

SB2160

Measure Title:
RELATING TO HEALTH.

Report Title:
Health; Mental Health Court; Conditional Discharge; Forensic Patients; Appropriation
(\$)

Description:
Requires the Hawaii state hospital to produce an annual report on forensic patients; requires yearly court status hearings for individuals ordered to be conditional release or hospitalized as an inpatient by the mental health court; reduces the minimum length of hospitalization from ninety to thirty days for individuals who are recommitted after conditional release; makes appropriation for mental health court operations.

Introducer(s):
BAKER (BR)

Current Referral:
HTH/JDL, WAM



The Judiciary, State of Hawaii

Testimony to the Twenty-Fourth State Legislature, 2008 Session

Senate Committee on Health

The Honorable David Y. Ige, Chair

The Honorable Carol Fukunaga, Vice Chair

Senate Committee on Judiciary & Labor

The Honorable Brian T. Taniguchi, Chair

The Honorable Clayton Hee, Vice Chair

Monday, February 11, 2008, 1:15 p.m.

State Capitol, Conference Room 016

By

Dee Dee Letts

First Circuit Treatment Court Coordinator

Bill No. and Title: Senate Bill No. 2160, Relating to Health.

Purpose: Requires the Hawaii state hospital to produce an annual report on forensic patients; requires yearly court status hearings for individuals ordered to be conditionally released or hospitalized as an inpatient by the mental health court; reduces the minimum length of hospitalization from ninety to thirty days for individuals who are recommitted after conditional release; makes appropriation for mental health court operations.

Judiciary's Position:

The Judiciary takes no position on the sections of Senate Bill No. 2160 relating to conditional release, but respectfully notes some construction and linguistic problems, as well as one area of ambiguity which needs clarification. The Judiciary supports Section 7 of this measure, which appropriates monies to support the operations and expansion of the mental health court.



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Generally speaking, the intent of this omnibus bill is consistent with the report of the SCR 117 Task Force (2006), in which the Judiciary participated. However, we would like to bring to your attention the following:

- Page 2: Regarding the proposed new §704- "Rulemaking Authority:" This section is ambiguous and in need of clarification. Though it may be presumed that "the department" refers to the Department of Health, as this was the SCR 117 context, we recommend that this be specified. Also, the bill asks the department to adopt rules outlining "specific criteria and procedures relating to the application of statutory periods... ." Here, too, it may be presumed that this refers to internal guidelines for recommendations to the court, once statutory criteria (e.g., eligibility criteria, required waiting periods, etc.) are satisfied. If these assumptions are correct, the language needs to be made more explicit. If they are not correct, then more specific language must be provided before the Judiciary can make further comment.

In addition, we note the following construction and linguistic problems contained within this measure.

- Report title page: Erroneously refers to "conditional discharge" rather than "conditional release and discharge."
- Page 4, (b): The new proposed language ("subject to conditional release") is not technically correct. The Judiciary suggests the following alternative language: "The court shall order that the defendant be granted conditional release with such conditions as the court deems... ." This language is simple and legally correct.
- Page 4, (5): This section provides for review hearings for committed individuals at various intervals. The impact on the judiciary is the added number of hearings. Even recognizing the increase in workload, the judiciary does not oppose this provision.
- Page 5, SECTION 4: The concept proposed here is that the director may not only make application for both conditional release and discharge for a person who is hospitalized, which the law already allows, but also for discharge from conditional release. The judiciary did not oppose this for SCR 117, but is uncomfortable with the proposed language. As written, the intent is not clear, and, in fact, provides that the director may make an application for conditional release on behalf of a person already conditionally released. The Judiciary would respectfully recommend that the process allowing the director to also make



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application for discharge on behalf of a conditionally released person be set out separately. We would suggest that the language be placed as proposed in Senate Bill No. 3071.

- Page 6, §704-413 (1) Conditional Release: This section has many references to a person "subject to conditional release." The Judiciary suggests alternative language where references to "any person" or "a person" subject to conditional release, would more accurately read: "granted" conditional release pursuant to §704-412(1)." This language is consistent with the proposed language in (2).
- Page 6: The last sentence of the above referenced section calls for a revocation hearing at the expiration of the 72-hour period if further hospitalization is required. The Judiciary has submitted testimony in favor of House Bill No. 3148 and Senate Bill No. 3070, which provides for an alternative to proceeding immediately to a revocation of conditional release.
- Page 7, §704-413 (2) last sentence: The Judiciary proposes language that substitutes "a hearing held on a prior application" with "the denial." This clarifies that this references the last application, not any prior application.
- Page 7, §704-413 (4): Consistent with the above, the Judiciary suggests use of the "granted conditional release" language, rather than the "subject to" language.
- Page 7: Consistent with the above, the Judiciary recommends substituting "a hearing held on a prior application" with "the denial."
- Pages 7 and 8, (4): This section provides for review hearings for persons on conditional release at varying intervals. While this does impact the Judiciary both in regard to the scheduling of hearings and the participation of Adult Client Services ("probation"), which monitors persons on conditional release, the Judiciary did not oppose this as a participant in the SCR 117 Task Force.

