

JAN 26 2011

A BILL FOR AN ACT

RELATING TO CONDITIONAL RELEASE TIMEFRAMES.

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

1 SECTION 1. The purpose of this Act is to amend the law to
2 establish a specific timeframe for an order of post-acquittal
3 conditional release when the defendant is charged with a petty
4 misdemeanor or misdemeanor.

5 SECTION 2. Section 704-411, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§704-411 Legal effect of acquittal on the ground of**
8 **physical or mental disease, disorder, or defect excluding**
9 **responsibility; commitment; conditional release; discharge;**
10 **procedure for separate post-acquittal hearing.** (1) When a
11 defendant is acquitted on the ground of physical or mental
12 disease, disorder, or defect excluding responsibility, the
13 court, on the basis of the report made pursuant to section 704-
14 404, if uncontested, or the medical or psychological evidence
15 given at the trial or at a separate hearing, shall make an order
16 as follows:

17 (a) The court shall order the defendant to be committed to
18 the custody of the director of health to be placed in

1 an appropriate institution for custody, care, and
2 treatment if the court finds that the defendant:

3 (i) Is affected by a physical or mental disease,
4 disorder, or defect;

5 (ii) Presents a risk of danger to self or others; and

6 (iii) Is not a proper subject for conditional release;

7 provided that the director of health shall place

8 defendants charged with misdemeanors or felonies

9 not involving violence or attempted violence in

10 the least restrictive environment appropriate in

11 light of the defendant's treatment needs and the

12 need to prevent harm to the person confined and

13 others. The county police departments shall

14 provide to the director of health and the

15 defendant copies of all police reports from cases

16 filed against the defendant which have been

17 adjudicated by the acceptance of a plea of guilty

18 or no contest, a finding of guilt, acquittal,

19 acquittal pursuant to section 704-400, or by the

20 entry of a plea of guilty or not contest made

21 pursuant to chapter 853, so long as the

22 disclosure to the director of health and the

1 defendant does not frustrate a legitimate
2 function of the county police departments, with
3 the exception of expunged records, records of or
4 pertaining to any adjudication or disposition
5 rendered in the case of a juvenile, or records
6 containing data from the United States National
7 Crime Information Center. The county police
8 departments shall segregate or sanitize from the
9 police reports information that would result in
10 the likelihood or actual identification of
11 individuals who furnished information in
12 connection with the investigation of who were of
13 investigatory interest. Records shall not be re-
14 disclosed except to the extent permitted by law;

15 (b) The court shall order the defendant to be granted
16 conditional release with conditions as the court deems
17 necessary if the court finds that the defendant is
18 affected by physical or mental disease, disorder, or
19 defect and that the defendant presents a danger to
20 self or others, but that the defendant can be
21 controlled adequately and given proper care,
22 supervision, and treatment if the defendant is

1 released on condition. ~~[+ or]~~ For any person granted
2 conditional release pursuant to section 704-411, and
3 who was charged with a petty misdemeanor, misdemeanor,
4 or violation the period of conditional release shall
5 be no longer than one year. Multiple conditional
6 release orders shall run concurrently; or

7 (c) The court shall order the defendant discharged if the
8 court finds that the defendant is no longer affected
9 by physical or mental disease, disorder, or defect or,
10 if so affected, that the defendant no longer presents
11 a danger to self or others and is not in need of care,
12 supervision, or treatment.

13 (2) The court, upon its own motion or on the motion of the
14 prosecuting attorney or the defendant, shall order a separate
15 post-acquittal hearing for the purpose of taking evidence on the
16 issue of physical or mental disease, disorder, or defect and the
17 risk of danger that the defendant presents to self or others.

18 (3) When ordering a hearing pursuant to subsection (2):

19 (a) In nonfelony cases, the court shall appoint a qualified
20 examiner to examine and report upon the physical or
21 mental condition of the defendant. The court may
22 appoint either a psychiatrist or a licensed

1 psychologist. The examiner may be designated by the
2 director of health from within the department of
3 health. The examiner shall be appointed from a list of
4 certified examiners as determined by the department of
5 health. The court, in appropriate circumstances, may
6 appoint an additional examiner or examiners; and

7 (b) In felony cases, the court shall appoint three
8 qualified examiners to examine and report upon the
9 physical and mental condition of the defendant. In
10 each case, the court shall appoint at least one
11 psychiatrist and at least one licensed psychologist.
12 The third member may be a psychiatrist, a licensed
13 psychologist, or a qualified physician. One of the
14 three shall be a psychiatrist or licensed psychologist
15 designated by the director of health from within the
16 department of health. The three examiners shall be
17 appointed from a list of certified examiners as
18 determined by the department of health.

19 To facilitate the examination and the proceedings thereon, the
20 court may cause the defendant, if not then confined, to be
21 committed to a hospital or other suitable facility for the
22 purpose of examination for a period not exceeding thirty days or

1 such longer period as the court determines to be necessary for
2 the purpose upon written findings for good cause shown. The
3 court may direct that qualified physicians or psychologists
4 retained by the defendant be permitted to witness the
5 examination. The examination and report and the compensation of
6 persons making or assisting in the examination shall be in
7 accord with section 704-404(3), (4)(a) and (b), (6), (7), (8),
8 and (9). As used in this section, the term "licensed
9 psychologist" includes psychologists exempted from licensure by
10 section 465-3(a)(3).

