



STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P.O. Box 3378  
HONOLULU, HAWAII 96801-3378

LATE

In reply, please refer to:  
File:

**House Committee on Finance**

**H.B. 1070, HD1, Relating to Conditional Release Timeframes**

**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:** This change will save approximately \$350,000 per individual discharged from  
3 Conditional Release under the new timeframes.

4 **Purpose and Justification:** The purpose of the proposed legislation is to amend current statutory  
5 language by establishing a maximum one year commitment period for all persons placed on Conditional  
6 Release (CR), limited to those charged with misdemeanor or petty misdemeanor offenses.

7 At the present time, persons who have been acquitted of criminal charges by reason of mental or  
8 physical disease, disorder or defect may be subsequently released to the community on a post-acquittal  
9 conditional release (CR). A person is placed on CR after the court has determined that the person can  
10 safely live in the community, and adequately benefit from mental health services, supervision, and  
11 support.

12 The Department's data reveals that 90% of persons on CR in Hawaii for a misdemeanor or petty  
13 misdemeanor offense are maintained longer on CR than they could have spent on maximum jail time or  
14 on probation for the same offense, sometimes up to 20 times longer. The average misdemeanant CR  
15 costs the State approximately \$400,000 before the case is finally dismissed. This cost aggregates to

1 millions of dollars per year. This large and costly population results in an increased burden on both  
2 human and financial resources at District courts, probation offices, mental health centers, and hospitals.

3 Most states with CR statutes either limit CR to felony charges, have time limits on CR, or both.  
4 At this time, Hawaii statutes have neither. A person can be placed on CR for any charge, even a petty  
5 misdemeanor, and there is no time limit on how long a person may be on CR. As a result, Hawaii has  
6 the largest per capita population of persons on CR in the nation; there are approximately 450 persons on  
7 CR; of those approximately 150 are on CR for misdemeanor or petty misdemeanor charges.

8 By comparison, misdemeanor offenses carry a maximum of one year in jail or on probation.  
9 Most petty misdemeanor charges carry a maximum of 30 days in jail or six months of probation.  
10 However, a person acquitted for the same misdemeanor or petty misdemeanor offenses can spend the  
11 rest of their life on CR.

12 The group of misdemeanant CR individuals is at low risk to community safety. A large majority  
13 of persons placed on CR live in the community without incident (87% are never returned to a hospital).  
14 Arrest rates have remained steady at 11% over the past several years. Of those who are rearrested, 87%  
15 are rearrested for misdemeanor charges. Less than one-half of one percent of persons placed on CR is  
16 rearrested for a serious felony, which is a lower rate than the rate in the general U.S. population.  
17 Persons discharged from CR in Hawaii have a rearrest rate of 4%, and the majority of those arrests stem  
18 from minor charges.

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

LATE

**HAWAII DISABILITY RIGHTS CENTER**

900 Fort Street Mall, Suite 1040, Honolulu, Hawaii 96813

Phone/TTY: (808) 949-2922 Toll Free: 1-800-882-1057 Fax: (808) 949-2928

E-mail: [info@hawaiidisabilityrights.org](mailto:info@hawaiidisabilityrights.org) Website: [www.hawaiidisabilityrights.org](http://www.hawaiidisabilityrights.org)

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

**Committee on Finance**

**Testimony in Support of H.B. 1070, HD1  
Relating to Conditional Release Timeframes**

**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 a one year limit that an individual could remain on a post acquittal conditional release when the offense charged was a petty misdemeanor, misdemeanor or violation. Conditional release occurs for defendants found not guilty by reason of mental disease, disorder or defect. After such an acquittal, defendants can either be confined to an institution or placed in the community on "conditional release", which, as the term implies, requires that they adhere to a variety of conditions pertaining to mental health treatment, medications and conduct.

In Hawaii, "conditional release" tends to become a lifetime status because it is ordered for an indefinite period and for any level of offense. The result is that many such individuals remain subject to the terms of the conditional release and at risk of being in violation of its terms (and therefore subject to confinement at the state hospital) for a period of time far in excess of the maximum penalty allowed for the offense charged. This results in a disproportionate infringement upon their liberty, as well as an inefficient allocation of resources in the penal system and at the state hospital.

We feel this bill takes a sound approach. Since many of the crimes for which these individuals are placed on conditional release are minor in nature, and since data from the Department of Health indicates that most of these individuals actually pose little risk

to the public, there is no reason to retain and monitor these individuals on conditional release for prolonged periods of time. Certainly it is unfair to the individual and represents both a needlessly punitive approach to addressing that individual, as well as a poor use of resources otherwise needed to address mental health needs as well as public safety in our community.

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.