The Judiciary supports Section 7 of this bill that appropriates monies to support the operation and expansion of the mental health court. Since its inception in February 2004, the mental health court has operated entirely on federal funding provided by grants through the Office of the Attorney General. This funding will end in December 2008. It is projected that \$327,346 would be necessary to cover staffing and client services costs (i.e., assessment, training, etc.), to increase the number of clients served from 30 to 50, and to explore expanding the program to deal with the population on conditional release.



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The mental health court was started in response to statistics which showed that more than 16% of the adults incarcerated in the United States have a serious and persistent mental illness. The court is currently operating at capacity and will have its first graduation in February 2008. Aside from the obvious benefits of providing better outcomes for its clients, improving public safety, and significantly reducing recidivism in this population, the diversion of these clients also saves the corrections system on Oahu approximately \$90,882 per client per year.

If enacted, Senate Bill No. 2160 will provide the Judiciary the necessary funds to continue providing these services as well as ensure the continued operation of a very successful program. We would also like to note that the Prosecuting Attorney's Office and the Public Defender's Office are partners with the Judiciary's Mental Health Court and should receive additional funding to support their continued role in the project.

Thank you for the opportunity to comment on this measure.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

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The Twenty-Fourth Legislature, State of Hawaii
Hawaii State Senate
Committee on Health
Committee on Judiciary and Labor

L A T E

Testimony by
HGEA/AFSCME, Local 152, AFL-CIO
February 11, 2008

S.B. 2160 – RELATING TO HEALTH

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of S.B 2160, which implements recommendations of the task force formed under S.C.R. 117, S.D. 1, H.D. 1, adopted by the 2006 Hawaii State Legislature. We supported the adoption of S.C.R. 117 and participated on the task force. The purpose of the task force was to analyze the identification, diagnosis, and treatment of mentally ill persons who are committed to the Hawaii State Hospital (HSH) by the state criminal justice system. The task force also considered initiatives to reform and improve the treatment of forensic patients sent to the hospital.

The major public policy change reported by the task force was to limit current criminal processes in mental health cases for criminal actions in which the defendant is prosecuted for violent non-felony charges and all felony charges. At the same time, there is a need to develop an alternative, faster process for defendants arrested for non-violent, non-felony charges such as trespass, property crimes and drug/alcohol related offenses.

The bill contains several statutory changes that we believe are improvements to the current situation. Therefore, we support the amendments to Chapter 704, HRS, that will require the HSH to produce an annual report containing relevant data on the forensic patients admitted and discharged, including the type of forensic patients by categories of underlying crimes.

Another section of the bill provides the Department of Health with rulemaking authority outlining specific criteria and procedures related to the application of statutory periods of involuntary inpatient hospitalization. We also support the authority granted to the courts in periodically assessing the need for further inpatient hospitalization of individuals who are acquitted of a felony on the grounds of a physical or mental disease, and the changes to the conditional release statutes.

Finally, we support the appropriation to support the expansion and operation of the mental health court by the Judiciary. Thank you for the opportunity to testify in support of this important bill.

Respectfully submitted,

Nora A. Nomura
Deputy Executive Director



HAWAII DISABILITY RIGHTS CENTER

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TESTIMONY TO THE TWENTY-FOURTH STATE LEGISLATURE, 2008 SESSION

To: Senate Committee on Health
 Senate Committee on Judiciary and Labor

From: Gary L. Smith, President
 Hawaii Disability Rights Center

Re: Senate Bill 2160
 Relating to Health

Hearing: Monday, February 11, 2008 1:15PM
 Conference Room 016, State Capitol

Members of the Committee on Health:
 Members of the Committee on Judiciary and Labor:

Thank you for the opportunity to provide testimony supporting Senate Bill 2160, Relating to Health.

I am Gary L. Smith, President of the Hawaii Disability Rights Center, formerly known as the Protection and Advocacy Agency of Hawaii (P&A). As you may know, we are the agency mandated by federal law and designated by Executive Order to protect and advocate for the human, civil and legal rights of Hawaii's estimated 180,000 people with disabilities.

