



STATE OF HAWAII
DEPARTMENT OF HEALTH
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In reply, please refer to:
File:

House Committee on Finance

H.B. 1071, HD1, Mental Health Release on Conditions of Persons Found Unfit to Stand Trial

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

Wednesday, March 2, 2011, 1:00 p.m.

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

2 **Purpose and Justification:** This bill provides a formal structure and mechanism to address community
3 safety and monitoring concerns for individuals found unfit to proceed and released on conditions.

4 Currently, if a criminal defendant is unable to participate meaningfully in court proceedings,
5 those proceedings are suspended, the person is found "unfit to proceed," and is then either ordered to
6 receive fitness restoration services at the Hawaii State Hospital (HSH) or released on conditions to be
7 restored to fitness in the community. Fitness restoration comprises a combination of medication, mental
8 health treatment, and education about the court proceedings. About 100, or approximately 87%, of all
9 fitness restoration cases in Hawaii per year are remanded to the custody of the Director to be restored to
10 fitness as an inpatient at the HSH. The statute also makes provisions to allow the court to order persons
11 to be "released on conditions" into the community to receive fitness restoration services there. This
12 population consists of approximately 15 new cases per year. The DOH has expanded fitness restoration
13 services for those individuals released to the community to include housing and specialized
14 programming at a community mental health center.

1 However, the current statute provides no clear formal description of a monitoring or reporting
2 process for those persons released on conditions into the community. There is no formal description of
3 the procedure to be followed in cases where an individual released on conditions does not comply with
4 the terms and conditions of release. As a consequence, courts have raised concerns about monitoring
5 and reporting when considering a request to release an unfit person on conditions into the community..

6 The proposed bill provides language describing structured monitoring and lines of
7 communication to the courts for individuals released on conditions. The proposed bill calls for the
8 department of health to monitor defendants released on conditions while unfit, provide a plan for
9 treatment, and contains a mechanism for reporting defendants' compliance with release conditions to the
10 prosecuting attorney's office in the court of the county in which the person was charged. The
11 prosecuting attorney's office takes appropriate action, which may include reporting violations to the
12 court for consideration of further action. The prosecutor's office is identified specifically as persons who
13 are unfit to proceed are not yet adjudicated, but are pre-trial defendants. The prosecutor's office is
14 uniquely positioned to channel legal information about pre-trial defendants efficiently to the court.

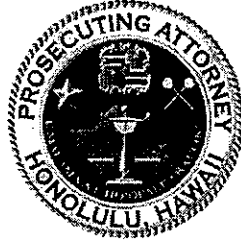
15 It is understood that this bill may result in an increased responsibility for the prosecuting
16 attorney. It is expected the proposed bill will result in desired outcomes including improved community
17 safety, increased willingness of courts to consider the outpatient fitness restoration option, and improved
18 use of financial resources for outpatient, rather than hospital, services to consumers who are released to
19 the community for fitness restoration.

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

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THE HONORABLE MARCUS R. OSHIRO, CHAIR
HOUSE FINANCE COMMITTEE
Twenty-sixth State Legislature
Regular Session of 2011
State of Hawai'i

March 2, 2011

RE: H.B. 1071, H.D. 1; RELATING TO MENTAL HEALTH RELEASE ON CONDITONS OF
A PERSON FOUND UNFIT TO STAND TRIAL.

Chair Oshiro, Vice Chair Lee, and members of the House Committee on Finance, the Department of the Prosecuting Attorney submits the following testimony in support of H.B. 1071, H.D. 1.

The purpose of this bill is to amend Hawaii Revised Statutes (HRS) section 704-406. When the defendant is released on conditions after a finding of unfitness to proceed, the Department of Health shall establish and monitor a fitness restoration program consistent with conditions set by the court order of release, and shall inform the prosecuting attorney of the county that charged the defendant of the plan and report the defendant's non-compliance. Our department appreciates working with the Department of Health on this issue.

For these reasons, we support the passage of H.B. 1071, H.D. 1. Thank you for this opportunity to testify.

Helping Hands Hawai'i

Wednesday, March 2, 2011

1:00 p.m.

Conference Room 208

To: Rep. Marcus Oshiro, Chair
Rep. Marilyn Lee, Vice Chair

From: Helping Hands Hawaii – Written Testimony Only

Re: **HB1071 HD1, RELATING TO MENTAL HEALTH RELEASE ON
CONDITIONS OF A PERSON FOUND UNFIT TO STAND TRIAL**

We *support the intent* of HB1071 HD1, RELATING TO MENTAL HEALTH RELEASE ON CONDITIONS OF A PERSON FOUND UNFIT TO STAND TRIAL. However, we have concerns that the current version of the bill does not adequately address concerns regarding existing procedures for releasing to the community individuals who are found unfit to stand trial.

