

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:

HOUSE COMMITTEE ON HEALTH, HOUSE COMMITTEE ON PUBLIC SAFETY

HB 667, RELATING TO MEDICAL USE OF MARIJUANA

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

February 8, 2013

1 **Department's Position:** COMMENTS on the transfer of the medical marijuana permitting program to
2 the Department of Health. The Department takes no position on the other provisions of this bill.

3 **Fiscal Implications:** Approximately \$100,000 in FY2013-14 and \$200,000 in FY2014-15 is estimated
4 to transition and implement the program. Any appropriation must not adversely impact the priorities
5 described in the Governor's Executive Budget request.

6 **Purpose and Justification:** The purposes of HB667 are to: 1) transfer responsibility for administration
7 of the medical marijuana permitting program from the Department of Public Safety to the Department of
8 Health, and 2) makes various amendments related to defining adequate supply, confidentiality of
9 growing sites, certifying physician requirements, confidentiality of patient's condition, caregiver to
10 patient ratio, transportation of medical marijuana, and qualifying visitors.

11

12 If sufficient time and resources are provided, the Department of Health will administer the medical
13 marijuana permitting program with a primary focus on patient. However, significant organizational,

1 regulatory, and programmatic changes are required to establish the program envisioned by the
2 department.

3
4 The proposed implementation date for the program is July 1, 2015. General funds of approximately
5 \$100,000 in FY 2013-14 and \$200,000 in FY 2014-15 are required for startup to:

- 6 • Coordinate with community and government stakeholders, including advocacy and law
7 enforcement
- 8 • Assure robust privacy, confidentiality, and information security policies and infrastructure
- 9 • Complete internal reorganization through the budget process, establishing function, program and
10 positions
- 11 • Promulgate new medical marijuana administrative rules
- 12 • Establish database, web interfaces, and other IT infrastructure
- 13 • Hire and train new staff and establish an appropriately secure physical office space

14
15 A new special fund into which permit fees are deposited needs to be established by January 1, 2015.

16 Until sufficient special funds are available for program self-sufficiency, general funds will be required.

17
18 Significant consideration of policy, legal, and operational issues is required since several responsibilities
19 described in HB667 currently fall outside of the current expertise of the Department of Health, such as:

- 20 • Reciprocity (page 2, lines 11 – 19): How will out of state or international permits be verified, and
21 what if any, limitations are they subject to?
- 22 • Enforcement (page 7, lines 3 – 4): How will individual quantity limits be tracked, verified, and
23 enforced?

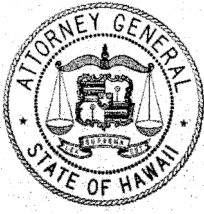
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1 The Department of Health is open to further discussion on the appropriate placement for the medical
2 marijuana permit program should this bill advance, but strongly emphasizes that sufficient resources to
3 implement and sustain the program are required.

4

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

6



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2013**

ON THE FOLLOWING MEASURE:

H.B. NO. 667, RELATING TO MEDICAL MARIJUANA.

BEFORE THE:

HOUSE COMMITTEE ON HEALTH

DATE: Friday, February 8, 2013

TIME: 8:30 a.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): David M. Louie, Attorney General, or
Richard W. Stacey, Deputy Attorney General

Chair Belatti and Members of the Committee:

The Department of the Attorney General submits testimony in strong opposition to this bill.

The purpose of this bill is to expand the medical marijuana program, allowing easier distribution of marijuana between qualifying patients and primary caregivers, granting immunity from searches and seizures and prosecution for marijuana-related offenses for qualifying patients transporting marijuana “intended for medical use,” allowing qualifying patients from other jurisdictions to easily obtain and use marijuana in Hawaii, altering the definition of “adequate supply” to ten marijuana plants and five ounces of usable marijuana, adding the definition of “reimbursement” to include compensation to primary caregivers, increasing the number of qualifying patients per primary caregiver from one to five, limiting the information to appear on the registry card to keep the location of where marijuana is grown confidential, and clarifying that the prescribing physician need not be the primary care physician. In addition, the bill switches the administration of the program from the Department of Public Safety to the Department of Health.

