H.B. NO. 3149

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 conditionally released pursuant to section 704-411, or section 704-412, 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)~~] (4).

(2) The director of health may apply to the court ordering any persons released pursuant to section 704-411, or section 704-412, for the person's discharge from, or modification of, the order granting conditional release; provided that the person receives community-based mental health services from or contracted by the department of health, and the director is of the opinion that the person on conditional release 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 director shall make application for the discharge from, or modification of the order of conditional release in a report to the court. The director shall transmit a copy of the application and report to the prosecuting attorney of the county from which the conditional release order was made, to the person's treating mental health professionals, and to the probation officer supervising the

conditional release. The person on conditional release shall be given notice of such application.

[~~(2)~~] (3) Any person conditionally released pursuant to section 704-411, or section 704-412, 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, to the person's treating mental health professionals, and to [~~any persons~~] the probation officer supervising the conditional release, and the hearing on the application shall be held following notice to such persons.

[~~(3)~~] (4) If, at any time after the order pursuant to section 704-411, or section 704-412, 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 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 3. This Act shall take effect upon its approval.

INTRODUCED BY: Calvin K.Y. Say

BY REQUEST

JAN 22 2008

Report Title:
Conditional Release

Description:
Grants the Director of the Department of Health (DOH) the authority to apply for discharge from conditional release (CR) or modification of the CR order for any patient in a mental health facility served by the DOH directly or through a contracted provider.

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JUSTIFICATION SHEET

DEPARTMENT: Health

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

PURPOSE: Grants the Director of the Department of Health (DOH) the authority to apply for discharge from conditional release (CR) or modification of the CR order for any person served by the DOH directly or through contracted provider.

MEANS: Amend Section 704-413, Hawaii Revised Statutes (HRS).

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.

This measure will enable the Director of Health to petition the court in appropriate cases, on behalf of any individual served by the DOH, for discharge from, or modification of, conditional release. Currently, there is no mechanism for the director to petition the courts when the clinical staff determines that an individual is clinically ready for discharge from conditional release.

Impact on the public: Any measure that will 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 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 by allowing the

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Director of Health to apply for discharge from conditional release for those who no longer require this level of supervision. This will free community resources for those who need continued supervision. When a person is on conditional release, it is possible for the person to be readmitted to inpatient care based on violations of conditional release orders which are no longer clinically necessary. In such instances, individuals do not need, nor do they meet clinical criteria for inpatient hospital care. The clinically unwarranted hospitalization of these individuals contributes to a higher inpatient census.

This measure may impact Judiciary court calendars with additional hearings as applications are submitted by the Director of Health for discharge from conditional release, as few if any such motions are now filed with the courts.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: HTH-420.

OTHER AFFECTED AGENCIES: Judiciary.

EFFECTIVE DATE: Upon approval.