



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

In reply, please refer to:
File:

House Committee on Judiciary

S.B. 2726, SD2, HD1, RELATING TO TIME FRAMES TO REGAIN FITNESS TO PROCEED

**Testimony of Chiyome Leinaala Fukino, M.D.
Director of Health**

March 16, 2:15 p.m.

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

2 **Fiscal Implications:** No funds are appropriated.

3 **Purpose and Justification:** The Department of Health is currently in discussions with the Prosecutor's
4 Office of the City & County of Honolulu concerning the issues raised by its objections to this bill in an
5 effort to identify mutually acceptable solutions to those issues, if possible. We have the impression that
6 our first round of discussions was productive, though inconclusive.

7 In response to what seemed a consensus that our discussions might be informed by a data
8 "snapshot" of the types of cases that would be affected by the provisions of this bill, the Department of
9 Health provided to the Honolulu Prosecutor's Office information from thirty cases in which unfit
10 defendants are committed to the custody of the Director of Health and admitted to Hawaii State
11 Hospital. The data show that the time frames proposed by this bill would apply in twenty-one of those
12 cases. Specifically, the time frame concerning petty misdemeanor charges would, at this time, apply in
13 fourteen out of eighteen cases; the time frame concerning misdemeanor cases would apply, at this time,
14 in six out of eleven cases; and we identified one case involving a non-violent violation.

15

1 As a matter of clarification, this administration measure was not prompted by any specific cases,
2 but by a general trend or pattern of cases, which the Adult Mental Health Division has studied for
3 several years. The advisability of statutory specification of certain time frames in cases involving unfit
4 defendants was discussed first during the SCR No. 117 Task Force meetings held in 2006 and 2007. In
5 the 2008 Legislative Session, the Task Force, which considered ways to minimize the Hawaii State
6 Hospital's census and promote the use of community based forensic programs, proposed several
7 amendments to chapter 704 Hawaii Revised Statutes (HRS), which were enacted. This measure was not
8 among the first round of amendments to chapter 704 because the Task Force, in its final report to the
9 Legislature, slated this topic for future action. In proposing this bill, the Department of Health is
10 following the action plan described in the Task Force's report.

11 The Department of Health is recommending the following amendments to this Administration
12 bill.

13 Page 5, Section 3, lines 6 through 9, should be amended to read as follows:

14 (3) If the defendant who is committed for a limited period, as provided in subsection (1), is
15 not found fit to proceed by the expiration of the commitment, the court shall conduct a
16 hearing, at which the charge for which the defendant was committed for a limited period
17 shall be dismissed.

18 Page 6, Section 4, lines 9 through 13, should be amended to read as follows:

19 (4) If the defendant who is released for a limited period, as provided in subsection (1), is not
20 found fit to proceed prior to the expiration of the order of release on conditions, the court
21 shall conduct a hearing, at which the charge for which the defendant was released for a
22 limited period shall be dismissed.

23 We respectfully request that the committee incorporate the recommended amendments.

24 Thank you for this opportunity to testify.

DEPARTMENT OF THE PROSECUTING ATTORNEY
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Twenty-fifth State Legislature
Regular Session of 2010
State of Hawai'i

March 16, 2010

**RE: S.B. 2726, S.D. 2, H.D. 1; RELATING TO TIME FRAMES TO REGAIN FITNESS
TO PROCEED.**

Chair Karamatsu and members of the House Judiciary Committee, the Department of the Prosecuting Attorney submits the following testimony in opposition to S.B. 2726, S.D. 2, H.D. 1.

The purpose of this bill is to mandate that a defendant who is charged with either a petty misdemeanor or misdemeanor and who has been found unfit shall be committed no longer than sixty days for a petty misdemeanor and one hundred twenty days for a misdemeanor. At the end of the period, if the defendant remains unfit, the charges against the defendant shall be dismissed and the defendant shall be released unless the defendant is subject to prosecution for other charges or the defendant is subject to civil commitment. The bill exempts defendants charged with offenses involving violence or attempted violence.

We oppose these statutory limitations since they assume that all petty misdemeanors and misdemeanor defendants found unfit can be released after a 60 or 120 day period instead of the current case by case determination courts presently make by weighing the severity of the charges and circumstances and the defendant's mental condition. We believe that a review of all the circumstances by a court is preferable to the "one size fits all" approach of this bill.

Secondly, we are unsure what a petty misdemeanor involving violence or attempted violence is. Is it defined by the elements of the offense or by the actual facts in a particular case? For example, the elements of a misdemeanor offense of Entry upon the premises of a sex, child or spouse abuse shelter, HRS section 708-816.5, only involves proof that a person trespassed onto the shelter premises, but the facts of the case may indicate that the defendant trespassed onto shelter premises to commit an injury or threaten someone there. Likewise, petty misdemeanor and misdemeanor offenses such as harassment by stalking, and violation of privacy also do not require proof of a threat of violence or an act of violence but may clearly be motivated by an intent to harm the victim. In these cases, we would be concerned that a statutory time limit requiring the dismissal of the case and a discharge of the defendant does not adequately represent the true seriousness of the situation.

We understand that this bill is prompted by approximately nineteen cases in which petty misdemeanants and misdemeanants have been committed for care and treatment to regain fitness. We are currently in discussions with the Department of Health regarding these cases and the issues raised by this bill to see if a mutually acceptable solution can be reached.

Thank you for this opportunity to testify.