



**LATE**

*THE JUDICIARY, STATE OF HAWAII*

**Testimony to the House Committee on Health**

The Honorable Ryan I. Yamane, Chair

The Honorable Scott Y. Nishimoto, Vice Chair

Friday, February 5, 2010, 9:30 a.m.  
State Capitol, Conference Room 329

by

Thomas R. Keller

Administrative Director of the Courts

**WRITTEN TESTIMONY ONLY**

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**Bill No. and Title:** House Bill No. 2572, Relating to Confidentiality of Forensic Mental Health Examination Reports

**Purpose:** Requires courts to maintain mental health examination reports as confidential documents, subject to certain specific exceptions for limited distribution of the reports.

**Judiciary's Position:**

The Judiciary takes no position on the merits of this bill, but respectfully offers the following comments.

Currently, the court either faxes and/or mails copies of most, if not all, "dispositive orders" (as defined in the bill) to the Adult Mental Health Division and other Department of Health facilities shortly after they are issued. Facsimile transmission is used because the health department (meaning primarily the state hospital) has insisted that the orders be transmitted as soon as possible after they are issued. Facsimile transmission has been doable in the past because the orders and reports have not been confidential.

If the reports are made confidential and attached to every dispositive order distributed, as proposed by this bill, transmission by facsimile may not be appropriate and mail delivery will necessarily delay receipt of the orders by the department.



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Ultimately, making the reports confidential and requiring the court to attach them to orders that must be distributed will cause delays in distribution that the Department of Health has repeatedly complained about in the past. While this bill will not create much more additional work for the court, it might create logistical problems and additional costs.

Thank you for the opportunity to provide testimony on this matter.

**LATE**

LINDA LINGLE  
GOVERNOR OF HAWAII



CHIYOME LEINAALA FUKINO, M.D.  
DIRECTOR OF HEALTH

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In reply, please refer to:  
File:

**LATE**

**House Committee on Health**

**H.B. 2572, RELATING TO CONFIDENTIALITY OF FORENSIC MENTAL  
HEALTH EXAMINATION REPORTS**

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

**February 5, 2010 9:30 a.m.**

1 **Department's Position:** The Department strongly supports this Administration-sponsored proposal.

2 **Fiscal Implications:** None

3 **Purpose and Justification:** This bill requires each forensic examiner to provide the original and three  
4 copies of each report to the court that ordered the forensic examination. The clerk of court is required to  
5 attach a copy of each report to the dispositive order issued pursuant to chapter 704, and deliver the  
6 dispositive order with attached report(s) to the director of health. Other than disclosure of the reports to  
7 prosecutor, defense counsel and the director of health, the reports are confidential and would not be  
8 disclosed by any person without an appropriate court order. A definition of "dispositive order" is  
9 provided.

10 The court may order a mental health examination of a defendant in a criminal action in various  
11 circumstances pursuant to Hawaii Revised Statute (HRS) sections 704-404 (initial pre-trial report  
12 concerning fitness to stand trial and/or penal responsibility), 704-406 (pre-trial report related to  
13 substantial likelihood of regaining fitness to proceed), 704-411(3) (post-acquittal report concerning  
14 dangerousness), and 704-414 (post-acquittal report concerning application for discharge, conditional  
15 release, or modification of conditional release).

1           Currently, the courts in all judicial circuits except for the Second Circuit file the mental health  
2 examination in the public record of the defendant's case, which is available for public review. The  
3 courts in the Second Circuit seal the examinations in a locked cabinet, and the reports are not available  
4 for review by the general public. Mental health examinations are sealed in other judicial circuits  
5 occasionally on a case by case basis.

6           The examination reports contain information which, in any other context, would be considered  
7 protected health information, and are personal, private, and sensitive. Reports routinely list the name of  
8 the defendant, defendant's mental health and medical histories, histories of mental health and medical  
9 treatment, diagnoses, names and locations of friends and family members, numbers of children,  
10 employers and employment history, social security numbers, criminal history, and the nature and  
11 circumstances of the current charge. While the defendant opens the door to otherwise confidential  
12 personal history information by seeking a mental health examination, the examinations may be required  
13 over the defendant's objection in some cases, and in all cases the reports include a great deal of highly  
14 personal history information. In all other circumstances the information is protected to various degrees  
15 by state and federal confidentiality laws and regulations. The limitation of dissemination to the court,  
16 the prosecutor, the defense, DOH, and others only upon court order will limit the release of the  
17 information to those who have an immediate need for access to the information.

18           The DOH needs a copy of each report for two purposes; (1) to optimize timely treatment of the  
19 defendant committed to DOH after acquittal, or ordered to receive DOH outpatient services, and (2)  
20 quality review of the examination reports by the DOH that are submitted to the court by independent  
21 examiners.

22           Thank you for the opportunity to testify on this bill.