



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

In reply, please refer to
File:

House Committee on Health

HB2301, Relating to Forensic Mental Health

Testimony of Lynn N. Fallin
Deputy Director, Behavioral Health Administration
Wednesday, February 12, 2014, 10:30 a.m., Room 329

- 1 **Department's Position:** The Department of Health (DOH) strongly supports this bill.
- 2 **Fiscal Implications:** This measure is designed to slow the current increasing rate of admissions to the
3 Hawaii State Hospital (HSH). If this high rate of admissions is not curtailed, the impact will include a
4 heightened inpatient census, concomitant increased expenditures, and pressure on the HSH budget. In
5 fiscal year 2012 – 2013, there were 122 persons placed in the hospital for violating conditional release.
6 Of those, forty-six had been acquitted by reason of mental illness of a misdemeanor, petty misdemeanor,
7 or violation. Moreover, eighty percent of the individuals admitted to the hospital do not require
8 inpatient hospital level of care, based on utilization management illness severity indexes.
- 9 **Purpose and Justification:** This bill proposes to limit the length of conditional release to one year for
10 all defendants acquitted by reason of mental disease, disorder, or defect of a misdemeanor, petty
11 misdemeanor, or violation, not involving violence or attempted violence. This bill also clarifies under
12 what circumstances the one-year conditional release status may be tolled and revoked. Limitations on
13 the length of the conditional release in this manner will focus the resources of HSH on those who pose a
14 greater risk to public safety and who need inpatient hospital services most.

1 The proposed changes are the result of the Governor's Special Action Team (SAT)
2 recommendations, which was convened by Governor Abercrombie in the summer of 2012 in response to
3 an increase in the rate of admissions to HSH.

4 This bill proposes limits to the time on conditional release to one year for individuals on
5 conditional release who have been given a charge of a non-violent misdemeanor or petty misdemeanor
6 (subject to tolling and the other provisions that were presented last year).

7 We are also recommending that the amendments proposed in the attached House Draft 1 be
8 adopted, as they would also have a profound effect on the rate of admissions and length of stay for
9 defendants at HSH. The proposed amendments are not part of the SAT recommendations; however
10 with the continued high census and growth in admissions and the concerns raised during the 2014
11 legislative briefings and hearings regarding safety at HSH, the proposed amendments are timely and
12 very important to consider at this time. They provide:

13 1) Sending all individuals for evaluation of fitness (section 704-404) who require custody and
14 close supervision, rather than be released to the community, to the Department of Public Safety (DPS)
15 initially, to be transferred to HSH by DPS per existing statute only if they require services not available
16 at DPS. We reviewed this with DPS staff and they are supportive of this procedure. There were 50
17 admissions on this legal status to HSH last year; the transfer provisions between DPS and DOH in
18 section 334-74, HRS will address the needs of persons who require more care than DPS can provide.
19 This reduction of flow of patients into HSH will help improve safety without unduly compromising
20 clinical care. This commitment section, evaluation of fitness, is not covered by the Clark Permanent
21 Injunction (U.S.D.C.).

22 2) Reducing the number of forensic examinations required in the instances of felony charges.
23 The current requirement is for three examiners in the instance of any felony charge. Hawaii is the only
24 state that requires three examinations for all defendants charged with a felony who need an examination

1 (see chart attached). We recommend that only for "A felonies," the court may appoint up to three
2 examiners. For other felony charges, the typical number of exams would be one, unless the court, at its
3 discretion, determines that added professional input is required, for the determination of fitness or penal
4 responsibility. We predict that reducing the number of required evaluations will result in the reduction
5 of time needed to complete the evaluation process, an increase in the efficiency of that portion of the
6 court process, and a reduction to the length of the defendant's inpatient stay at HSH.

7 The proposed amendments also include minor changes in the required content of exams and
8 reports.

9 Thank you for considering this bill and for considering the proposed amendments.

10 Thank you for the opportunity to testify.

Number of Examiners (by State)

State	Statute	Requirements
Hawaii	704-404(2)	3 examiners for felonies, 1 examiner for non-felonies
Alabama	Rule 11.3	A psychiatrist or psychologist
Alaska	12.47.070	At least 2 qualified psychiatrists or 2 forensic psychologists
Arizona	13-4505	2 or more mental health experts
Arkansas	5-2-305(b)(1)(B)	1 or more qualified psychiatrists or psychologists
California	1369(a)	Psychiatrist or licensed psychologist
Colorado	16-8.5-103	Competency evaluator
Connecticut	54-56d	1 or more physicians specializing in psychiatry or order the Commissioner of Mental Health and Addiction Services to conduct the examination either by a clinical team consisting of a physician specializing in psychiatry, a clinical psychologist, and one of the following: a clinical social worker, psychiatric nurse clinical specialist; or by one or more physicians specializing in psychiatry
Delaware	Title 11, Chapter 4	Procedures for examination of the accused by the accused's own psychiatrist or by a psychiatrist employed by the State and the circumstances under which such an examination will be permitted may be prescribed by rules of the court having jurisdiction over the offense
District of Columbia	24-531-03	A psychiatrist or psychologist
Florida	916.115	No more than 3 experts
Georgia	17-7-130.1	At least 1 psychiatrist or licensed psychologist
Idaho	18-211	At least 1 psychiatrist or licensed psychologist
Illinois	104-11(b)	A qualified expert
Indiana	35-36-3-1	2 or 3 psychiatrists, psychologists, or physicians
Iowa	81.3	Evaluator
Kansas	22-3302(3)	2 qualified licensed physicians or psychologists
Kentucky	504-080	A psychologist or psychiatrist
Louisiana	644	At least 2 and not more than 3
Maine	15, 101-D(6)	A licensed psychologist or psychiatrist
Maryland	3-105	Health Department
Massachusetts	15(a)	1 or more qualified physicians or 1 or more qualified psychologists
Michigan	330.2026 §1026	Examination by either the center for forensic psychiatry or other facility officially certified by the Department of Mental Health
Minnesota	20.02	At least 1 examiner

