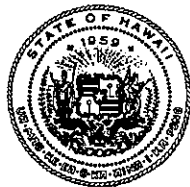


**HB 1070**

**HD2, SD1**



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

In reply, please refer to:  
File:

**Senate Committee on Ways and Means**

**H.B. 1070, SD1 Relating to Conditional Release Timeframes**

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

**April 1, 2011, 9:00 a.m., Room 211**

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

2 **Cost Implications:** Implementation of this law is not expected to increase expenditures. There may be  
3 cost savings as those who are now on Conditional Release (CR) an average of 5 years at approximately  
4 \$40,000 cost per year would remain on CR for a shorter period. In addition, resources currently devoted  
5 to misdemeanor CR consumers could be reallocated to programs and services for those who have greater  
6 clinical needs, more serious charges, or have a higher risk of danger to the community.

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

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

1           The Department's data reveal that 90% of persons on CR in Hawaii for a misdemeanor or petty  
2 misdemeanor offense are maintained longer on CR than they could have spent on maximum jail time or  
3 on probation for the same offense, sometimes up to 20 times longer. This large and expensive  
4 population results in an increased burden on both human and financial resources at District courts,  
5 probation offices, mental health centers, and hospitals.

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

11           To illustrate the comparison, misdemeanor offenses carry a maximum of one year in jail or on  
12 probation. Most petty misdemeanor charges carry a maximum of 30 days in jail or six months of  
13 probation. However, a person acquitted by reason of mental disease, disorder, or defect for the same  
14 misdemeanor or petty misdemeanor offenses could spend the rest of his or her life on CR.

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

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

DEPARTMENT OF THE PROSECUTING ATTORNEY  
**CITY AND COUNTY OF HONOLULU**

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**THE HONORABLE DAVID Y. IGE, CHAIR**  
**SENATE COMMITTEE ON WAYS AND MEANS**  
**Twenty-Sixth State Legislature**  
**Regular Session of 2011**  
**State of Hawai'i**

April 1, 2011

**RE: H.B. 1070, H.D. 2, S.D. 1; RELATING TO CONDITIONAL RELEASE TIME  
FRAMES.**

Chair Ige, Vice Chair Kidani and members of the Senate Committee on Ways and Means, the Department of the Prosecuting Attorney submits the following testimony in opposition to House Bill 1070, House Draft 2, Senate Draft 1.

The purpose of H.B. 1070, House Draft 2, Senate Draft 1 is to amend Hawaii Revised Statutes ("HRS") Section 704-411 to mandate that a conditional release be no longer than one year for any defendant granted such a release, who was charged with a petty misdemeanor, misdemeanor, or violation when the defendant was acquitted on the ground of physical or mental disease, disorder, or defect excluding responsibility, by the court, on the basis of:

1. The report made pursuant to section 704-404, HRS (Examination of defendant with respect to physical or mental disease, disorder, or defect), if uncontested; or
2. The medical or psychological evidence given at the trial or at a separate hearing.

When a court grants conditional release of a defendant, the court specifically determines that this is necessary, as the defendant is affected by physical or mental disease, disorder, or defect and the defendant presents a danger to self or others. The court grants a conditional release because it feels that the defendant can be safely released only if he or she is controlled adequately and given proper care, supervision, and treatment. Without such supervision and treatment, the defendant will continue to be a danger to self or others.

Rather than apply a blanket one-year limitation for all conditional releases of defendants charged with a petty misdemeanor, misdemeanor, or violation, a case-by-case review by the

court would be preferable, as this would involve a review of all relevant facts and circumstances, as well as the severity of the charges. Certain defendants may need supervision and treatment beyond the proposed one-year limitation.

Protecting the public's safety is our highest priority. Supervision and treatment of defendants is critical to prevent future violence or criminal violations. Instead of a time limitation on all conditional releases for defendants charged with a petty misdemeanor, misdemeanor, or violation, our department respectfully suggests that the committee consider a standardized schedule for court review.

For all these reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu opposes H.B. 1070, House Draft 2, Senate Draft 1. Thank you for the opportunity to testify on this matter.

## **HAWAII DISABILITY RIGHTS CENTER**

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

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### **THE SENATE THE TWENTY-SIXTH LEGISLATURE REGULAR SESSION OF 2011**

#### **Committee on Ways and Means Testimony in Support of H.B. 1070, HD2, SD1 Relating to Conditional Release Timeframes**

**Friday, April 1, 9:00 A.M.  
Conference Room 211**

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.

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.