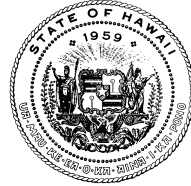


**SB1141**  
**TESTIMONY**



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

In reply, please refer to:  
File:

## Committee on Health

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

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

February 8, 2013, 2:30 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, 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 Hawaii*

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

Senator Josh Green, Chair

Senator Rosalyn H. Baker, Vice Chair

Friday, February 8, 2013, 2:30 p.m.  
State Capitol, Conference Room 229

By

Cheryl Marlow

Adult Client Services Branch Administrator

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**Bill No. and Title:** Senate Bill No. 1141, 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, Hawaii 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 Senate Bill No. 1141.

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

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**THE HONORABLE JOSH GREEN, CHAIR  
SENATE COMMITTEE ON HEALTH  
Twenty-Seventh State Legislature  
Regular Session of 2013  
State of Hawai`i**

February 8, 2013

**RE: S.B. 1141; RELATING TO FORSENSIC MENTAL HEALTH.**

Chair Green, Vice-Chair Baker and members of the Senate Committee on Health, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in opposition to Senate Bill 1141.

The purpose of S.B. 1141 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

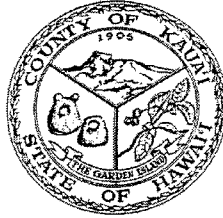
call for supervision and treatment beyond one-year, particularly in cases under HRS §704-412, where the defendant was previously committed and/or had their conditional release revoked.

Public safety is the Department's highest priority, and proper supervision and treatment of defendants is critical to preventing future violence or criminal violations. Instead of placing a set time limit on conditional releases, 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. Thank you for the opportunity to testify on this matter.



**Justin F. Kollar**  
Prosecuting Attorney



**Kevin K. Takata**  
First Deputy

**Rebecca A. Vogt**  
Second Deputy

**OFFICE OF THE PROSECUTING ATTORNEY**

**County of Kaua'i, State of Hawai'i**

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808-241-1888 ~ FAX 808-241-1758

Victim/Witness Program 808-241-1898 or 800-668-5734

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**TESTIMONY IN PARTIAL OPPOSITION TO  
SENATE BILL NO. 1141  
A BILL FOR AN ACT TO FORENSIC MENTAL HEALTH**

**Justin F. Kollar, Prosecuting Attorney  
County of Kaua'i**

**Senate Committee on Health**

**Friday, February 8, 2013  
2:30 p.m., Room 229**

Honorable Chair Green, Vice-Chair Baker, and Members of the Senate Committee on Health, the Office of the Prosecuting Attorney, County of Kaua'i submits the following testimony in partial opposition to Senate Bill No. 1141.

The purpose of Senate Bill No. 1141 is to amend Sections 704-404, 704-411, 704-412, 704-413(1) and (4), and 704-415(2), Hawai'i Revised Statutes to:

- 1) Require public agencies in possession of information regarding the examination of a defendant with respect to physical or mental disease, disorder, or defect, to turn over the information to the Courts; and
- 2) Impose a period of conditional release no longer than one (1) year if the defendant was initially granted conditional release and charged with a petty misdemeanor, misdemeanor, or violation.

While this proposal was a recommendation by the Governor's Special Action Team with good intent to minimize the census at the Hawai'i State Hospital, we need to keep in mind that the initial intent to have defendants put on conditional release is due to the fact that not only is the defendant affected by physical or mental disease, disorder, or defect, but that they are considered a danger or may present danger to self or to others. The conditions by which a defendant is expected to comply by assists in guiding the defendant into possibly integrating back into the community while keeping safety the main focus. By trying to establish a one-year limit on the length of time an individual may remain on conditional release essentially does not end up helping the defendant;

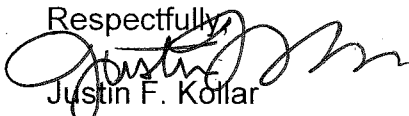
not every defendant's condition can be treated or maintained within the period of one (1) year.

Furthermore, while we may oppose the amendments proposed in Sections 704-412, 704-413(1) and (4), and 704-415(2), we indeed support the proposed amendment to Section 704-404(9) which requires public agencies to turnover information regarding defendants to the courts. It is in the best interest to the courts that any and all information regarding defendants be attained in order to appropriately charge a defendant and deliver justice to all those involved.

We also recognize that the amendment to Section 704-411 is a housekeeping amendment, and support as such.

For these reasons, we ask the Senate Committee on Health to please consider passing Senate Bill No. 1141, as amended, to only include amendments made to Sections 704-404 and 704-411, as we strongly oppose amendments proposed in Sections 704-412, 704-413(1) and (4) and 704-415(2). Thank you for the opportunity to testify on this matter.

Respectfully,



Justin F. Kollar  
Prosecuting Attorney  
County of Kaua'i