



## *The Judiciary, State of Hawaii*

### **Testimony to the House Committee on Judiciary**

Representative Karl Rhoads, Chair  
Representative Sharon E. Har, Vice Chair

Friday, March 1, 2013, 2:00 p.m.  
State Capitol, Conference Room 325

By

Cheryl Marlow  
Adult Client Services Branch Administrator

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**Bill No. and Title:** House Bill No. 910, H.D. 1, RELATING TO FORENSIC MENTAL HEALTH

**Purpose:** To make statutory changes to establish limits on the length of time an individual may remain on conditional release if charged with a misdemeanor, petty misdemeanor, or violation. To clarify under what circumstances the one-year conditional release status may be tolled. It also would require public agencies in possession of information about the defendant to provide that information to the court. These amendments are to assist in reducing the census at the Hawaii State Hospital.

**Judiciary's Position:** The Judiciary is in support of H.B. No. 910, H.D. 1 that incorporates the recommended change that was proposed by the Judiciary in testimony to the Committee on Health on February 13, 2013. As amended, the bill further clarifies circumstances under which the one-year conditional release status may be tolled, by specifying that the tolling period shall apply during a period of forensic hospitalization and during the pendency of a motion to revoke conditional release. This is addressed in Section 5 of the bill.

Thank you for the opportunity to testify on House Bill No. 910, H.D. 1.



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

In reply, please refer to:  
File:

**House Committee on Judiciary**

**H.B. 910, HD1, Relating to Forensic Mental Health**

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

**March 1, 2013, 2:00 p.m.**

1 **Department's Position:** The Department of Health (DOH) strongly supports this bill.

2 **Fiscal Implications:** Although positive fiscal impacts are not the primary focus of this bill, a  
3 continuation in the increased rate of admissions to the Hawaii State Hospital (HSH) is possible if this  
4 measure is not adopted, and concomitant increased expenditures and pressure on the HSH budget.

5 **Purpose and Justification:** This bill proposes four statutory changes. One proposed change is a new  
6 amendment to HRS §704-404 and three proposed changes are housekeeping measures to correct a  
7 drafting problem in Act 99, Session Laws of Hawaii (SLH) 2011, which amended section  
8 HRS §704-411.

9 The proposed changes are the result of the Governor's Special Action Team (SAT)  
10 recommendations, which was convened by Governor Abercrombie in the summer of 2012 in response to  
11 an increase in the rate of admissions to the HSH. The SAT met over the course of three months, with  
12 participation by a statewide panel comprised of representatives from the Governor's office, executive  
13 branch departments (Attorney General, Health, Human Services, Public Safety, Human Resources  
14 Development, Budget and Finance) the judiciary, the offices of the prosecutors of each county, the

1 office of the public defender, chiefs of police of each county, community mental health consumers,  
2 providers and advocates. The work of the group was focused on three areas:  
3 1) Personnel/Finance/Procurement; 2) Program Capacity/Clinical Operations; 3) Legal/Judicial. In  
4 addition to community based service delivery and interagency collaboration actions, the SAT has four  
5 recommendations for statutory changes. One proposed change is a new amendment to HRS §704-404  
6 and three proposed changes are housekeeping measures intended to clarify an amendment made to HRS  
7 §704-411, during the 2011 Legislative session by Act 99.

8 The four proposed changes are included and incorporated into this single bill.

9 The new proposed change amends HRS §704-404 to mandate that all public agencies provide  
10 records to the court regarding individuals undergoing fitness examinations ordered by that court. The  
11 amendment should result in helping to shorten the length of hospitalization at HSH due to delays in  
12 receiving required information in a timely manner needed by the courts. Most providers of medical care  
13 currently cannot provide their records without a consent from the defendant and many defendants do not  
14 consent. This amendment would make the disclosure required by law, and therefore, eliminate other  
15 confidentiality legal impediments to releasing the information. This proposal will make the Judge's  
16 order for evaluation to also be an order requiring and assembling information relevant to the evaluation;  
17 the impact of this change will be to shorten the length of legal proceedings as the necessary records will  
18 be submitted to court in a timely manner, and thereby shorten lengths of stay for patients at HSH.

