



HAWAII DISABILITY RIGHTS CENTER

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THE SENATE THE TWENTY-SIXTH LEGISLATURE REGULAR SESSION OF 2012

Committee on Ways and Means Testimony in Opposition To S.B. 2681, SD1 Relating to Defendants Committed To The Custody of the Director of Health

**Tuesday, February 28, 2012, 9:00 A.M.
Conference Room 211**

Chair Ige and Members of the Committee:

The Hawaii Disability Rights Center testifies in opposition to this bill.

We oppose the bill because despite the language in the Committee Report, the bill as drafted would allow the transfer to prison of many current residents of the Hawaii State Hospital. Under current law, if an individual is found not fit to proceed, they are to be transferred to the custody of the Director of Health, not the Director of Public Safety. They are almost always placed at the State Hospital in an attempt to restore their fitness, so they can proceed to trial. The individuals affected by this bill would be those who have not been restored, so that they are in a "limbo" situation where they might remain confined for an indefinite period of time.

This office was co-counsel in the case of Clark v. State of Hawaii, CV. No. 99-00885, which resulted in a permanent injunction requiring inmates who were unfit to proceed to be transferred to the state hospital within a matter of days. The Court deemed it so imperative to have these individuals away from the prison setting that it required this immediate transfer. That should provide some indication of just how important and appropriate it is that they be at the hospital as opposed to jail. This bill would reverse that decision along with the current law and allow the hospital to send them back to the prison. While they may not necessarily require an inpatient level of psychiatric care, they nonetheless receive more appropriate and more comprehensive mental health treatment at the state hospital than they would receive in the prison. Despite the language in the Committee Report, the bill as drafted is not limited to individuals who require a higher level of security. It could apply to a great many of the residents at the State Hospital.



Additionally, it is important to keep in mind that these individuals have not been convicted of any crime. They have been found by the court to be unfit to proceed and so have not had a trial and are therefore constitutionally presumed to be innocent. Jails are typically reserved for those who have been convicted of a crime and so these individuals, instead of being treated for their mental illness, would be incarcerated indefinitely simply because they are mentally ill. That would raise grave consequences and in our view be a deprivation of their constitutionally protected civil rights. We urge the Committee to not allow that to occur.

Thank you for the opportunity to testify in opposition to this measure.



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The Twenty-Sixth Legislature, State of Hawaii
Hawaii State Senate
Committee Ways and Means

Testimony by
Hawaii Government Employees Association
February 28, 2012

S.B. 2681, S.D. 1 - RELATING TO
DEFENDANTS COMMITTED TO
THE CUSTODY OF
THE DIRECTOR OF HEALTH

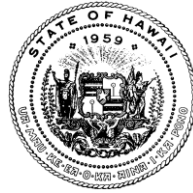
The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of S.B. 2681, S.D. 1, which allows for the transfer of patients at the Hawaii State Hospital (HSH) to a correctional facility under certain conditions. Under S.B. 2681, S.D. 1, the court upon a written request by the Director of the Department of Health and Director of Public Safety shall order a defendant who has been committed to the custody of the DOH through Section 704-406, to a correctional facility if the defendant:

1. No longer requires an inpatient level of psychiatric care, their mental health needs can be adequately addressed at the correctional facility, and the defendant is not ordered released on bail on their own recognizance;
2. No longer requires an inpatient level of psychiatric care, but is not suitable for discharge into a less restrictive community or residential setting; or
3. Requires stricter security than can be provided at HSH.

While we realize that the proposed legislation will likely affect a small number of individuals each year, we believe it will help to make the hospital a safer place in which to work. Ensuring the safety of our members is extremely important to the HGEA. Thank you for the opportunity to testify in support of S.B. 2681, S.D. 1

Respectfully submitted,

Leiomalama E. Desha
Deputy Executive Director



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

WRITTEN TESTIMONY ONLY

Senate Committee on Ways and Means

**S.B. 2681, SD1, Relating to Defendants Committed to
the Custody of the Director of Health**

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

February 28, 2012

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

2 **Fiscal Implications:** The financial implications of this bill are in the decreased expenditures for those
3 individuals who are transferred from DOH facilities to Department of Public Safety (PSD) facilities,
4 although the specific dollar amount is not calculatable at this time.

5 **Purpose and Justification:** The intent of this measure is to provide a mechanism to transfer an
6 individual, who has been committed to the Director of Health as "unfit to proceed" (Hawaii Revised
7 Statutes 704-406) to a setting controlled by the Director of Public Safety in specific circumstances.

8 The bill was drafted to address the situation that arises when an individual committed to the
9 custody of the director has been treated to clinical stability, but continues to need high security. This
10 legislation will allow the transfer of those individuals to an appropriate setting, once their treatment
11 needs have been met.

12 Consultation was done on this bill with PSD both to ensure that the proposed legislation is
13 consistent with that Department's goals and to confirm a mechanism for the coordination of care prior to
14 a transfer.

1 The measure provides for joint planning between the DOH and the PSD on the transfer. The
2 Court of original jurisdiction makes the determination about the transfer. The measure also includes a
3 mechanism to extend a current and valid involuntary order to treat the individual with medication to the
4 correctional institution to continue after the transfer.

5 The proposed legislation will only affect a small number of individuals each year, it is expected
6 to be helpful in improving the safety of Hawaii State Hospital operations and improving the effective
7 utilization of hospital resources.

8 There is no change proposed to the mechanisms currently in place to provide for the return of
9 these individuals back to the Hawaii State Hospital, if their clinical needs change and they do require
10 inpatient hospitalization.

11 This is an important, measured step in improving our continuum of services and supports and
12 will address the next steps in the restructuring and refinement of the State's management of individuals
13 ordered into its custody.

14 Thank you for the opportunity to testify on this measure.

From: mailinglist@capitol.hawaii.gov
To: [WAM Testimony](#)
Cc: Brenda.Kosky@gmail.com
Subject: Testimony for SB2681 on 2/28/2012 9:00:00 AM
Date: Monday, February 27, 2012 8:20:26 PM

Testimony for WAM 2/28/2012 9:00:00 AM SB2681

Conference room: 211
Testifier position: Support
Testifier will be present: No
Submitted by: Brenda Kosky
Organization: Individual
E-mail: Brenda.Kosky@gmail.com
Submitted on: 2/27/2012

Comments: