

## **HAWAII DISABILITY RIGHTS CENTER**

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

#### **Committee on Judiciary Testimony in Support of H.B. 1069 Relating to Effect Of Finding Of Unfitness To Proceed**

**Thursday, February 3, 2011, 2:00 P.M.  
Conference Room 325**

Chair Keith-Agaran 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.