



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

In reply, please refer to:
File:

House Committee on Judiciary

HCR 18, HD1, REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO CONDUCT A STUDY TO ADVISE THE SPECIAL ACTION TEAM ON THE OPTIMAL NUMBER OF FORENSIC EXAMINATIONS NECESSARY FOR FELONY CASES

Testimony of Loretta J. Fuddy, A.C.S.W., M.P.H.
Director of Health

Thursday, March 28, 2013, 2:00 p.m.

1 **Department's Position:** The Department of Health (DOH) supports this House Concurrent Resolution.

2 **Fiscal Implications:** None from the study itself; if the study results in a change in the number of
3 forensic examinations required there could be potential cost savings. While it is difficult to estimate
4 these precisely, we project the total savings for DOH given a shift to one panel exams might be in the
5 range of a few hundred thousand to several hundred thousand dollars per year, through shortened
6 hospital stay. Based upon data DOH received from the Judiciary, DOH's understanding of the costs to
7 the Judiciary is there might be considerable cost savings achieved through the smaller number of
8 independent evaluations required, but we defer to the Judiciary for a more precise estimate of fiscal
9 impact on their budget.

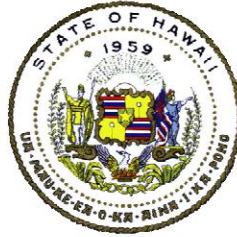
10 **Purpose and Justification:** The purpose of this study is for the Legislative Reference Bureau (LRB) to
11 advise the Governor's Special Action Team participants (and others) on the appropriate number of
12 forensic examinations required in cases where an individual is charged with a felony and where either an
13 evaluation is requested to determine fitness to proceed or the defendant is raising an insanity plea as a
14 defense, as provided under chapter 704, Hawaii Revised Statutes (HRS).

1 Currently, chapter 704, HRS requires the use of three forensic examiners in felony cases when
2 either a question is raised regarding fitness to proceed or an insanity defense is raised. Only one
3 forensic examiner is required in non-felony cases. The large number of examinations required results in
4 inefficiencies and delays in resolving cases and, for some individuals, an lengthened stay in DOH
5 custody. The delay is compounded by Hawaii’s use of three exams at each stage of the court case
6 including at fitness determinations, when determining criminal responsibility, requesting to transition
7 out of the hospital, petitioning to be placed on conditional release, and petitioning to be discharged from
8 conditional release. These multiple, repetitive uses of three forensic examinations creates substantial
9 delays and extensions of hospitalization without apparent clinical value. Costs are incurred for each
10 forensic examination that is required. Obviously costs are also incurred the longer a defendant remains
11 in the custody of the DOH.

12 With this advisement from the LRB study, there may emerge a consensus around modifying the
13 relevant portions of HRS, affected agencies may implement policies which will result in better
14 coordination between them. This will permit us to more effectively address mental health service needs
15 for individuals in our state, to realize potential cost savings, and to more effectively manage the census
16 at Hawaii State Hospital and those committed to the DOH.

17 Thank you for the opportunity to testify.

NEIL ABERCROMBIE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY

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DIRECTOR

Martha Torney
Deputy Director
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Max Otani
Deputy Director
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Keith Kamita
Deputy Director
Law Enforcement

No. _____

TESTIMONY ON HOUSE CONCURRENT RESOLUTION (HCR) 18, HOUSE DRAFT (HD) 1
REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO
CONDUCT A STUDY TO ADVISE THE SPECIAL ACTION TEAM
ON THE OPTIMAL NUMBER OF FORENSIC EXAMINATIONS
NECESSARY FOR FELONY CASES

By
Ted Sakai, Director
Department of Public Safety

House Committee on Judiciary
Representative Karl Rhoads, Chair
Representative Sharon E. Har, Vice Chair

Friday, March 22, 2013, 2:00 p.m.
State Capitol, Room 325

Chair Rhoads, Vice Chair Har, and Members of the Committee:

As a member of the Governor's Special Action Team, the Department of Public Safety (PSD) supports HCR 18, HD1 which requests the Legislative Reference Bureau to conduct a study to advise the Special Action Team on the optimal number of forensic examinations necessary for felony cases. PSD is also willing to cooperate further if needed.

Thank you for the opportunity to testify on this matter.



Community Alliance for Mental Health

Board of Directors

Anne Chipchase
President

Robert Scott Wall
Vice President

Crystal Aguinaldo
Secretary

William Lennox
Treasurer

Sunny Algoso

Jessica Carroll

Randolph Hack

Gina Hungerford

Susan King

To: The Hawai'i House of Representatives Committees on Judiciary
Re: HCR 18 HD1

To: The Honorable Representative Rhoads and the members of the committee.

Aloha,

The Community Alliance for Mental Health along with United Self Help supports HCR 18 HD1. We feel that the information derived by the Legislative Reference Bureau for the Special Action Team is necessary for the State Hospital to achieve the recommendations contained within the Special Action Team report. We also feel that the report will lead to an easing of the recovery process by consumers; free up beds at the State Hospital, and reduce the burden to the taxpayers of Hawai'i.