This bill expands the medical marijuana program in ways that will make it extremely difficult for the administrators and law enforcement to ensure that the law is followed. We strongly oppose this measure for the following reasons:

1. The bill, by making distribution between multiple primary caregivers and qualifying patients much easier, and by increasing the number of patients per caregiver from one to five, and making it harder to determine where medical marijuana is being grown, will make it

much more difficult to ensure compliance with the medical marijuana program, and much more difficult for law enforcement agencies to determine when a crime is being committed.

2. The bill appears to allow persons transporting marijuana, whether for medical purposes or not, to potentially evade law enforcement by giving blanket immunity from searches, seizures, or prosecution, where it appears that the person transporting the marijuana will just have to claim that it was “intended for medical use.” Also, it is unclear how law enforcement would know when a person transporting marijuana would be doing so in compliance with medical marijuana requirements and thus immune from a search, without being able to investigate the actual circumstances of the transport.

3. As a reminder, marijuana is still a schedule I controlled substance under federal law. It is in violation of federal law to grow, distribute, or use marijuana. Although this bill could legalize conduct that is currently prohibited under state law, federal law cannot be ignored. Federal law enforcement agencies make arrests and conduct raids on medical marijuana operations in other jurisdictions.

The Department has two additional concerns about two provisions. On page 7, at lines 16-22, the bill provides:

The form may request the address of the location where the marijuana is grown, but that information shall be **confidential** and shall not appear on the registry card issued by the department of health.

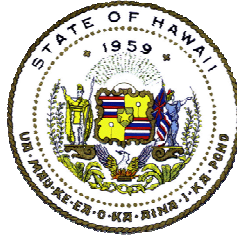
(Emphasis added). As the term “confidential” is not defined, it is not clear who would have access to that information, and who would not.

On page 8, at lines 1-9, the bill provides that the physician issuing the written certification shall only attest that the patient has a debilitating medical condition, but shall not identify the condition. It appears to prevent the registering authority from identifying the debilitating medical condition and confirming that the patient qualifies under the law for medical marijuana.

If this bill were passed, it would be extremely difficult to regulate and control the medical marijuana program, which was carefully tailored by legislation to reduce the chances of abuse.

We strongly oppose this bill and respectfully ask that it be held.

NEIL ABERCROMBIE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Blvd. 4th Floor
Honolulu, Hawaii 96813

TED SAKAI
INTERIM DIRECTOR

MARTHA TORNEY
Deputy Director
Administration

MAX OTANI
Deputy Director
Corrections

KEITH KAMITA
Deputy Director
Law Enforcement

AMENDED
TESTIMONY

No. _____

TESTIMONY ON HOUSE BILL 667
A BILL FOR AN ACT RELATING TO
MEDICAL MARIJUANA

By

Ted Sakai, Interim Director
Department of Public Safety

House Committee on Health
Representative Della Au Belatti, Chair
Representative Dee Morikawa, Vice Chair

House Committee on Public Safety
Representative Henry J.C. Aquino, Chair
Representative Kaniela Ing, Vice Chair

Friday, February 8, 2013, 8:30 AM
State Capitol, Room 329

Chairs Au Belatti and Aquino, Vice Chairs Morikawa and Ing, and Members of the Committees:

The Department of Public Safety (PSD) **does not support** House Bill 667 which proposes to transfer the medical use of marijuana program from the Department of Public Safety (PSD) to the Department of Health (DOH) as well as amend aspects of the medical use of marijuana program by increasing the authorized number of a patients marijuana plants from 4 immature and 3 mature and up to 3 ounces of usable marijuana to ten plants and five ounces of usable marijuana a significant increase, and allows for visitors from other States that have medical marijuana permits to utilize marijuana in Hawaii. The problem with this is that there is no way for law enforcement or DOH to verify the validity of the out of state visitors' medical use of marijuana ID card. House Bill 667 would allow a caregiver to charge a patient for costs associated with assisting that

qualifying patient to obtain marijuana for medical use as well as authorize the transfer of marijuana between other patients and caregivers.

