

MAR 15 2006

SENATE CONCURRENT RESOLUTION

REQUESTING THE JUDICIARY TO ESTABLISH AN APPROPRIATE FEE FOR
COURT-ORDERED FORENSIC EVALUATIONS AND TO PROVIDE COPIES OF
THE EXAMINATION REPORTS TO THE DEPARTMENT OF HEALTH.

1 WHEREAS, the Hawaii Disability Rights Center studied a
2 random sample of sixty-seven pretrial detainees who were the
3 subject of court-ordered forensic examinations in 2001 and 2002;
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6 WHEREAS, each person's criminal justice proceeding was
7 examined in depth to construct individual timelines for the
8 mental health evaluation process provided under section 704-404,
9 Hawaii Revised Statutes; and

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11 WHEREAS, the mental examination process averaged eighty-
12 four days from the date of the issuance of the court's order for
13 a mental health examination to the judicial ruling on the
14 fitness to proceed; and

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16 WHEREAS, during the forensic evaluation process, persons
17 suspected of mental illness may remain in prison for weeks or
18 months without appropriate mental health treatment; and

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20 WHEREAS, thirty-five percent of all persons who undergo a
21 forensic evaluation examination are declared unfit to proceed or
22 are acquitted or conditionally released; and

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24 WHEREAS, the initial period of evaluation was extended by
25 the court for additional periods of thirty to one hundred and
26 eighty days in 31.4 percent of the cases reviewed; and

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28 WHEREAS, generally, pretrial detainees for misdemeanors who
29 undergo one-panel forensic examinations are incarcerated far
30 longer than the possible length of incarceration for conviction
31 of the crime for which they are charged; and
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1 WHEREAS, in response to concerns raised in this study, the
2 Legislature has considered various measures aimed at
3 streamlining the forensic evaluation process; and

4 WHEREAS, one particular source of delay which has been
5 acknowledged is the inadequate compensation paid to the
6 psychiatrists and psychologists who conduct the forensic
7 evaluations; and

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9 WHEREAS, this results in a lack of available professionals
10 willing to undertake this function, thereby contributing
11 substantially to the lengthy evaluation process; and

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13 WHEREAS, the fee for forensic evaluations is currently set
14 by Circuit Court Part D Criminal Administrative Order No. 4.1 at
15 \$500; and

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17 WHEREAS, this fee is a flat fee which does not take into
18 account the number of hours devoted to conducting the
19 evaluation; and

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21 WHEREAS, this fee has not been raised by the Judiciary
22 since 1992; and

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24 WHEREAS, the Legislature believes that if the fee were
25 increased to an appropriate level of compensation, more
26 professionals would be willing to conduct these evaluations,
27 thereby expediting the process;

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29 WHEREAS, while the Adult Mental Health Division of the
30 Department of Health currently certifies those psychiatrists or
31 psychologists who are appointed by the court to conduct forensic
32 evaluations, the Department of Health has no statutory authority
33 to monitor the quality or consistency of the reports; and

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35 WHEREAS, this lack of a formal mechanism for the Department
36 of Health to receive or review the examination reports further
37 hinders the identification of the causes of delays in the
38 evaluation process; and

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40 WHEREAS, if the Department of Health could review the
41 forensic reports, it could better monitor the overall system of
42 mental health examinations, provide quality control oversight,
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1 and ensure that the reports are thorough, more consistent, and
2 timely; and

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4 WHEREAS, while there is no statutory mandate for the court
5 to provide copies of the forensic reports to the Department of
6 Health, neither is there a statutory prohibition; now,
7 therefore,

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9 BE IT RESOLVED by the Senate of the Twenty-third
10 Legislature of the State of Hawaii, Regular Session of 2006, the
11 House of Representatives concurring, that the Legislature
12 requests that the Judiciary evaluate and increase the fees for
13 forensic evaluations to an adequate level as it determines and
14 to submit as part of its biennium budget request to the next
15 Legislature an appropriation request sufficient to provide for
16 any additional expenditures required as a result thereof; and

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18 BE IT FURTHER RESOLVED that the Legislature requests the
19 Judiciary to provide, at the conclusion of the proceeding, a
20 copy of the forensic evaluation report and any supporting
21 documents to the Chief of Forensics of the Adult Mental Health
22 Division of the Department of Health for the purposes of quality
23 control; and

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25 BE IT FURTHER RESOLVED that certified copies of this
26 Concurrent Resolution be transmitted to the Chief Justice of the
27 Hawaii Supreme Court, the Chief of Forensics of the Adult Mental
28 Health Division of the Department of Health, the Hawaii
29 Psychiatric Association, the Hawaii Psychology Association, and
30 the Hawaii Disability Rights Center.

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OFFERED BY: *Anzanne Chun Oakland*