Number of Examiners (by State)

Mississippi	99-13-11	A psychiatrist or psychologist
Missouri	552.020	1 or more private psychiatrists or psychologists, or physicians with a minimum of 1 year training or experience
Montana	46-14-202	At least 1 qualified psychiatrist, licensed clinical psychologist, or advanced practice registered nurse
Nebraska	29-1823	Judge may also cause such medical, psychiatric, or psychological examination of the accused to be made
Nevada	178.415	2 psychiatrists, 2 psychologists, or one of each
New Hampshire	135:17	A qualified psychiatrist or psychologist
New Jersey	2C: 4-5	At least 1 qualified psychiatrist or licensed psychologist
New Mexico	31-9-1.1	A psychologist or psychiatrist
New York	730.30	Psychiatric examiners
North Carolina	15A-1002	1 or more impartial medical experts, including forensic evaluators
North Dakota	12.1-04-06	A psychiatrist or a licensed psychologist
Ohio	2945.371	An examiner
Oklahoma	22-1175.3(D)(2)	At least one qualified forensic examiner, at least one
Oregon	161.365(a)	A psychiatrist or psychologist
Pennsylvania	7402	At least 1 psychiatrist
Rhode Island	40.1-5.3-3	Appoint or designate the physician(s)
South Carolina	44-23-410	2 examiners
South Dakota	23A-10A-3	Court order that a psychiatric or psychological report be filed with the court
Tennessee	33-7-301	Evaluation done by community mental health center or licensed private practitioner
Texas	46B.021	Qualified psychiatrists or psychologists
Utah	77-15-5(2)(b)	At least 2 mental health experts
Vermont	4814(a)	A psychiatrist
Virginia	19.2-169.1	At least 1 psychiatrist or clinical psychologist qualified in forensic evaluation
Washington	10.77.060	A qualified expert
West Virginia	27-6A-4	1 or more qualified forensic psychiatrists or psychologists
Wisconsin	971.13	1 or more examiners
Wyoming	7-11-303	A designated examiner

A BILL FOR AN ACT

RELATING TO FORENSIC MENTAL HEALTH.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 704-404, Hawaii Revised Statutes, is
2 amended as follows:

3 (1) By amending subsection (2) to read as follows:

4 "(2) Upon suspension of further proceedings in the
5 prosecution, the court shall appoint from one to three qualified
6 examiners in class A felony cases and shall appoint one
7 qualified examiner in class B and C felony and nonfelony cases
8 to ~~[examine and report upon]~~ perform an examination of the
9 physical and mental condition of the defendant[-] and provide a
10 report of related findings. In class A felony cases the court
11 shall appoint at least one psychiatrist ~~[and at least one~~
12 ~~licensed psychologist. The third member]~~ and any other examiner
13 may be either a psychiatrist, licensed psychologist, or
14 qualified physician. ~~[One of the three shall be a psychiatrist~~
15 ~~or licensed psychologist designated by the director of health~~
16 ~~from within the department of health.]~~ In class B and C felony
17 cases and in nonfelony cases the court may appoint either a
18 psychiatrist or a licensed psychologist. One of the examiners

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Proposed HD1

1 for all classes of felony cases shall be a psychiatrist or
2 licensed psychologist designated by the director of health from
3 within the department of health. All examiners shall be
4 appointed from a list of certified examiners as determined by
5 the department of health. The court, in appropriate
6 circumstances, may appoint an additional examiner or examiners
7 [~~-~~] at its discretion. The examination may be conducted on an
8 out-patient basis or [~~in the court's discretion, when~~
9 ~~necessary~~] the court may order the defendant to be [~~committed to~~
10 ~~a hospital or other suitable facility~~] held over to the custody
11 of the department of public safety for the limited purpose of
12 the examination for a period not exceeding thirty days, or such
13 longer period as the court determines to be necessary for the
14 purpose. The department of public safety may apply to transfer
15 a defendant who requires a higher level of mental health care
16 than the department of public safety can provide, to a facility
17 operated by the department of health pursuant to section 334-74.
18 The court may direct that one or more qualified physicians or
19 psychologists retained by the defendant be permitted to witness
20 the examination [~~-~~] performed by other court appointed
21 examiners. As used in this section, the term "licensed
22 psychologist" includes psychologists exempted from licensure by
23 section 465-3(a)(3)."