The Department also has concerns that without the authorized location of the patient's marijuana plants on the permit, that if DOH does not have the capability to conduct verifications 24/7, the patient's marijuana plants may be seized unnecessarily. Presently, the medical use of marijuana permits provided by the Department's Narcotics Enforcement Division (NED) lists the patients' authorized grow location. The advantage of having the patient or caregiver's authorized grow location is that when a law enforcement officer is called to a residence and finds marijuana plants, the patient or caregiver can just present his or her medical use of marijuana permit and the officer will at a glance be able to verify that the plants are authorized and leave. If this information is not on the permit, the law enforcement officer will have to contact DOH for every permit.

The Department's Narcotics Enforcement Division, since the inception of Hawaii's Medical Use of Marijuana program in 2000, has worked very closely with State and County law enforcement officers in conducting medical use of marijuana permit verification information to the officer on the street. During FY 2012 NED conducted 950 medical marijuana verification checks for Federal, State, and County law enforcement agencies. NED has received numerous verification calls resulting in an individual being released without arrest or seizure of their plants due to the ability of law enforcement officer to contact NED 24 hours a day, 7 days a week to verify a patient or caregiver's medical use of marijuana certificate status. Even with NED streamlining the verification and response to law enforcement procedure, each check may take up to 15 minutes and is done by NED Investigators due to the possibility of having to testify in court on the information provided.

NUMBER OF VERIFICATION CHECKS MADE FOR LAW ENFORCEMENT

FY2009 (320)

FY2010 (412)

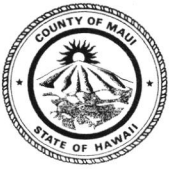
FY2011 (984)

FY2012 (950)

Island Medical Marijuana Counts January 2013			
	Patients	Caregivers	Physicians
Hawaii	4846	575	51
Kauai	1589	218	29
Lanai	16	8	4
Maui	2668	311	36
Molokai	201	31	10
Niihau	1	0	0
Oahu	2684	288	58
	12005	1431	188

For these reasons the Department cannot support House Bill 667.

Thank you for the opportunity to testify on this matter.



ALAN M. ARAKAWA
MAYOR

OUR REFERENCE

YOUR REFERENCE

POLICE DEPARTMENT

COUNTY OF MAUI

55 MAHALANI STREET
WAILUKU, HAWAII 96793
(808) 244-6400
FAX (808) 244-6411



GARY A. YABUTA
CHIEF OF POLICE

CLAYTON N.Y.W. TOM
DEPUTY CHIEF OF POLICE

February 07, 2013

The Honorable Henry J. C. Aquino, Chair
And Members of the Committee on Public Safety
House of Representatives
State Capitol
Honolulu, Hawaii 96813

The Honorable Della Au Belatti, Chair
And Members of the Committee on Health
House of Representatives
State Capitol
Honolulu, Hawaii 96813

RE: House Bill No. 667, RELATING TO MEDICAL MARIJUANA

Dear Chairs Aquino and Au Belatti, and Members of the Committees:

The Maui Police Department OPPOSES the passage of H.B. No. 667.

The passage of this bill amends aspects of the Medical Use of Marijuana regime, to include: defining adequate supply, confidentiality of growing sites, certifying physician requirements, confidentiality of patient's condition, caregiver to patient ratio, transportation of medical marijuana, qualifying visitors, and registration requirements, effective July 1, 2013.

The Maui Police Department strongly opposes this bill because it opens the floodgates to abuses in the current medical marijuana laws. This bill has many unanswered questions that would be a result of it passing. The following are a few questions and concerns that we would like to pose for the committees to consider.

In the proposed bill for SECTION 2 (Proposed addition of "Transfers"):

- 1) Checking for a valid medical marijuana permit alone is difficult to expedite. Is a transfer of medical marijuana from one patient to be regulated (by NED)? Or is it going to be on an "honor" system?
- 2) What is the burden of proof that the caregiver determined that the recipient had a valid medical marijuana permit?

The Honorable Henry J. C. Aquino, Chair
And Members of the Committee on Public Safety

The Honorable Della Au Belatti, Chair
And Members of the Committee on Health
February 6, 2013
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3) This clause does not specify the amount of medical marijuana a caregiver can possess, only that the recipient can receive an "adequate supply". Does that mean the caregiver or patient can legally possess more than the legal limit as long as they are holding it to "transfer" to a recipient?

