



STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

House Committee on Health

HB2318, Relating to Records for Forensic Examinations

Testimony of Lynn N. Fallin
Deputy Director, Behavioral Health Administration
Wednesday, February 12, 2014, 10:15 a.m., Room 329

1 **Department's Position:** The Department of Health (DOH) strongly supports this Administration's
2 proposed bill.

3 **Fiscal Implications:** None.

4 **Purpose and Justification:** This bill proposes to amend the Hawaii Penal Code with respect to forensic
5 evaluations of defendants, specifically when there is a concern about fitness to proceed or penal
6 responsibility. The bill allows public agencies to share information about defendants for whom forensic
7 examinations are ordered by the court, notwithstanding confidentiality laws, with the court, so that the
8 court can then share the information with the forensic examiners when evaluations are deemed
9 necessary. Under the Health Insurance Portability and Accountability Act (HIPAA), public agencies are
10 prohibited from exchanging protected health information about their clients without the client's consent,
11 unless it is for the purpose of treatment, payment, or healthcare operations.

12 This measure amends HRS §704-404, to allow public agencies to share information they
13 maintain about defendants being evaluated for fitness or penal responsibility, without the defendant's
14 consent, with adult probation, so that adult probation can then share the information with court
15 examiners (which is already permitted in the statute). This disclosure would then fall into the HIPAA

Promoting Lifelong Health & Wellness

1 exception to the requirement of having consents because it would then be "required by law" pursuant to
2 45 C.F.R. 164.512(a). By requiring public agencies to share defendants' records with the forensic
3 examiners, mental health evaluations will be expedited and there will be fewer continuances because of
4 unavailability of relevant information, more accurate and complete evaluations, and potentially shorter
5 lengths of time for patients to remain at Hawaii State Hospital pending these evaluations. The DOH
6 requests the expeditious passing of this measure and appreciates the support of the House Committee on
7 Public Safety in recommending this bill pass Second Reading.

8 Thank you for the opportunity to testify.

NEIL ABERCROMBIE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY

919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

TED SAKAI
DIRECTOR

Martha Torney
Deputy Director
Administration

Max Otani
Deputy Director
Corrections

Shawn Tsuha
Deputy Director
Law Enforcement

TESTIMONY ON HOUSE BILL (HB) 2318
RELATING TO
RECORDS FOR FORENSIC EXAMINATIONS
by
Ted Sakai, Director
Department of Public Safety

House Committee on Health
Representative Della Au Belatti, Chair
Representative Dee Morikawa, Vice Chair

Wednesday, February 12, 2014; 10:15 a.m.
State Capitol, Conference Room 329

Chair Belatti, Vice Chair Morikawa, and Members of the Committee:

The Department of Public Safety (PSD) **supports** HB 2318, which would enable public agencies to provide the appropriate records necessary for court ordered mental health evaluations, irrespective of confidentiality laws.

The timely availability of these records would facilitate the completion of these evaluations, thereby reducing the patients' length of stay at the Hawaii State Hospital or PSD's correctional facility.

PSD is a participating agency in the Governor's special action team. All recommendations to revitalize adult mental health services in the community, and to address the increase in the Hawaii State Hospital census will have a positive impact on PSD's mental health care system.

Thank you for the opportunity to present this testimony.

House Committee on Health

HB 2318 Relating to Records for Forensic Examinations

Representative Della Au Belatti
Representative Dee Morikawa
Members of the House Committee on Health

LATE

Wednesday, February 12, 2014 10:15 am Room 329

Testimony in support of HB2318

This bill proposes to amend HRS 704 -404 to allow public agencies to share information about defendants with adult probation so that adult probation can share that information with court examiners, and in doing so, expedite the process of forensic examination for fitness.

I work with victims of violent crimes and have seen the frustration of these victims at the long delays in the criminal justice proceedings. Anything that can be done to expedite these examinations would be beneficial for the victims.

Any additional information could only be valuable to the examiners who are trying to assess the defendant's fitness to stand trial, often for serious crimes, in the space of one interview with the defendant. They are also trying to offer a judgment as to the defendant's state of mind at the time of the offense within the same interview. These are complicated and life changing for the defendant and they deserve to have their examinations performed by a well informed examiner.

Thank you for allowing me to submit testimony in favor of this bill.

Jane Huntington

Jlh96750@yahoo.com