

SB2725

LINDA LINGLE
GOVERNOR OF HAWAII



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In reply, please refer to:
File:

Senate Committee on Health

**S.B. 2725, RELATING TO CONFIDENTIALITY OF FORENSIC MENTAL
HEALTH EXAMINATION REPORTS**

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

February 8, 2010 2:45 p.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.