

DEPARTMENT OF THE PROSECUTING ATTORNEY  
CITY AND COUNTY OF HONOLULU

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**THE HONORABLE RYAN YAMANE, CHAIR**  
**HOUSE HEALTH COMMITTEE**  
**Twenty-fifth State Legislature**  
**Regular Session of 2010**  
**State of Hawai'i**

March 9, 2010

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

Chair Yamane and members of the House Health Committee, the Department of the Prosecuting Attorney submits the following testimony in opposition to S.B. 2726, S.D. 2.

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 60 or 120 day 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.