11 (4) Whether the court's order under subsection (1) is made
12 on the basis of the medical or psychological evidence given at
13 the trial, or on the basis of the report made pursuant to
14 section 704-404, or the medical or psychological evidence given
15 at a separate hearing, the burden shall be upon the State to
16 prove, by a preponderance of the evidence, that the defendant is
17 affected by a physical or mental disease, disorder, or defect
18 and may not safely be discharged and that the defendant should
19 be either committed or conditionally released as provided in
20 subsection (1).

21 (5) In any proceeding governed by the section, the
22 defendant's fitness shall not be an issue.

S.B. NO. 1297

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

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

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INTRODUCED BY: Q.S.T.Z.

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BY REQUEST

Report Title:

Conditional Release Timeframes

Description:

Specifies that any person released on condition pursuant to section 704-411, Hawaii Revised Statutes and who was charged with a petty misdemeanor, misdemeanor, or violation, spend no more than one year on conditional release and requires that multiple conditional releases run concurrently.

JUSTIFICATION SHEET

DEPARTMENT: Health

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

PURPOSE: To establish a specific timeframe for an order of post-acquittal conditional release when the defendant is charged with a petty misdemeanor, misdemeanor, or violation.

MEANS: Amend section 704-411, Hawaii Revised Statutes (HRS).

JUSTIFICATION: Persons who have been acquitted of criminal charges by reason of mental or physical disease, disorder or defect may be subsequently released to the community on a post-acquittal "conditional release" (CR). A person may be placed on CR after the court has determined that the person can be controlled adequately and given proper care, supervision, and treatment in the community.

The CR obligates the individual to certain requirements by statute: the person must receive mental health treatment, follow all prescribed treatments, take all prescribed medications, and report to an assigned probation officer until discharged from CR. Specific CR court orders typically contain additional obligations, including subjection to search of property, participation in random drug screens, restriction of weapons possession, reporting changes of address, restriction of travel off island, and other requirements.

A CR may be granted subsequent to any level of charge (Jackson vs. Indiana 1972; Foucha vs. Louisiana, 1992). Because the United States Supreme Court has found many types of indefinite mental health commitments unconstitutional, most states with CR statutes have time limits assigned to them.

unconstitutional, most states with CR statutes have time limits assigned to them. However, in Hawaii the CR is ordered for an indefinite period of time.

To compare, in Hawaii misdemeanor offenses carry a maximum of one year in jail or on probation. Most petty misdemeanor charges carry a maximum of 30 days in jail or six months of probation, though it is possible for persons charged with a petty misdemeanor, misdemeanor or violations to spend up to one year on probation, if they have entered a deferred acceptance of guilty or no contest plea.

This measure proposes to amend the current statutory language by establishing a maximum order of one year for all CRs involving exclusively misdemeanor and petty misdemeanor charges.

At the end of the specific CR timeframes, the person will be released from court supervision.

Specific CR timeframes are expected to reduce the strain on mental health and public safety resources currently devoted to misdemeanor CR commitments. Specific CR timeframes are also expected to be consistent with legal decisions regarding civil rights and restrictions of liberties.

Impact on the public: Hawaii has the largest per-capita population of persons on conditional release in the nation. This is largely due to the two statutory provisions noted above: a person can be placed on CR for any level or charge, and all CR commitments are indefinite. Currently, Hawaii has more than 450 people on CR, approximately 150 of are on for petty misdemeanor or misdemeanor charges. Most states with CR statutes do not allow for the

CR of a misdemeanant; CR is reserved for felony offenders.

Currently, 90 percent of persons on CR for a misdemeanor or petty misdemeanor offense in Hawaii spend longer on CR than they could have possibly spent in jail or on probation if convicted for the same offense; sometimes up to 20 times as long. The average misdemeanant CR spends more than nine months in jail and in the Hawaii State Hospital (HSH) before ever being released on CR, and then spends more than five years on CR before being discharged.

Impact on the department and other agencies:
A year of jail costs taxpayers approximately \$50,000 per inmate. A person with mental illness ordered to basic state-provided community mental health treatment (i.e., a mentally ill person ordered to probation for one year) costs taxpayers approximately \$5,000 per year. The average person on a misdemeanor or petty misdemeanor CR costs taxpayers approximately \$200,000 prior to being released from CR, and then an additional approximately \$50,000 per year after release. Because the CR is indefinite, this yearly taxpayer cost is usually incurred for multiple years.

It is important to note that most persons placed on CR live in the community without incident (87 percent are never returned to a hospital). Arrest rates remain steady over the past several years at 11 percent. Of those persons who are rearrested, 87 percent are rearrested for misdemeanor charges. Less than one-half of one percent is rearrested for a serious felony, which is a lower rate than the general United States population. Persons discharged from CR in Hawaii have a rearrest rate of 4 percent, with similar proportions of minor to serious charges as listed above.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: HTH-495.

OTHER AFFECTED
AGENCIES: Judiciary; City and County of Honolulu
Prosecutor; County Prosecutors; Department
of the Attorney General; Office of the
Public Defender.

EFFECTIVE DATE: Upon approval.