Mahalo,
Robert Scott Wall
Vice-President

Charlotte A. Carter-Yamauchi
Acting Director

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LEGISLATIVE REFERENCE BUREAU
State of Hawaii
State Capitol
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Written Comments

HCR18, HD1

REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO CONDUCT A STUDY TO ADVISE THE SPECIAL ACTION TEAM ON THE OPTIMAL NUMBER OF FORENSIC EXAMINATIONS NECESSARY FOR FELONY CASES

Comments by the Legislative Reference Bureau
Charlotte A. Carter-Yamauchi, Acting Director

Presented to the House Committee on Judiciary

Friday, March 22, 2013, 2:00 p.m.
Conference Room 325

Chair Rhoads and Members of the Committee:

Good afternoon Chair Rhoads and members of the Committee, my name is Charlotte Carter-Yamauchi and I am the Acting Director of the Legislative Reference Bureau. Thank you for providing the opportunity to submit written comments on H.C.R. No. 18, H.D. 1, Requesting the Legislative Reference Bureau to Conduct a Study to Advise the Special Action Team on the Optimal Number of Forensic Examinations Necessary for the Felony Cases.

The purpose of this measure is to request that the Legislative Reference Bureau:

- (1) Conduct a study to advise the Special Action Team on the optimal number of forensic examinations necessary for each individual committed to the Hawaii State Hospital who is charged with a felony, relative to the practices in other states and jurisdictions; and
- (2) Consult with critical stakeholders in studying this issue and submitting a report to the Legislature; and
- (3) Submit a report of the study to the Legislature no later than twenty days prior to the convening of the Regular Session of 2014.

While the Legislative Reference Bureau takes no position on this measure, we submit the following comments for your consideration.

As background, the genesis of the requested study stems from a report issued by the Governor's Special Action Team on the Revitalization of the Adult Mental Health System and Effective Management of the Hawaii State Hospital Census (Special Action Team). In its report, the Special Action Team recommended that the Bureau study the National Model for Competency Evaluations and how it might be applied to Hawaii. The Department of Health also indicated in the Special Action Team's report that they believe that Hawaii is the only state that utilizes three evaluations each time an evaluation is needed for a defendant charged with a felony.

As an initial matter, it appears that the National Model for Competency Evaluations to which the measure refers is actually the Mental Competency Best Practices Model. In conducting some preliminary research on the issue, the Bureau found that the Mental Competency Best Practices Model was authored by the National Judicial College and funded by a grant from the United States Department of Justice's Bureau of Justice Assistance. According to the National Judicial College, the purpose of the Mental Competency Best Practices Model is to present a body of practices deemed to be most effective and efficient for handling mental incompetency issues in the criminal justice and mental health systems. We note that the National Judicial College provides training and technical assistance to states to implement these best practices.

For your information, the National Judicial College is the preeminent institution providing judicial educational for judges from across the nation and around the world, to improve the delivery of justice and advance the rule of law through a disciplined process of professional study and collegial dialogue. It annually educates more than 3,000 judges from all 50 states, U.S. territories, and over 150 countries. The National Judicial College has also become a leading resource for government agencies seeking assistance with judicial-related projects and programs. The National Judicial College presents an average of 21-30 federal grant programs annually. Grant-related projects range in scope and complexity from providing national resources on capital litigation improvement issues, to developing publications and technical assistance on caseload management and sentencing sex offenders initiatives.

While the Special Action Team's report indicated that their recommendation was to request the Bureau to study the National Model for Competency Evaluations and how it might be applied to Hawaii, this measure does not follow that recommendation. Rather, it requests the Bureau to advise the Special Action Team on the optimal number of forensic examinations necessary for each individual committed to the Hawaii State Hospital who is charged with a felony, relative to the practices in other states and jurisdictions.

Regardless of the differences between what the report recommends and what the measure requests, it seems that the subject of the study requested under both documents is unnecessary since the National Judicial College, a nationally esteemed organization, has already conducted a comprehensive review of the issue and formulated a best practices model. There is little, if anything, that the Bureau would be able to add to the findings of the National Judicial College's study and recommendations. Furthermore, as stated previously, according to the Department of Health, Hawaii appears to be the only state that requires three forensic evaluations in felony cases and, therefore, is out of step with other jurisdictions and the National Judicial College's Mental Competency Best Practices Model. It appears that a decision rather than a study is in order.

Consequently, if the Legislature would like to apply the National Judicial College's Mental Competency Best Practices Model to felony cases in Hawaii, then the Bureau could readily convert the model to draft legislation without the need for further review and study. The merits, weaknesses, costs, or cost savings of the model, as it applies to Hawaii, could then be discussed by affected parties as the legislation moves through the legislative process.

Thank you again for this opportunity to provide written comments.