



*The Judiciary, State of Hawaii*

**Testimony to the House Committee on Judiciary**

Representative Gilbert S.C. Keith-Agaran, Chair

Representative Karl Rhoads, Vice Chair

Thursday, February 16, 2012, 2:15 p.m.

State Capitol, Conference Room 325

by

Cheryl R. Marlow

Administrator

Adult Client Services Branch

Circuit Court of the First Circuit

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**Bill No. and Title:** House Bill No. 1797, Relating to Conditional Release.

**Purpose:** To establish a tolling provision when a defendant has been acquitted on the grounds of physical or mental defect charged with a petty misdemeanor, misdemeanor, or violation and granted conditional release.

**Judiciary's Position:**

The Judiciary strongly supports House Bill No. 1797 which is part of the Judiciary's 2012 legislative package. The bill identifies that recent amendments to the conditional release statute resulted in conditional release for petty misdemeanors and misdemeanors to be only one year long. As such, it is unclear what happens to the time period when a motion to revoke conditional release or a motion to modify conditions is filed.

Due to increased caseloads, a hearing on a motion to revoke may take anywhere from a month to up to two years to be heard, especially if the defendant cannot be served who is on bench warrant status. If the time period is not tolled the one year would quickly elapse. Conditions of probation are analogous to conditions of conditional release. 706-627, HRS expressly provides in similar language a tolling provision.

Thank you for the opportunity to testify on House Bill No. 1797.

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



LORETTA J. FUDDY, A.C.S.W., M.P.H.  
DIRECTOR OF HEALTH

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In reply, please refer to:  
File:

**House Committee on Judiciary**

**HB 1797, Relating to Conditional Release**

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

**Director of Health**

**February 16, 2012**

**Department's Position:** The Department of Health (DOH) opposes this measure.

**Fiscal Implications:** No funds are appropriated; however, the costs to the DOH would be substantial if this measure is passed, due to the expense of continuing services for those affected by any extensions of conditional release time.

**Purpose and Justification:** This measure requires tolling of the one-year conditional release period upon filing of a motion for revocation of conditional release or a motion to modify conditions. The department supported and continues to support the intent of the statutory changes made last year to Hawaii Revised Statutes (HRS) section 704-411, in Act 99, which limited the time to one year that individuals specified in the Act would remain on conditional release. The department does not support activity which extends that term beyond one year. The provision for the one year duration for conditional release of defendants subject to HRS, section 704-411, who were charged with a petty misdemeanor, misdemeanor, or violation, was intentional. The tolling provision, if enacted, would extend the term of the conditional release beyond the one year time period.

We understand that in HRS section 706-627, there is a tolling provision which is applicable upon the filing of a motion to revoke probation. It is the department's position that individuals on conditional

1 release are not equivalent to those on probation, as they have not been convicted by the criminal justice  
2 system. They are individuals with mental illness, not convicted, but acquitted or found not guilty due to  
3 their mental illness. Conditional release is intended to be different from probation, to assure that  
4 services and treatment continue after release. It is not meant to be a punishment. The intent of Act 99  
5 was to have those individuals described in its provisions be on conditional release for one year total.

6 The department is especially concerned about the impact of any tolling provision in those  
7 instances where the petition to a court for modification of conditional release decreases the amount or  
8 lessens the severity of conditions placed on the individual because they have made clinical progress.  
9 This may have inadvertently been left out of the bill's language, but the department does not support  
10 tolling especially in these situations.

11 If this bill does proceed, the department has a recommendation for the committee's  
12 consideration. In section 1 (b) (ii), the bill states: "If the court, following hearing, refuses to revoke the  
13 conditional release or grant the requested modification, the defendant may be granted the period of  
14 tolling of conditional release for purposes of computation of the remaining conditional release, if any."  
15 We recommend that the word "may" be changed to "shall."

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

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

February 16, 2012

H.B. No. 1797: RELATING TO CONDITIONAL RELEASE

Chair Keith-Agaran and Members of the Committee:

We have concerns about H.B. No. 1797 which provides for the tolling of misdemeanor and petty misdemeanor conditional release periods upon the filing of a motion for revocation of conditional release. The concern is that this measure would toll the running of the conditional release period upon filing of the motion whereupon the motion could remain dormant for an indefinite period of time until the violator is apprehended and brought before the court.

It is our understanding that the district court, which has jurisdiction over misdemeanor cases currently suffers from a bench warrant service backlog in the tens of thousands. This measure is likely to simply add to that backlog because it contains no provision regarding urgency of service of the motion and apprehension of the violator. If a person is violating terms of his/her conditional release, he/she should be promptly brought before the court to answer to the violations. This bill should contain a time limitation for service of the motion to revoke on the violator and for a prompt hearing.

Thank for the opportunity to comment on this measure.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
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**THE HONORABLE GILBER S.C KEITH-AGARAN, CHAIR  
HOUSE COMMITTEE ON JUDICIARY  
Twenty-Sixth State Legislature  
Regular Session of 2012  
State of Hawai'i**

Thursday, February 16, 2012

**RE: H.B. 1797; RELATING TO CONDITIONAL RELEASE.**

Chair Keith-Agaran, Vice Chair Rhoads, 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 support of H.B. 1797.

Under section 704-411, Hawaii Revised Statutes, any defendant granted conditional release pursuant to this paragraph, and who was charged with a petty misdemeanor, misdemeanor, or violation, the period of conditional release shall be no longer than one year.

Under this measure, upon the filing of a motion to revoke conditional release or a motion to modify the conditions imposed thereby, the period of conditional release shall be tolled pending the hearing upon the motion and the decision of the court. The period of tolling shall be computed from the filing date of the motion, through and including the filing date of the written order of the court concerning the motion, for purposes of computation of the remaining period of conditional release, if any. During the period of tolling of conditional release, the defendant shall remain subject to all terms and conditions of conditional release, except as otherwise provided by this chapter. If the court, following hearing, refuses to revoke the conditional release or grant the requested modification, the defendant may be granted the period of tolling of conditional release for purposes of computation of the remaining conditional release, if any.

With the challenges of maneuvering numerous cases in the court process, and limited staff and resources in both the courts and the Department of the Prosecuting Attorney of the City and County of Honolulu as well as the other prosecuting attorney departments throughout the state, tolling tolling of one-year conditional release period upon filing of motion for revocation of conditional release or motion to modify conditions will help the department ensure the public is protected.

For this reason, the Department of the Prosecuting Attorney of the City and County of Honolulu strongly supports the passage of H.B. 1797. Thank you for the opportunity to testify.