We support this bill and have a long standing interest in this issue. We were pleased to serve on the SCR 117 Task Force convened by the legislature. We believe that this bill will help to keep track of the status and the needs of the individuals who are residents at the Hawaii State Hospital. We particularly express strong support for the provision which will provide for an annual review of the individuals who are on conditional release status. We have seen that many individuals remain on conditional release for an extended, indefinite period of time. While some of these individuals may need to remain on conditional release, we also believe that some do not. For those who do not, it represents a serious infringement upon their personal liberties. It is also difficult under the current system to obtain court review of these conditional releases. We believe that the provision for a mandatory annual will provide greater protection for these individuals and ensure that their needs are being met.

Thank you for the opportunity to provide testimony in support of this bill.





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

In reply, please refer to:
File:

**Senate Committee on Health
Senate Committee on Judiciary and Labor**

S.B. 2160, RELATING TO HEALTH

**Testimony of Chiyome Leinaala Fukino, M.D.
Director of Health**

February 11, 2008, 1:15 p.m.

- 1 **Department's Position:** The department supports this measure, with amendments, and so long as it
2 does not adversely impact the priorities outlined in the Executive Supplemental Budget.
- 3 **Fiscal Implications:** Unspecified appropriation for the establishment of the Mental Health Court.
- 4 **Purpose and Justification:** The SCR 117 taskforce was convened in September 2006 by the Governor
5 under the joint direction of Senator Rosalyn Baker and Representative Josh Green. The taskforce
6 included members of the Department of Health (DOH), Adult Mental Health Division (AMHD), Hawaii
7 State Hospital (HSH), the judiciary, probation, community hospitals, police, sheriffs, Department of
8 Public Safety (PSD), consumer rights advocates, consumers, and others. SCR 117 was developed to
9 identify changes in statute, procedure, and public policy that could reduce the census at HSH. SB 2160
10 was developed with some of those recommendations included. However, the department respectfully
11 requests a number of amendments be made to this proposal, as currently written.
- 12 **Section 1:** The SCR 117 taskforce was convened by the Governor, not the department of health.
13 Secondly, the preamble slightly misstates the purpose of the task force. Currently, it reads that the
14 purpose was to 'analyze the identification, diagnosis, and treatment of persons with mental illness who
15 are committed to the Hawaii State Hospital by the state criminal justice system'. According to the

1 language contained in S.C.R. 117, the task force was designed to ‘*evaluate and recommend possible*
2 *procedural, statutory, and public policy changes to minimize the census at Hawaii State Hospital and*
3 *promote community based health services for forensic patients*’.

4 **Section 2:** This section statutorily requires an annual report and rules.

5 *Annual Report*

6 The department has continued to highlight how utilization of the hospital is or is not changing over time.
7 This information has assisted decision makers to determine how best to allocate resources and may
8 provide an objective basis for policy review and revision. There is, however, currently no consistently
9 available, comprehensive description of this important aspect of our mental and forensic system. If this
10 report is to be required, we will need to continue to work with the legislature to identify appropriate
11 information that the department can or cannot provide for the purposes of this report.

12 *Rules*

13 The penal code now gives the court the responsibility for deciding who is committed, for how long, and
14 when they are able to leave. This is appropriate because judges enjoy absolute judicial immunity and
15 cannot be sued for damages payable with their personal assets for judicial decisions made in their
16 capacities as judges. The director of health, on the other hand, does not enjoy such immunity. Her
17 immunity is only qualified, and that always raises questions of fact for the judges or jury in case a claim
18 for damages resulting from a negligent decision. The requirement for the development of rules is not
19 recommended. We recommend deleting all language requiring the development of rules in both sections
20 2 and 6 of this bill. If, however, the committee opts to retain this language, the statutory references
21 should be amended for sections 704-411 and 704-413, HRS.

22 **Section 3:** This section requires an annual judicial review (for five years and bi-annually
23 thereafter) for an individual committed pursuant to 704-411(1) a – (Not guilty by reason of mental
24 disease, defect or disorder). The proposed legislation will require numerous hearings annually which do

1 not currently occur. The hospital is prepared and can provide whatever clinical information is required
2 for these hearings.

3 **Section 4:** This legislation simply shortens the wait for post conditional release (CR) revocation
4 from 90 to 30 days. The proposed legislation would let the person or the Director, DOH, acting on their
5 behalf, to apply for CR up to 60 days earlier than is permitted presently. The proposed legislation would
6 provide the small number of patients whose conditional release has been revoked and who are clinically
7 stable and able to abide by conditions of release between their 31st and 89th days of hospitalization, with
8 the opportunity to apply for CR reinstatement.

9 **Section 5:** The department notes that language from Page 9, lines 19 to Page 12 line 3 has a
10 similar intent to SB3070/HB3148 as it seeks to provide statutory guidance and clarification on the 72
11 hour hold and extended hold process. However, the department strongly suggests either substituting the
12 language contained in SB3070 into this part of section 5 or deleting this part, and/or advancing SB3070
13 to most appropriately fulfill this statutory change.