19 The first of three housekeeping measures intended to clarify the statutes is an amendment of  
20 HRS §704-411 and HRS §704-412, to specify the time duration of conditional release in cases of  
21 misdemeanors, petty misdemeanors, and violations. Hawaii is unusual compared to other states in  
22 providing conditional release, at all, given a misdemeanor or more minor charge. This aligns the length  
23 of time on conditional release with the maximum length of time an individual could be held in jail or on  
24 probation, given a misdemeanor or more minor charge and a finding of guilt.

1           The second of three housekeeping measures amends HRS §704-413 to include a tolling  
2 provision to be in effect during a hospitalization subsequent to a violation of conditional release in cases  
3 of misdemeanors, petty misdemeanors, and violations; time spent in the hospital will not count towards  
4 the one year limit. This part of the measure is in the interest of fairness and equitable treatment, and to  
5 provide assurance that an individual on conditional release, who is not complying with the terms, will  
6 have their conditional release extended, for the period of time they are in the hospital.

7           And the third of three housekeeping measures would clarify that when a person's conditional  
8 release is revoked due to noncompliance, the one year is terminated. If that person is subsequently  
9 placed back on conditional release, the length of that conditional release will be one year.

10           Thank you for the opportunity to testify on this bill.



DEPARTMENT OF THE PROSECUTING ATTORNEY  
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Deputy Prosecuting Attorney  
Supervisor, Appellate, Asset Forfeiture and Administrative Services Division

TESTIMONY

ON

HB 910, HD 1 - RELATING TO FORENSIC MENTAL HEALTH

March 1, 2013

The Honorable Karl Rhoads  
Chair  
The Honorable Sharon E. Har  
Vice Chair  
and Members  
House Committee on Judiciary

Chair Rhoads, Vice Chair Har and Members of the Committee:

The Department of the Prosecuting Attorney, County of Maui, OPPOSES HB 910, HD 1, Relating to Forensic Mental Health.

HB 910, HD 1 proposes to limit conditional release periods for defendants acquitted of petty misdemeanors, misdemeanors or violations because of physical or mental disease, disorder or defect to a period of one year, *except for certain tolling periods*. We have several problems with this measure.

First, conditional release is afforded to a defendant who is "affected by physical or mental disease, disorder, or defect, and the defendant presents a danger to self or others, but can be controlled adequately and given proper care, supervision, and treatment is released on condition." Thus, conditional release deals with defendants who present a danger to him/herself or others.

Second, under HRS § 704-411(b), when a court directly places a defendant on conditional release, there already is a one-year conditional release period if the defendant was charged with a

petty misdemeanor, misdemeanor, or violation. Therefore, a court's determination that a defendant be directly placed on conditional release already creates a one-year time limit.

Third, the new one-year provisions for petty misdemeanors, misdemeanors, or violations will apply to situations where the defendant initially required commitment, or where a defendant was previously placed on conditional release, violated conditional release, and conditional release was revoked. These are more serious situations, where it was determined that conditional release was insufficient to control and properly care for, supervise and treat the defendant. We believe that having the defendant remain on conditional release until discharged pursuant to HRS § 704-413(3) to be more prudent to protect the defendant and the public. This also ensures that the defendant will receive proper care, supervision, and treatment as needed, rather than being discharged based on an arbitrary termination date.

Finally, the wording at the end of Section 5 of the bill is ambiguous. A defendant could argue, when his/her conditional release is revoked and he/she is subsequently placed on conditional release, that the one-year time limitation includes time previously served on conditional release. For example, if a defendant's conditional release was revoked after 11 months, if the defendant is subsequently placed on conditional release again, he/she could claim that the new conditional release period is only one month given his/her previous 11 months on conditional release. If this committee decides to pass this bill, the language should be clarified that the one-year time limitation applies to the new placement on conditional release, and there is no credit for previous time on conditional release.

