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THE HONORABLE RYAN YAMANE, CHAIR
HOUSE HEALTH COMMITTEE
Twenty-fifth State Legislature
Regular Session of 2010
State of Hawai'i

February 2, 2010

RE: H.B. 2573; RELATING TO TIME FRAMES TO REGAIN FITNESS TO PROCEED.

Chair Yamane and members of the House Committee on Health, the Department of the Prosecuting Attorney submits the following testimony in opposition to H.B. 2574.

The purpose of this bill is to mandate that a defendant who is charged with either a petty misdemeanor or misdemeanor and who has been found unfit shall be committed no longer than sixty days for a petty misdemeanor and one hundred twenty days for a misdemeanor. The bill exempts defendants charged with offenses involving violence or attempted violence.

We oppose this bill for several reasons. First, we note that the current language in Hawaii Revised Statutes (HRS) section 704-406(2) already allows the court to dismiss the charge if so much time has elapsed since the commitment or release on conditions that it would be unjust to resume the proceeding. Upon the dismissal, the court can: 1) order the defendant to be discharged; 2) order the defendant civilly committed; or 3) released on conditions. H.B. 2573 adds a new subsection which seems to require that at the end of the sixty or one hundred twenty day time frame that the only possibilities are a dismissal and discharge or a civil commitment and that despite conflicting existing language that a release on conditions is not possible.

Secondly, we are unsure what a petty misdemeanor involving violence or attempted

violence is. Is it defined by the elements of the offense or by the actual facts in a particular case? For example, the elements of a misdemeanor offense of Entry upon the premises of a sex, child or spouse abuse shelter, HRS section 708-816.5, only involves proof that a person trespassed onto the shelter premises, but the facts of the case may indicate that the defendant trespassed onto shelter premises to commit an injury or threaten someone there. Likewise, petty misdemeanor and misdemeanor offenses such as harassment by stalking, and violation of privacy also do not require proof of a threat of violence or an act of violence but may clearly be motivated by an intent to harm the victim. In these cases, we would be concerned that a statutory time limit requiring the dismissal of the case and a discharge of the defendant, does not adequately represent the true seriousness of the situation.

For these reasons, we oppose the passage of H.B. 2573 and thank you for this opportunity to testify.