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GOVERNOR OF HAWAII



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In reply, please refer to:
File:

House Committee on Finance

H.B. 1069, HD1, Time Frames to Regain Fitness to Proceed

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

Monday, February 28, 2011, 11:00 a.m., Room 308

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

2 **Fiscal Implications:** Placing a maximum time limit for fitness restoration in misdemeanor and petty
3 misdemeanor cases will result in fewer days of hospitalization at the Hawaii State Hospital (HSH) and
4 significant financial savings, as the average operating cost of a day's stay at the Hawaii State Hospital is
5 approximately 750 dollars.

6 **Purpose and Justification:** The purpose of this bill is to set specific time frames which will put limits
7 on the amount of time a person charged with a petty misdemeanor or misdemeanor can be held as unfit
8 to proceed with trial.

9 Currently, if a criminal defendant is unable to participate in court proceedings, those proceedings
10 are suspended, the person is found "unfit to proceed," and is then ordered to receive "fitness restoration"
11 services at the Hawaii State Hospital or in the community. Fitness restoration comprises a combination
12 of medication, mental health treatment, and education about court proceedings.

13 Unfit defendants cannot remain in custody or released on conditions indefinitely. The Supreme
14 Court has ruled that fitness restoration may only continue for a "reasonable period of time," with
15 considerations made of the severity of the charge and the defendant's mental condition. Forty-three

1 states have adopted since specific time frames for fitness restoration. Hawaii is not one of them. Each
2 year, many patients remain at the HSH for fitness restoration for months beyond what they might have
3 served in jail for the same offense, if they had been found guilty.

4 This measure proposes to amend the current law that requires competency restoration in a
5 "reasonable period of time" for all grades of offenses by establishing a time frame of sixty days for
6 when the charge is a petty misdemeanor and one hundred-twenty days when the charge is a non-violent
7 misdemeanor. At the end of the new fitness restoration time frames, if the defendant remains unfit, the
8 court dismisses the charge and either releases the defendant or proceeds with civil commitment if those
9 criteria are met.

10 National and local data for fitness restoration indicate that most people will be "restored to
11 fitness" on average within 120 days after beginning treatment. Specific time frames are expected to
12 shorten the hospital stay of unfit defendants charged with petty misdemeanors or non-violent
13 misdemeanors, and allow Department to better manage the hospital census and staff resources.

14 This measure will help DOH achieve the most efficient utilization of the most intensive and most
15 expensive level of public mental health care. Community safety, which is a significant issue for the
16 Department, is protected by the option for civil commitment of those who qualify, as the proposed time
17 frames are applicable only to non-violent charges, and a determination by the hospital staff and court
18 that the individual is appropriate for safe release from the hospital.

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

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HAWAII DISABILITY RIGHTS CENTER

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**THE HOUSE OF REPRESENTATIVES
THE TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2011**

Committee on Finance

**Testimony in Support of H.B. 1069, HD1
Relating to Effect Of Finding Of Unfitness To Proceed**

**Monday, February 28, 2011 11:00 A.M.
Conference Room 308**

Chair Oshiro 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.

The purpose of the bill is to establish time frames beyond which individuals cannot be confined if they have been found not fit to proceed to trial and have been charged with relatively minor offenses.

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. In fact, since there is no timeline established under current law, an individual could theoretically spend their entire life locked up at the Hawaii State Hospital for committing an offense that may have carried at most a prison sentence of thirty days.

Clearly, there is a manifest injustice occurring in such situations. In effect, the State is incarcerating people without a trial because they are mentally ill. In addition to being a wasteful allocation of valuable bed space at the state hospital, this state of affairs violates the constitutional rights of citizens of our State and exposes the State to litigation that could take additional financial resources away from treatment of the mentally ill.

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.