We do agree with the language of Section 2, that all public agencies shall provide records to the court, "notwithstanding any other state statute." It is our position that if the committee intends to pass this bill, that the bill be amended to only include Section 2 as the substantive portion of the bill.

We ask that HB 910, HD 1 be HELD.

Thank you very much for the opportunity to provide testimony on this bill.

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

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KEITH M. KANESHIRO  
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**THE HONORABLE KARL RHOADS, CHAIR  
HOUSE COMMITTEE ON JUDICIARY  
Twenty-Seventh State Legislature  
Regular Session of 2013  
State of Hawai'i**

March 1, 2013

**RE: H.B. 910, H.D. 1; RELATING TO FORSENSIC MENTAL HEALTH.**

Chair Rhoads, Vice Chair Har 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 opposition to House Bill 910, H.D. 1.

One of the primary purposes of H.B. 910, H.D. 1 is to limit conditional release to a maximum of one year, for anyone granted conditional release after he or she was:

- (1) committed to the custody of the Director of Health, following an acquittal for physical or mental disease, disorder, or defect excluding penal responsibility; or
- (2) placed on conditional release pursuant to Chapter 704, then had such conditional release revoked

if the original charge against that person was a misdemeanor, petty misdemeanor, or violation.

When conditional release is granted, the court makes a specific determination that conditional release is necessary, as the defendant is still affected by physical or mental disease, disorder, or defect and still a danger to self or others. The court grants a conditional release because it feels that the defendant can be safely released only if he or she is adequately monitored and given proper care, supervision, and treatment. Without such supervision and treatment, the defendant will continue to be a danger to self or others.

Rather than apply a set one-year limitation on all conditional releases granted under HRS §704-412, in which the defendant was charged with a petty misdemeanor, misdemeanor, or violation, the Department would strongly recommend a case-by-case review by the court, involving a thorough review of all relevant facts and circumstances. Inevitably, some cases will

call for supervision and treatment beyond one-year, particularly in cases under HRS §704-412, where the defendant was previously committed and/or had their conditional release revoked.

Public safety is the Department's highest priority, and proper supervision and treatment of defendants is critical to preventing future violence or criminal activity. Instead of placing a set time limit on conditional release, the Department respectfully suggests a standardized schedule for court review. When a court finds that the defendant may be released into the community without being a danger to self or others, then it is within the court's powers to discharge him or her at that time.

For all the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes H.B. 910, H.D. 1. Thank you for the opportunity to testify on this matter.

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

March 1, 2013

H.B. No. 910 HD1: RELATING TO FORENSIC MENTAL HEALTH

Chair Rhoads and Members of the Committee:

We support passage of H.B. No. 910 HD1. This measure is a product of a special action team commissioned by the Governor to address the problem of increased lengths of stay at the Hawaii State Hospital ['HSH']. The committee determined that the cause that contributed the most to overpopulation at HSH was criminal commitments from the court. Many of those court commitments take place upon a revocation of conditional release status.

H.B. No. 910 HD1 is a housekeeping measure that clarifies the length of conditional release terms for violations, petty misdemeanors, and misdemeanors. In 2011, the legislature amended H.R.S. § 704-411 to limit the term of conditional release to one year on violations, petty misdemeanors, and misdemeanors. However, the changes failed to address the situation where a person is first committed to HSH then subsequently applies for conditional release. The 2011 changes also failed to address situations where a defendant already on conditional release is hospitalized on a 72-hour emergency hospitalization.

H.B. No. 910 HD1 clarifies the length of the term of conditional release in these situations. We support its passage.

Thank for the opportunity to comment on this measure.

**TESTIMONY OF THE HAWAII POLICE DEPARTMENT**

**HOUSE BILL 910**

**RELATING TO FORENSIC MENTAL HEALTH**

BEFORE THE COMMITTEE ON JUDICIARY

DATE : Friday, March 1, 2013

TIME : 2:00 P.M.

