

SB2726

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In reply, please refer to:
File:

Senate Committee on Health

**S.B. 2726, RELATING TO TIME FRAMES TO REGAIN FITNESS TO
PROCEED**

**Testimony of Chiyome Leinaala Fukino, M.D.
Director of Health**

February 8, 2010; 2:45 p.m.

1 **Department's Position:** The Department of Health strongly supports this Administration bill

2 **Fiscal Implications:** None

3 **Purpose and Justification:** This bill establishes specific time frames within which to resolve the "unfit
4 to proceed" status for unfit defendants charged with two grades of offenses: 1) petty misdemeanors not
5 involving violence or attempted violence; and 2) misdemeanors not involving violence or attempted
6 violence. The time frame to regain fitness in cases involving petty misdemeanors is sixty days; and for
7 misdemeanors, one hundred-twenty days. If the defendant has not regained fitness to proceed within the
8 specified time frame, the charge is dismissed and the defendant is either discharged from custody or
9 civilly committed to a hospital.

10 A criminal defendant must be able to participate meaningfully in court proceedings; in other
11 words, be "fit to proceed" in order to go to trial or proceed with a plea bargain. Fitness refers, generally,
12 to a defendant's ability to understand basic court proceedings, understand the details and specifics of the
13 particular case, and work constructively with defense counsel. If a court finds that a defendant is unable
14 to do one or more of these three things, then the court usually finds the defendant "unfit to proceed."
15 After the finding, the court proceeding is temporarily suspended, and the defendant is ordered to fitness

1 restoration activities either in the custody of the director of health or while released on conditions in the
2 community. It is expected that a combination of mental health treatment and education about court
3 proceedings will eventually enable the defendant to participate meaningfully in his case, at which time
4 the court proceedings are resumed.

5 Unfit defendants cannot remain in custody or released on conditions indefinitely. The precedent-
6 setting cases, Jackson v. Indiana, 406 U.S. 715 (1972); and, in Hawaii, State v. Raitz, 63 Hawaii 64
7 (1980), provide that the fitness restoration process may continue for a "reasonable period of time"
8 considering the severity of the charge and the defendant's mental condition, or words to that effect.
9 Several of the States have implemented the "reasonable time period" requirement by adopting specific
10 time frames for fitness restoration, for all or some grades of offenses. Hawaii is one of only ten United
11 States jurisdictions without specified time frames for fitness restoration.

12 Currently, some unfit defendants charged with non-violent petty misdemeanors, or non-violent
13 misdemeanors have spent more time in custody at the Hawaii State Hospital (HSH) for fitness
14 restoration than the maximum time they would have otherwise spent in jail or on probation if sentenced
15 for the charged offenses. Many, if not most of this cohort do not present with behaviors dangerous
16 enough to support a petition for civil commitment. But for their minor charges, they would not qualify
17 clinically for inpatient psychiatric care. In most such cases, this result involves delivery of hospital level
18 care, which is the most intensive public mental health service, and the most costly, in cases where such
19 intensity may be unnecessary, and for some patients, may not be optimal. In addition, when inpatient
20 costs are incurred unnecessarily, DOH's ability to provide public mental health hospital services to all
21 who need them is restricted.

22 This measure proposes two changes to the current statutory language that requires competency
23 restoration for a "reasonable period of time" for all grades of offenses regardless of the severity of the
24 acts which lead to the charges, or despite the lack of any current dangerous behavior. It establishes a

1 time frame of sixty days for fitness restoration when a petty misdemeanor is involved, and one hundred-
2 twenty days when a misdemeanor is charged, provided that neither charge involves behavior that injured
3 or almost injured other persons.

4 The proposed amendment will result in court orders specifying the sixty or one hundred-twenty
5 day commitment in the designated cases. If the defendant remains unfit at the completion of the time
6 frame, and is not subject to other prosecution, the defendant will be released at the completion of the
7 time frame, unless the court grants the Department of Health's petition for civil commitment.

8 In summary, we expect the specific time frames proposed by this legislation to eliminate
9 unnecessarily prolonged hospital stays of unfit defendants charged with petty misdemeanors and
10 misdemeanors not involving violence or attempted violence. The Department of Health anticipates that
11 enactment and operationalization of the two specific time frames will increase the more efficient
12 utilization of inpatient hospital level psychiatric care, and thereby more effective expenditure of funds
13 for this level of care.

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

HAWAII DISABILITY RIGHTS CENTER

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THE SENATE THE TWENTY-FIFTH LEGISLATURE REGULAR SESSION OF 2010

Committee on Health Testimony in Support of S .B. 2726 Relating to Time Frames To Regain Fitness To Proceed

**Monday, February 8, 2010, 2:45 P.M.
Conference Room 016**

Chair Ige 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.