HB1069

TESTIMONY

Office of the Public Defender
State of Hawaii

Timothy Ho, Chief Deputy Public Defender

Testimony of the Office of the Public Defender,
State of Hawaii to the Senate Committee on Judiciary and Labor

March 21, 2011, 8:30 a.m.

RE: H.B. 1069, HD2: Relating To Effect of Finding of Unfitness to Proceed

Chair Hee and Members of the Committee:

This measure would impose limitations on the length of commitment for a person charged with misdemeanor and petty misdemeanor offenses that do not involve violence or attempted violence who have been found unfit to proceed by the court.

The Office of the Public Defender supports H.B. 1069, HD2.

When a court determines that a defendant lacks fitness to proceed, the criminal proceedings against him are suspended, and he is committed to the director of health to be placed in an appropriate institution for detention, care and treatment. What really happens is that the defendant is committed to the Hawaii State Hospital in Kaneohe, and given a future court date in which his fitness to proceed is reevaluated. If the defendant remains unfit to proceed, he is returned to the hospital, and another return date is scheduled. More often than not, a defendant charged with a misdemeanor or petty misdemeanor offense who is found unfit to proceed will be held at the hospital for a period longer than the year or thirty days in jail he would have received had he been sentenced to the maximum jail time the law allows.

Defense attorneys are hesitant to request fitness hearings, or recommend the defense of penal irresponsibility to their clients because they know that a defendant who lacks fitness to proceed, or who is found not guilty by reason of mental illness, will be subjected to a longer period of detention and court supervision than those who do not claim mental illness as a defense. With the time limitations proposed in this measure, and H.B. 1070, HD2, we would be more likely to encourage our clients to avail themselves of the mental health system to get the help they need.

Not all people who suffer from mental illnesses are violent or a danger to the community. We do not have the resources to commit all people who suffer from a mental illness, nor is it morally acceptable. By imposing time limits on those individuals charged with misdemeanor and petty misdemeanor offenses, the Department of Health will be able to focus their limited resources on defendants charged with felonies and crimes involving violence.

Thank you for the opportunity to comment on this bill.

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THE HONORABLE CLAYTON HEE, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR
Twenty-Sixth State Legislature
Regular Session of 2011
State of Hawai`i

March 18, 2011

RE: H.B. 1069, H.D. 2; RELATING TO EFFECT OF FINDING UNFITNESS TO PROCEED.

Chair Hee, Vice Chair Shimabukuro and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney, City and County of Honolulu submits the following testimony in opposition of H.B. 1069, H.D. 2.

The purpose of this bill is to mandate that a defendant who is charged with either a petty misdemeanor or misdemeanor not involving violence, and who has been found by the court to be lacking fitness to proceed, the defendant shall be committed to the custody of the Director of Health to be placed in an appropriate institution for detention, care, and treatment no longer than sixty days for a petty misdemeanor and one hundred twenty days for a misdemeanor. If the defendant is not fit to proceed at the expiration of the commitment for a limited period or release on conditions for a limited period, or even prior to the expiration of the commitment for a limited period or release on conditions for a limited period, the charges against the defendant shall be dismissed and the defendant shall be released from custody unless the defendant is subject to prosecution for other charges or the defendant is subject to involuntary civil commitment.

We oppose limited periods of commitment and limited periods of release on conditions since it is assumed that all defendants charged with petty misdemeanor and misdemeanor not involving violence who are found unfit can be released after a 60 or 120 day period respectively instead of the current case by case determination courts presently make by weighing the severity of the charges, facts of the case, circumstantial evidence, 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. A cased by case review, better protects the public from defendants who may need further hospitalization or oversight by the court allowing the defendant a "release on condition," in which the court sets conditions on the defendant that it determines necessary.

For this reason, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes H.B. 1069, H.D. 2. Thank you for this opportunity to testify.

Monday, March 28, 2011
8:30 a.m.
Senate Conference Room 016

To: Senator Clayton Hee, Chair
Maile S.L. Shimabukuro, Vice Chair
Senate Committee on Judiciary and Labor

From: Anton Muhlert

Re: **HB 1069 RELATING TO EFFECT OF FINDING OF UNFITNESS TO PROCEED**

I would like to take this opportunity to write in ***support*** of HB 1069, which establishes a set of reasonable time frames beyond which individuals charged with minor offences deemed unfit to stand trial.

I am a first year MSW student at the University of Hawaii at Manoa. It is a great honor for me to be able to participate in the democratic process by giving my insight on this bill.

I am 54 years old, and have had a varied and diverse life. During the years 2002-2005 I was homeless on the streets of Honolulu. During that time, I could not help but notice that many of my brothers and sisters also without homes were dealing with mental illness. It was then that I became sensitive to the fact that the mentally ill among us are often treated unfairly.

For example, even though there is public assistance available, the process to qualify is often impossible for the mentally ill to navigate. Filling out forms and giving rational answers at an interview are simply not the forte of those enduring the audio hallucinations of schizophrenia. The very nature of the intake process discriminates against those most in need of assistance.

On our city buses, the disabled person in a wheelchair is welcomed and hoisted aboard with a specially designed lift. This is as it should be, however the person exhibiting symptoms of Tourette's syndrome, might be thrown off at the next stop as he blurts out obscenities.

In our society we are just turning the corner on discrimination against those with physical disabilities. That said we still have a long way to go when it comes leveling the playing field for the mentally ill. To put it plainly, mental illness is hard. It's diverse, difficult to diagnose, and even more of a challenge to treat. Moving forward in a thoughtful manner to treat the mentally ill with a greater degree of fairness needs to be an on-going process, a major portion of which necessarily will reside in the policy arena.

HB 1069 is an opportunity to rectify some unfairness in the way our criminal justice treats the mentally ill who commit Minor offences. The proposed bill sets time limits on the amount of time defendants deemed unfit to stand trial can be held for fitness restoration. As other testimony for this bill has already established, often the mentally ill frequently end up incarcerated, or under supervision for periods of time far beyond the maximum penalty for the original infraction. In essence this creates a two tier system of punishment, one for folks that have the wherewithal and opportunity to plead guilty, and another for those who are deemed by the court not capable of doing so. It also leaves the door open for the mentally ill to be incarcerated permanently for the sole cause of being deemed unfit to stand trial. The States Supreme Court spoke to this issue in Jackson v. Indiana, 406 U.S. 715 (1972), saying that such indefinite detention violated the defendants right to due process. Our current law does nothing to preclude such indefinite detention.

In a perfect world, defendants deemed unfit would be swiftly assessed and treated by our mental health professionals working in synchronicity with our legal system to get these minor cases swiftly resolved. Unfortunately with our overloaded courts, overcrowded State Hospital, and severe funding as well as staffing shortfalls at DHS, this perfect world is far off indeed. It is my opinion that time limits, given the situation as it is, are a practical solution to do the most good for the most people with the resources at hand. The limits proposed in HB 1069 would also eliminate the possibility of indefinite detention due to the inability to stand trial.

Thank you for the opportunity to testify on this bill.