

# SB 2681

## **RELATING TO DEFENDANTS COMMITTED TO THE CUSTODY OF THE DIRECTOR OF HEALTH**

### *Description:*

Allows for the transfer of persons committed to the custody of the director of health to be transferred to correctional facilities under certain conditions.

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



LORETTA J. FUDDY, A.C.S.W., M.P.H.  
DIRECTOR OF HEALTH

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

In reply, please refer to:  
File:

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

**S. B. 2681 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 14, 2012**

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

2 **Fiscal Implications:** The dollar amount is not able to be specifically calculated at this time, but  
3 implementation of this bill is expected to result in more efficient utilization of DOH facilities and  
4 resources.

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 (PSD), when the individual no  
8 longer needs an inpatient level of clinical care, continues to require strict security, and is not appropriate  
9 for release into the community.

10 Consultation was done on this measure with PSD both to ensure that the proposed legislation is  
11 consistent with PSD's goals and to confirm a mechanism for the coordination of care prior to a transfer.

12 As a result of the consultation with PSD, several modifications and changes were discussed that  
13 the departments believe will strengthen the measure. Those changes are suggested to the committee as

1 amendments to the original measure, and are presented for your consideration as a Senate Draft 1 (SD1).

2 A copy of the proposed SB 2681 SD 1 is attached to this testimony.

3 The amended bill provides for both departments to have a working agreement in advance of  
4 filing the application for the transfer of a person from DOH to PSD custody.

5 The proposed amended legislation will be an effective mechanism to arrange for the transfer of  
6 individuals who need strict security to another, more appropriate setting. The measure provides for joint  
7 planning between the DOH and the PSD on the transfer. The court of original jurisdiction makes the  
8 determination about the transfer. The measure also includes a mechanism to extend a current and valid  
9 order to involuntarily treat the individual with medication, to the correctional institution after the  
10 transfer.

11 While the proposed legislation will only affect a small number of individuals each year, we  
12 anticipate that it will be helpful in improving the safety of Hawaii State Hospital operations and  
13 improving the effective utilization of hospital resources.

14 There are reciprocal mechanisms in place to provide for the return of these individuals back to  
15 the Hawaii State Hospital, if their clinical needs change and they do require inpatient hospitalization.

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

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

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## A BILL FOR AN ACT

RELATING TO DEFENDANTS COMMITTED TO THE CUSTODY OF THE DIRECTOR  
OF HEALTH.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

SECTION 1. Chapter 704, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**"§704- Committed defendants; transfer to a correctional facility.** (1) When the court, upon application of the director of health in written agreement with the director of public safety, determines, after a hearing if a hearing is requested, that a defendant who has been committed to the custody of the director of health pursuant to section 704-406 and who:

(a) No longer requires an inpatient level of psychiatric care, the defendant's mental health needs can be adequately addressed at a correctional facility, and the defendant is not ordered released on bail or on the defendant's own recognizance; or who

(b) No longer requires an inpatient level of psychiatric care but is not otherwise suitable for discharge into a less restrictive community or residential treatment setting; or

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1           who

2           (c) Requires stricter security than can be provided at the  
3           Hawaii state hospital or other facility designated by the  
4           director of health; the court shall order the defendant  
5           transferred to a correctional facility.

6           (2) The director of health or the director's designee shall  
7           work with the correctional facility to create an adequate mental  
8           health plan for any defendant transferred pursuant to this section.

9           (3) Should the clinical needs of any defendant transferred to a  
10           correctional facility pursuant to this section require inpatient  
11           level of psychiatric care, that defendant may be returned to a  
12           facility under the control of the director of health pursuant to a  
13           court order, or as a resident in need of treatment as provided under  
14           section 334-74.

15           (4) If there is an active order authorizing involuntary  
16           administration of psychiatric medication obtained by the director of  
17           health for the defendant, then, at the time of the order in  
18           subsection (1), the court may extend the order to the department of  
19           public safety to permit the order to be valid in the correctional  
20           facility for the duration of term of the order."

21           SECTION 2. This Act does not affect rights and duties that  
22           matured, penalties that were incurred, and proceedings that were  
23           begun before its effective date.

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1 SECTION 3. New statutory material is underscored.

2 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: \_\_\_\_\_

6

NEIL ABERCROMBIE  
GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF PUBLIC SAFETY**  
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TESTIMONY ON SENATE BILL 2681  
RELATING TO DEFENDANTS COMMITTED TO  
THE CUSTODY OF THE DIRECTOR OF HEALTH

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

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

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

Wednesday, February 15, 2012; 2:45 P.M.  
State Capitol, Conference Room 229

Chairs Espero and Green, Vice Chairs Kidani and Nishihara, and Members of the  
Committees:

The Department of Public Safety (PSD) has reviewed Senate Bill (SB) 2681 and  
supports the intent of this measure.

PSD requests that the following amendments to the measure:

1. **Page 1 (line 6)** – omit "704-411 (1)"
2. **Page 1 (line 7)** – omit "704-413 (3)"

PSD believes that these amendments will properly identify the committed  
defendants, the 704-406 who can be transferred to a correctional facility. PSD and the  
Department of Health (DOH) have agreed upon and jointly drafted additional  
amendments, as presented by DOH in SB 2681 proposed Senate Draft 1.

Thank you for the opportunity to present this testimony.