

HB1070
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. 1070, HD2: Relating To Conditional Release Timeframes

Chair Hee and Members of the Committee:

This measure would limit the length of conditional release for any person who was charged with a misdemeanor, petty misdemeanor or violation and who was acquitted by reason of mental illness, disorder or defect to one year.

The Office of the Public Defender supports H.B. 1070, HD2.

Defendants who are acquitted by reason of mental illness are placed on conditional release by the court for an indefinite period of time. Many defense attorneys advise their clients to forgo the mental illness defense and risk jail because the court's jurisdiction, especially for misdemeanor offenses will be for a shorter period of time. These defendants are not getting the kind of treatment services that they need.

At the end of the one year conditional release period, if the Court believes that a defendant poses an imminent risk of harm to himself or the community, the Court can refer the defendant to the family court for civil commitment proceedings, which would result in the involuntary hospitalization for a period of up to ninety days.

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 21, 2011

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

Chair Hee, Vice Chair Shimabukuro and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney submits the following testimony in opposition to House Bill 1070, House Draft 2.

The purpose of H.B. 1070, H.D. 2 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, H.D. 2. Thank you for the opportunity to testify on this matter.