PLACE : Conference Room 325  
State Capitol  
415 South Beretania Street

PERSON TESTIFYING:

Police Chief Harry S. Kubojiri  
Hawaii Police Department  
County of Hawaii

(Written Testimony Only)

**William P. Kenoi**  
*Mayor*



**Harry S. Kubojiri**  
*Police Chief*

**Paul K. Ferreira**  
*Deputy Police Chief*

## **County of Hawai'i**

### **POLICE DEPARTMENT**

349 Kapiolani Street • Hilo, Hawai'i 96720-3998  
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February 27, 2013

Representative Karl Rhoads  
Chairperson and Committee Members  
Committee on Judiciary  
415 South Beretania Street, Room 325  
Honolulu, Hawai'i 96813

### **RE: HOUSE BILL 910, RELATING TO FORENSIC MENTAL HEALTH**

Dear Representative Rhoads:

The Hawai'i Police Department opposes passage of House Bill 910, relating to Forensic Mental Health. The intent of the appropriation is to establish a one-year length of time in which an individual may remain on conditional release if charged with a misdemeanor, petty misdemeanor or violation, amongst other requirements.

Our Department is opposed to this measure as it limits the amount of time that conditions can be placed upon a defendant acquitted of a misdemeanor on the grounds of mental disease, disorder or defect. We believe premature release from conditions for such a defendant may fail to adequately deal with the mental disease, disorder or defect.

We understand this Bill attempts to link the amount of time this type of defendant can be placed on conditional release to the maximum jail time of a misdemeanor (one year); however it fails to address the problem. A defendant, who is not afflicted with a mental disease or disorder and who is found guilty of a misdemeanor and given the maximum sentence, is presumed to be capable of relating punishment with the crime; and thus, seemingly able to reason that a repeat act will once again result in punishment. However, those defendants who are indeed acquitted as a result of mental disease, disorder or defect may very well be incapable of this reasoning process; the end result being that after one year, these types of defendants will be back in the community without proper support regardless of said defendants' inability to properly reason within the realm of the community's prescribed laws and expectations.

REPRESENTATIVE KARL RHOADS  
CHAIRPERSON AND COMMITTEE MEMBERS  
COMMITTEE ON JUDICIARY  
RE: HOUSE BILL 910 RELATING TO FORENSIC MENTAL HEALTH  
FEBRUARY 27, 2013  
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We are further concerned, as very often the commission of a misdemeanor may in fact be a portent to more serious behaviors to come from this type of defendant; not to mention the fact that plea bargaining may have had a role in reducing felonious behavior to misdemeanor status.

Our additional concern is the process whereby the Police are being tasked with the responsibility for generating additional (redacted) reports to aid the mental health assessors for which the defendant has been adjudicated by the acceptance of pleas of guilty or no contest, a finding of guilt, acquittal, acquittal pursuant to Section 704-400, or by entry of pleas of guilty or no contest. This requirement is overly onerous and, in fact, amounts to an unfunded mandate on the County Police Departments.

This unfunded mandate would in effect require our Department to determine which of the cases previously forwarded to the Judiciary for the defendant are attendant to the prescribed adjudication outcomes. In that our Department does not maintain such a database, we would be hard pressed to conduct research with the Judiciary's database and would subsequently have to produce new redacted copies. We believe these reports, if indeed necessary, should be derived from the Judiciary's already-received and already-available copies.

For these stated reasons, we strongly oppose this legislation. Thank you for allowing the Hawai`i Police Department to provide comments relating to House Bill 910.

Sincerely,

  
HARRY S. KUBOJIRI  
POLICE CHIEF



# Community Alliance for Mental Health

## Board of Directors

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Susan King

To: The Hawai'i House of Representatives Committee on Judiciary  
Re: HB910 HD1

To: The Honorable Representative Rhoads and the members of the committee.