Helping Hands Hawaii is a 501(c)(3) non-profit social service agency, which was incorporated in 1974. HHH administers a variety of Behavioral Health and Human Services programs, which assist over 37,000 individuals and households each year.

Behavioral Health services have been a core function of HHH for over 20 years. HHH currently administers Community-Based Case Management (CBCM), Community-Based Care Coordination (CBCC), Day Treatment and Aftercare, Psychosocial Rehabilitation, Intensive Outpatient Program, and Representative Payee services to assist adults with serious and persistent mental illness. CBCM and CBCC services in particular include in-depth psychological assessments as a key component of service delivery.

HHH has a long history of providing these types of services in Hawaii, and previously administered the Suicide & Crisis Center, a Jail Diversion Program, and in 1997 initiated the first Assertive Community Treatment (ACT) team to service SPMI individuals in the State of Hawaii.

In 2009, HHH was re-accredited by the Commission on Accreditation of Rehabilitation Facilities (CARF) for a three-year period, which demonstrates that the agency has met nationally recognized standards for the quality of service in the behavioral health field.

Based on our long history of providing Behavioral Health services in Hawaii, HHH supports the intent of HB1071 HD1 and its purpose to establish more clearly defined procedures for defendants unfit to stand trial and on conditional release. Currently, the law does allow Courts the option to release individuals who are unfit to stand trial to be released into the community if they do not pose a public safety risk, but this option has been underutilized primarily due to concerns from the Courts regarding the lack of procedures to follow if a person does not comply with established terms and conditions of release.

The bill in its current form amends Section 704-406 of the Hawaii Revised Statutes to require the Department of Health to establish and monitor a fitness restoration program for individuals released on conditions who are deemed unfit to stand trial and requires non-compliance to be reported to the Prosecuting Attorney within the respective county. However, the bill does not clearly address how this information would be reported back to the Courts for possible revocation purposes.

Our suggestion would be to add language to this bill to require that information regarding non-compliance also be reported to the Court. In the original version of this bill, this responsibility was designated to the Department of Public Safety. HHH has no comment on which government agency should be responsible for this reporting requirement, but feels that a clear line of responsibility for reporting non-compliance to the Court should be more clearly outlined to ensure better continuity of care and communication among all agencies involved in this process.

Once again, HHH supports the intent of HB 1071 HD1, but would suggest further amendments to address the concerns outlined above.

Thank you for the opportunity to testify.

HAWAII DISABILITY RIGHTS CENTER

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**THE HOUSE OF REPRESENTATIVES
THE TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2011****Committee on Finance****Testimony in Support of H.B. 1071, HD1****Relating to Mental Health Release On Conditions Of A Person Found Unfit
To Stand Trial**

**Wednesday, March 2, 2011, 1:00 P.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 this bill is to enhance the monitoring and the conditions under which a person may be released into the community after being found unfit to proceed to trial. Most individuals who fall into that category are sent to the Hawaii State Hospital. However, the statute does allow the Court the option, if the person is found to be not dangerous and not to pose a public safety risk, to release the individual into the community. Evidently, this is rarely utilized.

One of the reasons for the underutilization of this option is that the monitoring and reporting mechanisms for this individual are unclear. Justifiably, a Court may be reluctant to release an individual if there is a genuine concern that inadequate monitoring and supervision will occur. However, if these concerns were satisfied, it would increase the likelihood of a Court entering such an Order.

That would serve two basic purposes. First, it would alleviate some of the overcrowding that currently exists at the Hawaii State Hospital. While it was at one time intended to serve as the major institution for mental health treatment in our state, it has become a forensic facility to the point that no individual can be admitted except via Court order. This has created a large gap in our overall system of mental health delivery and

treatment. There are individuals in our state who might otherwise need to be at the State Hospital and could benefit from treatment at the facility. However, lack of bed space precludes them from admission. Housing individuals who have been found unfit to proceed, while they may attempt fitness restoration, may not represent the highest and best utilization of the state hospital.

The other purpose is that such individuals, if they are truly unfit to proceed, have by definition not been adjudicated of a criminal offense. They are still in a pretrial status. So, there is an inequitable feature about essentially incarcerating these people. As noted in our testimony on HB 1069, these individuals, if not restored to fitness, can spend an indefinite amount of time in a locked facility. If they were placed in the community at this earlier stage, then their basic freedoms and civil rights could be preserved.

Our review of the data from the state hospital indicates that fully 60% of the individuals housed there in this status have been charged with misdemeanors and petty misdemeanors. These individuals could safely be released without posing a risk to the public.

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.