4) The fact of the matter is that marijuana, legal or not, is a controlled substance. You are NOT allowed to transfer your prescription pills to someone else with the same illness/conditions. They would need a prescription from their doctor. Why should this be any different?

In the proposed bill in SECTION 2 (Proposed addition of "Transportation"):

1) This proposed addition cannot be allowed. This will allow any medical marijuana patient to leave their marijuana in a vehicle and simply cite this section of law when pulled over. If allowed, there should be some provision that would dictate the amount of marijuana allowed at any time in the vehicle

In the proposed bill in SECTION 2 (Proposed addition of "Authorized conduct by a visiting qualifying patient"):

1) From state to state there are varying degrees of difficulty when obtaining a medical marijuana permit. In some states, simple back pain can get you a medical marijuana permit. In Hawaii, we are making it more restrictive (one must have a debilitating illness/injury). In addition, are we to allow/verify a medical marijuana permit from another state? There is no on-line database. An out of state permit can only be checked during normal business hours which limits the time(s) a law enforcement official can verify the permit.

The Maui Police Department again asks that you OPPOSE the passage of H.B. No. 667.

Thank you for the opportunity to testify.

Sincerely,



GARY A. YABUTA
Chief of Police



Committee: Committee on Health
Committee on Public Safety
Hearing Date/Time: Friday, February 8, 2013, 8:30 a.m.
Place: Conference Room 329
Re: Testimony of the ACLU of Hawaii in Support of H.B. 667,
Relating to Medical Marijuana

Dear Chairs Belatti and Aquino and Members of the Committees:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in support of H.B. 667, Relating to Medical Marijuana, which provides a number of important and necessary changes to the medical cannabis program.

Contemporary scientific evidence confirms the countless stories of the therapeutic effects of medical marijuana, which has provided unique relief for serious conditions, including cancer and AIDS, when no other medicine is as effective or free of side effects such as nausea or loss of appetite. Nearly one million patients nationwide now use medical marijuana as recommended by their doctors and in accordance with state laws. Unfortunately, Hawaii’s medical cannabis program is flawed; H.B. 667 will go far towards alleviating the problems faced by current patients.

As a member of the Medical Cannabis Working Group, the ACLU of Hawaii is aware of the many difficulties that patients face with the current medical marijuana program. H.B. 667 attempts to address some of these concerns by ensuring that qualifying, registered patients are immune from searches, seizures, and prosecution for marijuana-related offenses during the transportation of the substance, increasing the caregiver to patient ratio so that caregivers may cultivate plants or parts for five patients at any given time, instead of the current limitation of one patient. H.B. 667 also takes substantive steps to protect the privacy of medical marijuana patients by mandating that the name and specifics of a medical condition should not be submitted to the State so long as the application includes a physician’s attestation that a debilitating medical condition exists. Because the address of the location where the marijuana is grown will no longer appear on the registry card, this bill also protects the rights of the primary caregiver. Finally, we strongly support the transfer of jurisdiction from the Department of Public Safety to the Department of Health, the latter of which is better suited to monitor and regulate Hawaii’s medical marijuana program.

American Civil Liberties Union of Hawaii
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Chairs Belatti and Aquino and HLT-PBS Committee Members
February 8, 2013
Page 2 of 2

The Medical Cannabis Working Group's full report is available at
<http://www.acluhawaii.org/downloads/1002MCWG.pdf>. Please support H.B. 667.

Thank you for this opportunity to testify.

Sincerely,
Laurie A. Temple
Staff Attorney and Legislative Program Director

The American Civil Liberties Union of Hawaii ("ACLU") has been the state's guardian of liberty for 47 years, working daily in the courts, legislatures and communities to defend and preserve the individual rights and liberties equally guaranteed to all by the Constitutions and laws of the United States and Hawaii. The ACLU works to ensure that the government does not violate our constitutional rights, including, but not limited to, freedom of speech, association and assembly, freedom of the press, freedom of religion, fair and equal treatment, and privacy. The ACLU network of volunteers and staff works throughout the islands to defend these rights, often advocating on behalf of minority groups that are the target of government discrimination. If the rights of society's most vulnerable members are denied, everyone's rights are imperiled.

American Civil Liberties Union of Hawaii
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