14 When someone is on conditional release and violates the terms and conditions of the CR, the
15 probation officer has the authority to hospitalize the person involuntarily for up to 72 hours. At the end
16 of the 72 hours, a decision has to be made whether or not to release the person back to the community on
17 CR or continue hospitalization. As it works now, a court hearing is held at the end of 72 hours and the
18 court makes a decision on releasing versus continuing. If they court wants to continue hospitalization,
19 they can either revoke the CR (mandating a minimum 90 day hospitalization) or “extend” the 72 hour
20 hold for some arbitrary period of time. DOH prefers the extended 72-hour hold, because the CR
21 remains intact and the court will authorize the person’s release from hospitalization upon AMHD’s
22 recommendation.

23 The language in SB 3070 spells out the process for doing an extended 72-hour hold. Currently,
24 the statutes do not have a process for extending the 72-hour hold, even though it is done routinely. As

1 such, the department is supporting that the statute be rewritten to clarify the process already informally
2 in place.

3 SB 2160 recommends that the Director of Health make the decision to release or continue at the
4 end of the 72-hour hold, rather than the court. This significant difference is found on Page 10, lines 20,
5 granting the Director authority to determine the need for continued hospitalization, as opposed to
6 requiring a court hearing to this effect. However, this may open DOH up to more liability as the
7 department does not enjoy the judicial immunity that the judicial system maintains. It is preferable to
8 retain the current status as advisor to the courts.

9 *Again, the department strongly recommends using the language contained in SB 3070, Relating*
10 *to Conditional Release, for this portion of SB 2160.*

11 The second part of section 5 (page 12, line 16 to page 13, line 2) addresses the need for the
12 courts to hear all Conditional Release cases at least once a year. Currently, when a person is accused of
13 committing a crime and found to be acquitted by reason of physical or mental disease, disorder, or
14 defect (which other states refer to as “Not Guilty by Reason of Insanity”), that person can be allowed to
15 live in the community instead of a hospital if certain conditions are met. These conditions are specified
16 by a court order, and that court order is called a “Conditional Release (CR).” In effect, a CR allows a
17 mentally ill person who has committed a crime the ability to live in the community and pursue recovery
18 goals as appropriate, rather than being forced to remain in a hospital for the rest of his or her life.
19 Overall, the process is a very positive and progressive system to aid in the recovery of mentally ill
20 individuals. The downside to this process is the back end. Very few individuals are ever legally
21 discharged from their CR, even though state statute allows for it. This results in a disproportionately
22 high number of mentally ill consumers in the community who may be doing quite well, but still have
23 outstanding court-ordered requirements. It is incompatible with a consumer’s recovery goals to remain
24 under court jurisdiction if no longer clinically required. In the worst case scenarios, people on CR may

1 be involuntarily committed to HSH as a result of minor infractions of their CR, which may often be
2 heavy-handed or out of step with clinical need, simply as an artifact of their continuing legal status. We
3 believe that one of the most salient reasons is that the courts do not have a process in place to hear the
4 CR cases regularly. The language highlighted in this portion of the bill attempts to ensure that the court
5 hears all CR cases on a regular basis, to ensure that appropriate cases are continued on CR and other
6 cases are legally discharged from CR.

7 **Section 6:** The DOH does not believe rules are appropriate and this section should be deleted.

8 **Section 7:** Oahu has the state's only Mental Health Court (MHC). This court is a specialty
9 court which hears, exclusively, cases of mentally ill defendants. Very briefly, the point of the current
10 ideation of the MHC is to steer defendants out of jail and into treatment. The MHC, mirrored after
11 successful MHCs on the mainland and tailored for implementation in Hawaii, has shown encouraging
12 outcome results. However, the MHC is funded entirely by a grant, and therefore is limited in its scope
13 and influence. It continues to be a pilot project of the judiciary. Only 30 defendants can participate in
14 the MHC at any one time, for example, and only one dedicated staff position has been created to help
15 run the court. Also, current funding and staffing limits the impact of the MHC on the correctional
16 population, but the impact on the HSH census has been minimal. The current MHC qualifying criteria
17 eliminate any person who is unfit to proceed to trial and who chooses to raise a Chapter 704 "lack of
18 penal responsibility" defense. Thus, MHC clients do not come from the hospitalized/hospital-eligible
19 population. If the MHC is expanded, there is much greater potential for including HSH consumers in
20 the program, which would likely allow for their release from HSH more quickly.

21 We look forward to continuing the dialog and collaborating with the legislature on this measure.

22 Thank you for this opportunity to provide testimony.

23