Aloha,

The Community Alliance for Mental Health along with United Self Help supports HB 910 HD1. We feel that this bill will ease the recovery of consumers, free up beds at the State Hospital, and reduce the burden of the taxpayers of Hawai'i.

Mahalo,  
Robert Scott Wall  
Vice-President



## **HAWAII DISABILITY RIGHTS CENTER**

1132 Bishop Street, Suite 2102, Honolulu, Hawaii 96813

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### **THE HOUSE OF REPRESENTATIVES THE TWENTY-SEVENTH LEGISLATURE REGULAR SESSION OF 2013**

#### **Committee on Judiciary Testimony in Support of H.B. 910, HD1 Relating to Forensic Mental Health**

**Friday, March 1, 2013, 2:00 P.M.  
Conference Room 325**

Chair Rhoads and Members of the Committee:

The Hawaii Disability Rights Center testifies in support of this bill.

The purpose of the bill is to establish a one year limit that an individual could remain on a post acquittal conditional release when the offense charged was a petty misdemeanor, misdemeanor or violation. Conditional release occurs for defendants found not guilty by reason of mental disease, disorder or defect. After such an acquittal, defendants can either be confined to an institution or placed in the community on "conditional release", which, as the term implies, requires that they adhere to a variety of conditions pertaining to mental health treatment, medications and conduct.

In Hawaii, "conditional release" tends to become a lifetime status because it is ordered for an indefinite period and for any level of offense. The result is that many such individuals remain subject to the terms of the conditional release and at risk of being in violation of its terms (and therefore subject to confinement at the state hospital) for a period of time far in excess of the maximum penalty allowed for the offense charged. This results in a disproportionate infringement upon their liberty, as well as an inefficient allocation of resources in the penal system and at the state hospital.

We feel this bill takes a sound approach. Since many of the crimes for which these individuals are placed on conditional release are minor in nature, and since data from the Department of Health indicates that most of these individuals actually pose little risk to the public, there is no reason to retain and monitor these individuals on conditional release for prolonged periods of time. Certainly it is unfair to the individual and represents both a needlessly punitive approach to addressing that individual, as well



as a poor use of resources otherwise needed to address mental health needs as well as public safety in our community. For all those reasons, this bill is very sensible from the perspective of conserving penal resources as well as appropriate, humane treatment towards individuals with disabilities.

We would also like to point out that this provision passed the Legislature as Act 99 of the 2011 session and but for a “technical” defect in the bill would be implemented as the current law. For that reason, we would hope that this Legislature might view this portion of the bill as a “housekeeping” measure, as opposed to completely revisiting the underlying policy issue.

Thank you for the opportunity to testify in support of this measure.

**HB910**

Submitted on: 2/28/2013

Testimony for JUD on Mar 1, 2013 14:00PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Arvid Tadao Youngquist	The Mestizo Association	Support	No

Comments: Chair, JUD Committee Honorable Members The Mestizo Association has been advocating accommodation, justice, and understanding both locally as well as nationally since 1982. Measure in discussion amends penal code to establish limits to the length of conditional release for certain criminal charges, to clarify circumstances under which the one-year conditional release may be tolled, and to require information-sharing among public agencies. (HB910 HD1 We support the intent of HB 910 HD1, however the information sharing criteria must include strict protocol to prevent release of unauthorized information, such as child or young adult patients in this category. Since the years when we were part of the Work Study at the behest of the DOH Adult Mental Health Division (three month period at Kalihi-Palama Mental Health Clinic (corner of Kuakini/Lanakila Center), the effort to electronically share medical and psychiatric histories have come forward with leaps and bounds. But periodically, the system is a victim of hacking and virus attacks locally as well as nationally, jeopardizing patients' rights to privacy as well recovery and rehabilitation. Please proceed with caution. Mahalo for this opportunity to provide supportive written testimony on behalf of The Mestizo Association. Me Ke Aloha Pumehana, Arvid T. Youngquist Kali Valley Feb. 28, 2013

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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