

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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In reply, please refer to:
File:

House Committee on Judiciary

H.B. 1071, 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

Thursday, February 3, 2011, 2:00 p.m.

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

2 **Purpose and Justification:** This bill provides additional structure and a formalized mechanism to
3 address community monitoring and safety concerns in managing individuals found unfit to proceed and
4 released into the community.

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

1 However, the statute as currently worded provides no clear formal description of a monitoring or
2 reporting process for persons released on conditions into the community. Also, there is lack of clarity as
3 to the procedure to follow if a person does not comply with the terms and conditions of release. As a
4 result, courts have concern when considering a request to release on conditions for individuals deemed
5 unfit to proceed to trial.

6 The proposed bill provides language describing structured monitoring and reporting
7 responsibilities for individuals released on conditions. Under the bill, the department of health monitors
8 defendants released on conditions as unfit to proceed, provides a plan for treatment, and reports
9 defendants' compliance with the plan to the Intake Service Center (ISC) of the Department of Public
10 Safety. The ISC takes appropriate action, which may include reporting violations to the court for
11 consideration of initiating revocation proceedings. ISC is named specifically because persons who are
12 unfit to proceed are not yet adjudicated, but are pre-trial defendants. As the pre-trial agency, ISC is
13 uniquely positioned to report legal information about pre-trial defendants to the court.

14 It is understood that this bill will result in an increased responsibility for the ISC and the
15 Department of Public Safety. DOH and PSD are scheduled to meet to discuss these issues. It is
16 expected the proposed bill will result in better outcomes including improved community safety,
17 increased confidence by the courts in the outpatient fitness restoration option, and improved utilization
18 of financial resources to support outpatient, rather than inpatient, programs when an individual's
19 condition is appropriate to warrant community placement.

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