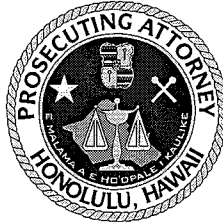


SB2726

SD1

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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THE HONORABLE BRIAN TANIGUCHI, CHAIR
SENATE JUDICIARY AND GOVERNMENT OPERATIONS COMMITTEE
Twenty-fifth State Legislature
Regular Session of 2010
State of Hawai'i

February 23, 2010

RE: S.B. 2726, S.D. 1; RELATING TO TIME FRAMES TO REGAIN FITNESS TO PROCEED.

Chair Taniguchi and members of the Senate Judiciary and Government Operations Committee, the Department of the Prosecuting Attorney submits the following testimony in opposition to S.B. 2726, S.D. 1.

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. At the end of the 60 or 120 day period, if the defendant remains unfit, the charges against the defendant shall be dismissed and the defendant shall be released unless the defendant is subject to prosecution for other charges or the defendant is subject to civil commitment. The bill exempts defendants charged with offenses involving violence or attempted violence.

We oppose these statutory limitations since they assume that all petty misdemeanors and misdemeanor defendants found unfit can be released after a 60 or 120 day period instead of the current case by case determination courts presently make by weighing the severity of the charges and circumstances and the defendant's mental condition. We believe that a review of all the circumstances by a court is preferable to the "one size fits all" approach of this bill.

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.

We understand that this bill is prompted by approximately nineteen cases in which petty misdemeanants and misdemeanants have been committed for care and treatment to regain fitness. We are currently in discussions with the Department of Health regarding these cases and the issues raised by this bill to see if a mutually acceptable solution can be reached.

Thank you for this opportunity to testify.

HAWAII DISABILITY RIGHTS CENTER

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THE SENATE THE TWENTY-FIFTH LEGISLATURE REGULAR SESSION OF 2010

Committee on Judiciary and Government Operations Testimony in Support of S.B. 2726, SD1 Relating to Time Frames To Regain Fitness To Proceed

**Tuesday, February 23, 2010, 10:00 A.M.
Conference Room 016**

Chair Taniguchi and Members of the Committee:

I am Louis Erteschik, Staff Attorney at the Hawaii Disability Rights Center, and am testifying in support of this bill.

We have a long standing interest in the issue of pretrial detainees who are mentally ill and the length of time they remain incarcerated. In 2003 the Hawaii Disability Rights Center undertook a comprehensive analysis and examined the case studies of sixty seven individuals who were incarcerated while awaiting trial. We found that detainees waited an average of eighty four days before the Court either entered an order declaring them unfit to proceed or acquitted and committed them due to a mental disease, disability or defect. During that time, they did not receive appropriate mental health treatment. We have always believed that this time line for a fitness to proceed determination needed to be streamlined and for several years advocated for such legislation.

We are pleased to see this bill introduced and feel it takes a sound approach to a different aspect of this problem. Since many of the crimes for which these individuals are charged are minor in nature, frequently the result is that the individual remains incarcerated for a longer period of time during this fitness restoration period than they would have if they had simply pled guilty to the charges at the first hearing. This bill specifies a timeline beyond which that individual can be incarcerated. That seems appropriate in light of the fact that if the crime alleged is so minor, then there is no benefit to society to incarcerate that person for a longer period of time. Certainly it is

unfair to the individual and represents a disproportionately punitive approach to addressing that individual based solely upon their mental illness.

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.

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

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Mental Health America
of Hawai'i

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February 22, 2010

TO: COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS; Senator
Brian T. Taniguchi, Chair; Takamine, Vice Chair; and Committee members
RE: Testimony in **Support** of SB 2726, Relating to Time Frames To Regain
Fitness To Proceed
Hearing: Feb 23, 2010, 10 am, room 16

Dear Senators:

I am Marya Grambs, Executive Director of Mental Health America of Hawai'i, and I am writing in **strong support** of SB2726. It currently takes too long for fitness restoration to take place, and in some cases individuals spend more time in Hawai'i State Hospital than they would have spent in jail or on probation if they were found guilty. This is unconscionable.

Not only is this unfair to the individuals charged, but it also contributes to the unnecessary overcrowding at Hawai'i State Hospital.

This is a clog in our system that needs to be remediated.

Thank you for considering this testimony.

Sincerely yours,

Marya Grambs
Executive Director