H.B. NO. 3148

A BILL FOR AN ACT

RELATING TO CONDITIONAL RELEASE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Section 704-413, Hawaii Revised Statutes, is amended to read as follows:

"**§704-413 Conditional release; application for modification or discharge; termination of conditional release and commitment.** (1) Any person released pursuant to section 704-411 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 any mental health professional treating any conditionally released person believes 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 conditionally released person. The probation officer may order the conditionally released person 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 (3)[~~.~~]; provided that at 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 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 (3) should be conducted.

(2) Any person released pursuant to section 704-411 may apply to the court ordering the conditional release for discharge from, or modification of, the order granting conditional release on the ground that the person is no longer affected by a physical or mental disease, disorder, or defect and may be discharged, or the order may be modified, without danger to the person or to others. The application shall be

accompanied by a letter from or supporting affidavit of a qualified physician or licensed psychologist. A copy of the application and letter or affidavit shall be transmitted to the prosecuting attorney of the circuit from which the order issued and to any persons supervising the release, and the hearing on the application shall be held following notice to such persons. If the determination of the court is adverse to the application, the person shall not be permitted to file further application until one year has elapsed from the date of any preceding hearing on an application for modification of conditions of release or for discharge.

(3) If, at any time after the order pursuant to section 704-411 granting conditional release, the court determines, after hearing evidence, that:

(a) The person is still affected by a physical or mental disease, disorder, or defect, and the conditions of release have not been fulfilled; or

(b) For the safety of the person or others, the person's conditional release should be revoked, the court may forthwith modify the conditions of release or order the person to be committed to the custody of the director of health, subject to discharge or release

only in accordance with the procedure prescribed in section 704-412."

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

INTRODUCED BY: Calvin K.Y. Say

BY REQUEST

JAN 22 2008

Report Title:
Conditional Release

Description:
Provide statutory guidance and clarification on the seventy-two (72) hour hold and extended hold process, especially as it relates to patients under Conditional Release (CR) from the State Hospital or related facility.

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JUSTIFICATION SHEET

DEPARTMENT: Health

TITLE: A BILL FOR AN ACT RELATING TO CONDITIONAL RELEASE.

PURPOSE: Provide statutory guidance and clarification on the seventy-two (72) hour hold and extended hold process, especially as it relates to the Conditional Release (CR) revocation process.

MEANS: Amend section 704-413, Hawaii Revised Statutes.

JUSTIFICATION: This proposal is based on a recommendation by the task force organized as a result of Senate Concurrent Resolution No. 117, Regular Session of 2006. However, the task force did not draft, review, or approve the specific wording of this legislation.

CR revocation is not the same as a 72-hour hold or extended hold. A 72-hour hold mandates a maximum of 72 hours in DOH care and custody, followed by a hearing at which the court may extend the hold for additional amounts of time. Any extension is considered an extended hold. Courts or treatment teams that may not understand the difference may recommend a CR revocation when a 72-hour hold may have addressed the clinical and supervision needs in a more timely and cost-effective manner. Creating explicit language in the statute should assist in providing this clarification for treatment teams or courts.

Impact on the public: Any measure that might result in decreasing the utilization of bed space at Hawaii State Hospital by those mental health consumers that do not actually require such intense level of services means

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that more bed space is then available for individuals in the community that do.

Impact on the department and other agencies: The measure may positively impact the census at Hawaii State Hospital as courts and treatment teams may be less apt to recommend revocation of conditional release. Many consumers on CR who may have their CR revoked do not necessarily require extended hospitalization for re-stabilization. This measure may necessitate that the Judiciary review practices with regards to 72-hour holds, extended holds, and revocation of conditional release options for mental health consumers.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: HTH-420.

OTHER AFFECTED AGENCIES: Judiciary.

EFFECTIVE DATE: Upon approval.