

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

March 16, 2010

S.B. 2726, SD2, HD1: Relating to Time Frames To Regain Fitness to Proceed.

Representative Karamatsu and Members of the Committee:

This bill proposes to create specified time frames for disposition of certain petty misdemeanor and misdemeanor cases when a defendant has been found unfit to proceed and has not regained fitness under Chapter 704.

Under this bill, petty misdemeanor cases "not involving violence or attempted violence" would be dismissed if a person had not regained fitness to proceed in two months. Misdemeanor cases "not involving violence or attempted violence" would be dismissed in four months if a person had not regained fitness to proceed. The defendant in either case would be free to reenter the community unless the court determined that the defendant fit the criteria for involuntary commitment. We are generally in favor of this legislation but offer the following comments.

We have some concern about the phrase "not involving violence or attempted violence". First of all, the term is not defined. Secondly, it may have the unintended affect of encouraging the charging body (police or prosecutor) to charge a so-called "violent" crime, even if it is a stretch given the facts of an arrest, in order that this new law not be triggered. Another, and frankly greater concern, is that the language in question may eliminate too many worthy cases from application of this law.

We would suggest that instead of the undefined language "not involving violence or attempted violence", the delineation be something along the lines of "when a defendant is charged with a petty misdemeanor property offense", etc. While we would still wish that laws such as this would be applied to offenses against the person, we understand there may be a desire to start small, as it were, and beginning with property offenses seems a good beginning.

As noted, the Office of the Public Defender supports passage of this bill and believes it would be improved with the suggestions outlined above.

Thank you for the opportunity to comment on this bill.