and who is found guilty of a misdemeanor and given the maximum sentence, is presumed to be capable of relating punishment with the crime; and thus, seemingly able to reason that a repeat act will once again result in punishment. However, those defendants who are indeed acquitted as a result of mental disease, disorder or defect may very well be incapable of this reasoning process; the end result being that after one

Representative Karl Rhoads
Chairperson and Committee Members
Committee on Judiciary
April 2, 2013
Page 2

year, these types of defendants will be back in the community without proper support regardless of said defendants' inabilities to properly reason within the realm of the community's prescribed laws and expectations.

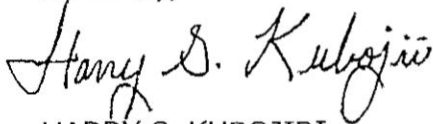
We are further concerned, as very often the commission of a misdemeanor may in fact be a portent of more serious behaviors to come from this type of defendant; not to mention the fact that plea bargaining may have had a role in reducing felonious behavior to misdemeanor status.

Our additional concern is the process whereby the Police are being tasked with the responsibility for generating additional (redacted) reports to aid the mental health assessors for which the defendant has been adjudicated by the acceptance of pleas of guilty or no contest, a finding of guilt, acquittal, acquittal pursuant to Section 704-400, or by entry of pleas of guilty or no contest. This requirement is overly onerous and, in fact, amounts to an unfunded mandate on the County Police Departments.

This unfunded mandate would in effect require our Department to determine which of the cases previously forwarded to the Judiciary for the defendant are attendant to the prescribed adjudication outcomes. In that our department does not maintain such a database, we would be hard pressed to conduct research with the Judiciary's database and would subsequently have to produce new redacted copies. We believe these reports, if indeed necessary, should be derived from the Judiciary's already-received and already-available copies.

For these stated reasons, we strongly oppose this legislation. Thank you for allowing the Hawai'i Police Department to provide comments relating to Senate Bill 1141, SD2, HD1.

Sincerely,

A handwritten signature in cursive script that reads "Harry S. Kubojiri". The signature is written in black ink and is positioned above the printed name and title.

HARRY S. KUBOJIRI
POLICE CHIEF



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

The Twenty-Seventh Legislature, State of Hawaii
House of Representatives
Committee on Judiciary

Testimony by
Hawaii Government Employees Association
April 4, 2013

S.B.1141, S.D. 2, H.D. 1 - RELATING TO
FORENSIC MENTAL HEALTH

The Hawaii Government Employees Association supports S.B. 1141, S.D. 2, H.D. 1. The purpose of this bill is to implement the statutory changes recommended by the Special Action Team convened in response to an increase in the rate of admissions to the Hawaii State Hospital (HSH). One of the primary objectives of this legislation is to reduce the census at HSH. The Special Action Team consisted of representatives from the Governor's Office, various state agencies, the Judiciary, the offices of the Prosecutor's of each county, the Office of the Public Defender, the Chiefs of Police of each county, as well as community mental health consumers, providers and advocates.

The high patient census at the HSH has been an ongoing concern of the HGEA because of its adverse effect on the health and safety of patients and staff. The bill proposes several amendments to Chapter 704, HRS, the mental health forensic chapter, to promote shorter stays in the HSH for patients waiting for forensic examinations and by putting time limits on state oversight of persons on conditional release for relatively minor crimes. The bill achieves these important objectives by making the following statutory changes:

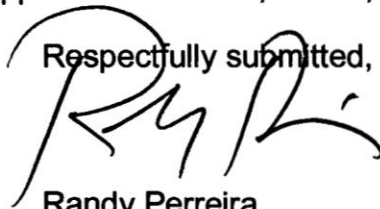
1. Amending Section 704-404, HRS to require all public agencies to provide records to the court regarding individuals undergoing fitness examinations ordered by the court. This amendment is designed to shorten the length of hospitalization at HSH caused by delays in receiving information in a timely manner needed by the courts. This will also assist court examiners by getting them the background documents on a defendant without undue delay. Presently, 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. Amending Section 704-12, HRS to correct a drafting problem created by Act 99, SLH 2011, which amended Section 704-11, HRS, to limit to a maximum of 1 year the length of conditional release for defendants charged with petty misdemeanors, or violations and acquitted by reason of physical or mental disease. The intent of Act 99, SLH 2011 was to create parity with similarly situated defendants who are convicted of the same

offense. Persons convicted may be sentenced to a maximum of 1 year of prison or probation. However, under the Act 99, SLH 2011 amendment, the current statute applies the 1 year limitation only to defendants who are put on conditional release at the same hearing at which they are acquitted of the charge. A person acquitted and committed to the HSH and then later placed on conditional release was not eligible for the 1 year limitation. This bill corrects that problem by amending Sections 704-12, HRS and 704-15, HRS that provides for an order of conditional release so that if the alleged crime was a misdemeanor, petty misdemeanor or violation, the period of conditional release would be no longer than 1 year.

3. Amending Section 704-13, HRS by clarifying that if a person placed on a 1 year conditional release is returned to the HSH due to violations of that conditional release, the 1 year period would be tolled during any period of ordered hospitalization, or 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. This means the clock stops during these periods.
4. Amending Section 704-13, HRS by clarifying that if a person violates their conditional release and is placed back at the HSH, and subsequently the person's conditional release is revoked, the 1 year period ends. If that person is put on conditional release again, a new 1 year period will start at that time.
5. The bill also requires the Department of Health to submit a report to the Legislature detailing the number, frequency, and types of criminal offenses and violations committed by defendants discharged from conditional release during the period beginning with the commencement of the 2013 Legislative Session through the end of 2014 no later than twenty days prior to the convening of the 2015 Legislative Session.

Thank you for the opportunity to testify in support of S.B. 1141, S.D. 2, H.D. 1.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Randy Perreira', is written over the typed name and title.

Randy Perreira
Executive Director



HAWAII DISABILITY RIGHTS CENTER

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Phone/TTY: (808) 949-2922 Toll Free: 1-800-882-1057 Fax: (808) 949-2928

E-mail: info@hawaiidisabilityrights.org Website: www.hawaiidisabilityrights.org

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

Committee on Judiciary Testimony in Support of S.B. 1141, SD2, HD1 Relating to Forensic Mental Health

**Thursday, April 4, 2013, 2:00 P.M.
Conference Room 325**

Chair Rhoades 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



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.

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

Community Alliance for Mental Health

Board of Directors

Anne Chipchase
President

Robert Scott Wall
Vice President

Crystal Aguinaldo
Secretary

William Lennox
Treasurer

Sunny Algosos

Jessica Carroll

Randolph Hack

Gina Hungerford

Susan King

To: The Hawai'i State House of Representatives Committee on the Judiciary
Re: SB 1141 SD 2, HD1

To: The Honorable Representative Rhoads and the member of the committee.

Aloha,

The Community Alliance for Mental Health along with United Self Help strongly supports SB 1141 SD 2, HD1. We feel that this bill will not only improve the care and treatment of Hawai'i's mental health consumers; but will speed up the flow of justice, and free up space at the State Hospital with the resultant lessening of the tax burden upon our fellow citizens.

Mahalo,
Scott Wall
Vice-President

LATE