

SB 1298

RELATING TO MENTAL HEALTH RELEASE ON
CONDITIONS OF A PERSON FOUND UNFIT TO STAND
TRIAL.

Requires the Department of Health to provide a fitness restoration program for defendants unfit to proceed with court proceedings and on conditional release. Allows Department of Public Safety to take appropriate action on information shared regarding defendant compliance.



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

In reply, please refer to:
File:

Senate Committees on Health, Public Safety, Government Operations and Military Affairs

S.B. 1298, 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**

Tuesday, February 8, 2011; 2:45 p.m.; Room 224

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

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

NEIL ABERCROMBIE
GOVERNOR



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JODIE F. MAESAKA-HIRATA
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No. _____

**TESTIMONY ON SENATE BILL 1298
RELATING TO MENTAL HEALTH RELEASE ON CONDITIONS
OF A PERSON FOUND UNFIT TO STAND TRIAL**

by

Jodie F. Maesaka-Hirata, Interim Director
Department of Public Safety

Senate Committee on Public Safety, Government Operations, and Military Affairs
Senator Will Espero, Chair
Senator Michelle Kidani, Vice Chair

Senate Committee on Health
Senator Josh Green, M.D., Chair
Senator Clarence K. Nishihara, Vice Chair

Tuesday, February 8, 2011, 2:45 PM
State Capitol, Conference Room 224

Senator Espero, Senator Green, Senator Kidani, Senator Nishihara, and
Members of the Committee:

The Department of Public Safety (PSD) cannot support the intent of Senate Bill 1298 because in accordance with HRS 708-814(1) (b), when the Court has determined a pretrial offender is "Unfit to Stand Trial," all proceedings are suspended and the individual's custody is then committed to the Director of Health. The offender is no longer under the jurisdiction of PSD.

Therefore, the Department of Health's (DOH) treatment plan to release the individual into the community under HRS 708-406, should be worked out between the DOH and the Judiciary.

One, we strongly believe the Court's purpose to commit the offender to the custody of the Director of Health, as it is stipulated in its order, is to place the person "in the appropriate institution for detention, care and treatment." Two, we also contend to release an offender who is deemed to be unfit to proceed, places the safety of the community in jeopardy, and is contrary to the Department's fundamental mission to protect the welfare of the community. Finally, we do not have the staff or expertise to provide case management to clients with severe and persistent mental illness.

On behalf of the Department and the community we serve, thank you for the opportunity to provide testimony on this serious matter.

HAWAII DISABILITY RIGHTS CENTER

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THE SENATE THE TWENTY-SIXTH LEGISLATURE REGULAR SESSION OF 2011

**Committee on Public Safety, Government Operations and Military Affairs
Committee on Health
Testimony in Support of S.B. 1298
Relating to Mental Health Release On Conditions Of A Person Found Unfit
To Stand Trial**

**Tuesday, February 8, 2011, 2:45 P.M.
Conference Room 224**

Chair Espero, Chair Green and Members of the Committees:

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.

From: Marya Grambs [Marya@mentalhealth-hi.org]
Sent: Monday, February 07, 2011 4:04 PM
To: PGM Testimony
Subject: SB1298, hearing Feb 8, 2:45

TO:

COMMITTEE ON PUBLIC SAFETY, GOVERNMENT OPERATIONS, AND MILITARY AFFAIRS

Senator Will Espero, Chair
Senator Michelle Kidani, Vice Chair

COMMITTEE ON HEALTH

Senator Josh Green, M.D., Chair
Senator Clarence K. Nishihara, Vice Chair

RE: SB1298 RELATING TO MENTAL HEALTH RELEASE ON CONDITIONS OF A PERSON FOUND UNFIT TO STAND TRIAL.

I am Marya Grambs, Executive Director of Mental Health America of Hawai'i, and we are testifying in support of this bill.

This bill will enhance the monitoring under which a person may be released into the community after being found unfit to stand trial. Most individuals who are in this category are sent to the Hawaii State Hospital, and 60% of them were charged only with misdemeanors or petty misdemeanors. Many of these are not dangerous and not a risk to society, and they should be released into the community. This bill provides a monitoring process for this.

Apparently, often times the reason they are not released is because the monitoring is seen to be inadequate and confusing. If this bill is passed, it will address concerns about monitoring and reporting and will also, importantly, alleviate some of the overcrowding at Hawaii State Hospital, which has meant that many people in the community who need hospitalization are unable to do so.

The individuals affected by this bill have not, by definition, been found guilty of a crime, and this bill will keep them from being unfairly incarcerated.

Thank you for the opportunity to submit this testimony.

With Aloha,

Marya Grambs, Executive Director
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Note: Please let me know by emailing me if it's not okay with you to be added to our email list to receive occasional emails from us (invitations to our mental health seminars and our May luncheon, job announcements, etc.).