



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

In reply, please refer to:  
File:

**House Committees on Health and Public Safety**

**S.B. 1141, SD2, Relating to Forensic Mental Health**

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

**March 15, 2013, 10:00 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,  
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 department supports these amendments and will comply with their provisions should the  
15 measure enacted to include these.

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



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

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**ON THE FOLLOWING MEASURE:**

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

**BEFORE THE:**

HOUSE COMMITTEES ON HEALTH AND ON PUBLIC SAFETY

**DATE:** Friday, March 15, 2013

**TIME:** 10:00 a.m.

**LOCATION:** State Capitol, Room 329

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

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Chairs Belatti and Aquino and Members of the Committees:

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, 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.



## *The Judiciary, State of Hawaii*

### **Testimony to the House Committee on Health**

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

**and**

### **House Committee on Public Safety**

Representative Henry J.C. Aquino, Chair  
Representative Kaniela Ing, Vice Chair

Friday, March 15, 2013, 10:00 a.m.  
State Capitol, Conference Room 329

By

Cheryl Marlow  
Adult Client Services Branch Administrator

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**Bill No. and Title:** Senate Bill No. 1141, S.D. 2, 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 supported the original version of Senate Bill No. 1141 and requested modifications to the language of the bill. However, the Judiciary has concerns with Senate Bill No. 1141, S.D. 2 as currently written, as it does not incorporate the requested changes submitted by the Judiciary via prior testimony. The Judiciary is in support of companion bill, House Bill No. 910, H.D. 1 however, that incorporates the recommended change that was proposed by the Judiciary in testimony to the Committee on Health on February 13, 2013. House Bill No. 910,



House Bill No. 910, Relating to Forensic Mental Health  
House Committees on Health and Public Safety  
Wednesday, February 13, 2013  
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H.D. 1, as amended, further clarifies circumstances under which the one-year conditional release status may be tolled, by specifying 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.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

ALII PLACE  
1060 RICHARDS STREET • HONOLULU, HAWAII 96813  
PHONE: (808) 547-7400 • FAX: (808) 547-7515

KEITH M. KANESHIRO  
PROSECUTING ATTORNEY

ARMINA A. CHING  
FIRST DEPUTY PROSECUTING ATTORNEY



**THE HONORABLE DELLA AU BELLATI, CHAIR  
HOUSE COMMITTEE ON HEALTH  
THE HONORABLE HENRY J.C. AQUINO  
HOUSE COMMITTEE ON PUBLIC SAFETY  
Twenty-Seventh State Legislature  
Regular Session of 2013  
State of Hawai'i**

March 15, 2013

**RE: S.B. 1141, S.D. 2; 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.

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. Thank you for the opportunity to testify on this matter.

**TESTIMONY OF THE HAWAII POLICE DEPARTMENT**

**SENATE BILL 1141, SD2**

**RELATING TO FORENSIC MENTAL HEALTH**

BEFORE THE COMMITTEES ON HEALTH AND PUBLIC SAFETY

DATE : Friday, March 15, 2013

TIME : 10:00 A.M.

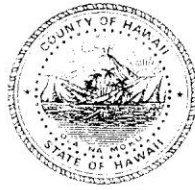
PLACE : Conference Room 329  
State Capitol  
415 South Beretania Street

PERSON TESTIFYING:

Police Chief Harry S. Kubojiri  
Hawaii`i Police Department  
County of Hawaii`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**

349 Kapiolani Street • Hilo, Hawai'i 96720-3998  
(808) 935-3311 • Fax (808) 961-8865

March 13, 2013

Representative Della Au Belatti  
Chairperson and Committee Members  
Committee on Health  
Representative Henry J. C. Aquino  
Committee on Public Safety  
415 South Beretania Street, Room 329  
Honolulu, Hawai'i 96813

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

Dear Representatives Au Belatti and Aquino:

The Hawai'i Police Department opposes passage of Senate Bill 1141, 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 year, these types of defendants will be back in the community without proper support regardless of said defendants' inability to properly reason within the realm of the community's prescribed laws and expectations.

REPRESENTATIVE DELLA AU BELATTI, CHAIRPERSON, AND COMMITTEE MEMBERS

COMMITTEE ON HEALTH

REPRESENTATIVE HENRY J. C. AQUINO, COMMITTEE ON PUBLIC SAFETY

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

MARCH 13, 2013

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We are further concerned as very often the commission of a misdemeanor may in fact be a portent to 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.

Sincerely,



HARRY S. KUBOJIRI  
POLICE CHIEF

