



**STATE OF HAWAII**  
**DEPARTMENT OF HEALTH**  
P. O. Box 3378  
Honolulu, HI 96801-3378  
doh.testimony@doh.hawaii.gov

**Testimony COMMENTING on H.B. 2068**  
**RELATING TO THE ADMINISTRATION OF JUSTICE**

REPRESENTATIVE JOHN M. MIZUNO, CHAIR  
HOUSE COMMITTEE ON HEALTH

REPRESENTATIVE BERTRAND KOBAYASHI, VICE-CHAIR  
HOUSE COMMITTEE ON HEALTH

Hearing Date and Time: Thursday, February 6, 2020 at 8:45a.m. Room: 329

**Department Position:** The Department of Health (“Department”) strongly supports the intent of this measure and offers comments.

**Department Testimony:** The subject matter of this measure intersects with the scope of the Department’s Behavioral Health Administration (“BHA”) whose statutory mandate is to assure a comprehensive statewide behavioral health care system by leveraging and coordinating public, private and community resources. Through the BHA, the Department is committed to carrying out this mandate by reducing silos, ensuring behavioral health care is readily accessible, and person centered. The BHA’s Adult Mental Health Division (“AMHD”) provides the following testimony on behalf of the Department.

The Department supports the intent of this measure to avoid keeping individuals who have been charged with non-violent offenses and committed to the custody of the Director of Health for periods of time that are longer than necessary while ensuring that the State’s finite resources are used appropriately. The Department respectfully notes that if this measure is adopted in its current form, individuals with misdemeanor and petty misdemeanor charges who are acquitted and committed would have a longer period of maximum time on conditional release (one year) than individuals with non-violent felony C charges (six months).

1           The Department respectfully suggests that if a 180-day maximum conditional release is  
2 approved for defendants charged with a Felony C offense, a 180-day maximum should also be  
3 adopted for defendants charged with non-violent misdemeanors and non-violent petty  
4 misdemeanors.

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

6  
7       **Offered Amendments:** None.

8       **Fiscal Implications:** Undetermined.

**HB-2068**

Submitted on: 2/4/2020 6:27:39 PM

Testimony for HLT on 2/6/2020 8:45:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Louis Erteschik	Hawaii Disability Rights Center	Comments	No

## Comments:

We were involved with the drafting of the current law that limits the period of conditional release as well as the commitment of individuals who are not fit to proceed, and we believe that extending it as proposed in this bill makes sense. At some point if the person cannot be restored to fitness and they did not commit a violent offense, then they are basically just being deprived of their liberty because they are mentally ill. Similarly, conditional release represents an infringement of a person rights and most states do limit the period in situations such as this.



**LATE**

*The Judiciary, State of Hawai'i*

**Testimony to the House Committee on Health**

Representative John M. Mizuno, Chair

Representative Bertrand Kobayashi, Vice Chair

Thursday, February 6, 2020, 8:45 a.m.

State Capitol, Conference Room 329

**WRITTEN TESTIMONY ONLY**

by

Judge Shirley M. Kawamura

Deputy Chief Judge, Criminal Administrative Judge

Circuit Court of the First Circuit

---

**Bill No. and Title:** House Bill No. 2068, Relating to the Administration of Justice.

**Purpose:** Limits DOH commitment to 180-days for those defendants charged with a non-violent class C felony and found to be unfit to proceed under chapter 704, HRS. Limits to 180-days the period of conditional release granted to defendants charged with a non-violent class C felony.

**Judiciary's Position:**

The Judiciary appreciates the intent of this proposed bill, but respectfully opposes the bill in its current form. This would lead to defendants who would be penally responsible and convicted if they were guilty of the conduct alleged being released without conviction or any requirements for drug treatment.

Currently, if a defendant is found unfit to proceed they are either committed to the custody of the director of health for detention, care, and treatment, or, if they are not a danger to self or others, then they are released to complete a community based fitness restoration program. The determination of fitness, i.e., whether a defendant has the capacity to understand the proceedings against him/her and the capacity to assist in his/her own defense, is not a determination that the defendant suffers from a mental illness. When a defendant is determined to be initially unfit, it is difficult to determine whether the lack of fitness to proceed is drug-induced (and therefore would resolve given time) or is actually the result of a mental disease,



disorder, or defect. Treatment for each type of condition would be different and having a mandatory time frame of 180 days for a determination of regained fitness (or likelihood of regaining fitness) in every case would be problematic for C felonies.

Many of the non-violent C felony cases in the First Circuit on the Chapter 704 track are either drug offenses or property-based crimes which can be directly linked back to drugs (unauthorized control of a propelled vehicle, unauthorized entry into a motor vehicle, burglary in the second degree, identity theft, forgery, etc). C felonies are serious crimes, subject to a term of imprisonment of five years. Although some drug-induced psychosis would likely resolve before a defendant completes an evaluation on fitness, due to forced detox or treatment due to the pending case, those defendants who are actually found unfit due to a drug-induced psychosis, would likely not be ready for or complete a panel examination for regained fitness within the time limitations set forth in this proposed bill.

This would lead to defendants who would be penally responsible and convicted if they were guilty of the conduct alleged being released without conviction or any requirements for drug treatment.

Moreover, these defendants could not be diverted into the community programs currently available to them to help with drug addiction or to the treatment courts that may assist them (drug court, veteran's court, mental health court, and HOPE) as they likely will not be ready to proceed in these programs in the 180 days allowed under this proposal. This would subvert the intent of the bill by potentially creating a revolving door on these drug-related property crime cases as defendants are not offered or engaged in drug treatment, and released and may commit new crimes.

In those cases where a defendant has a mental illness, and that mental illness is the reason they are unfit to proceed, forcing the release of an unfit, possibly dangerous, defendant into the community without services right when they may be responding to treatment would be contrary to the intent of the bill. The current statute contemplates the release of unfit defendants who are not dangerous to self or others through a release on conditions order requiring community-based treatment to obtain fitness, and this is done on a regular basis. Restricting the amount of time that these individuals are given supervised community-based treatment aimed at regaining fitness to six months may lead to insufficient treatment and further recidivism.

If a mandatory time limitation for the restoration to fitness of a non-violent C felony defendant is determined to be necessary to advance the purposes of the proposed bill, the Judiciary respectfully proposes a two-year time limitation.

As to the proposal to limit the term of conditional release in non-violent C felony cases to 180 days, this limitation is far shorter than the current one-year limitation placed on non-violent



House Bill No. 2068, Relating to the Administration of Justice  
House Committee on Health  
Thursday, February 6, 2020  
Page 3

misdemeanors. Conditional release of a defendant who, but for his/her mental illness is guilty of the conduct charged, is analogous to probation for a defendant who has been found guilty of the offense. Respectfully the Judiciary proposes if a term limitation is to be placed on non-violent C felonies, it should be equal to the term of probation a conviction would result in (four or five years).

Thank you for the opportunity to testify on this measure.