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1 (2) By amending subsection (4) to read as follows:

2 "(4) The content and report of the examination [~~shall~~] may
3 include the following [+]
4 as deemed necessary and as directed by
5 the court:

6 [~~(a)~~] ~~A description of the nature of the examination;~~

7 [~~(b)~~] ~~A diagnosis of the physical or mental condition of the~~
8 ~~defendant;~~

9 [~~(c)~~] (a) [~~An~~] The elements of fitness to stand trial
10 including an opinion as to the defendant's capacity to
11 understand the proceedings against the defendant and
12 to assist in the defendant's own defense;

13 [~~(d)~~] (b) The elements of penal responsibility, which may
14 include:

15 (1) An opinion as to the extent, if any, to which the
16 capacity of the defendant to appreciate the
17 wrongfulness of the defendant's conduct or to conform
18 the defendant's conduct to the requirements of law was
19 impaired at the time of the conduct alleged;

20 [~~(e)~~] (2) [~~When directed by the court, an~~] An opinion as to
21 the capacity of the defendant to have a particular
22 state of mind that is required to establish an element
of the offense charged; and

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1 (3) A diagnosis of the physical or mental condition of
2 the defendant.

3 ~~[(f)]~~ ~~[where]~~ In all instances where more than one examiner
4 is appointed, each examiner shall include a statement in the
5 report that the diagnosis and opinion rendered were arrived at
6 independently of any other examiner, unless there is a showing
7 to the court of a clear need for communication between or among
8 the examiners for clarification. A description of the
9 communication shall be included in the report. After all
10 reports are submitted to the court, examiners may confer without
11 restriction."

12 SECTION 2. Section 704-411, Hawaii Revised Statutes, is
13 amended by amending subsection (1) to read as follows:

14 "(1) When a defendant is acquitted on the ground of
15 physical or mental disease, disorder, or defect excluding
16 responsibility, the court, on the basis of the report made
17 pursuant to section 704-404, if uncontested, or the medical or
18 psychological evidence given at the trial or at a separate
19 hearing, shall order that:

20 (a) The defendant shall be committed to the custody of the
21 director of health to be placed in an appropriate
22 institution for custody, care, and treatment if the
23 court finds that the defendant:

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- 1 (i) Is affected by a physical or mental disease,
2 disorder, or defect;
- 3 (ii) Presents a risk of danger to self or others; and
- 4 (iii) Is not a proper subject for conditional release;
5 provided that the director of health shall place
6 defendants charged with misdemeanors or felonies
7 not involving violence or attempted violence in
8 the least restrictive environment appropriate in
9 light of the defendant's treatment needs and the
10 need to prevent harm to the person confined and
11 others. The county police departments shall
12 provide to the director of health and the
13 defendant copies of all police reports from cases
14 filed against the defendant that have been
15 adjudicated by the acceptance of a plea of guilty
16 or nolo contendere, a finding of guilt,
17 acquittal, acquittal pursuant to section 704-400,
18 or by the entry of a plea of guilty or nolo
19 contendere made pursuant to chapter 853, so long
20 as the disclosure to the director of health and
21 the defendant does not frustrate a legitimate
22 function of the county police departments;
23 provided that expunged records, records of or

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1 violence or attempted violence, the period of
2 conditional release shall be no longer than one year;
3 or

4 (c) The defendant shall be discharged if the court finds
5 that the defendant is no longer affected by physical
6 or mental disease, disorder, or defect or, if so
7 affected, that the defendant no longer presents a
8 danger to self or others and is not in need of care,
9 supervision, or treatment."

10 SECTION 3. Section 704-412, Hawaii Revised Statutes, is
11 amended by amending subsection (3) to read as follows:

12 "(3) Upon application to the court by either the director
13 of health or the person committed, the court shall complete the
14 hearing process and render a decision within sixty days of the
15 application; provided that for good cause the court may extend
16 the sixty-day time frame upon the request of the director of
17 health or the person committed. For any defendant granted
18 conditional release pursuant to this section, and who was
19 charged with a petty misdemeanor, misdemeanor, or violation, not
20 involving violence or attempted violence, the period of
21 conditional release shall be no longer than one year."

22 SECTION 4. Section 704-413, Hawaii Revised Statutes, is
23 amended as follows:

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1 (1) By amending subsection (1) to read as follows:

2 "(1) Any person granted conditional release pursuant to

3 this chapter shall continue to receive mental health or other

4 treatment and care deemed appropriate by the director of health

5 until discharged from conditional release. The person shall

6 follow all prescribed treatments and take all prescribed

7 medications according to the instructions of the person's

8 treating mental health professional. If a mental health

9 professional who is treating a person granted conditional

10 release believes that either the person is not complying with

11 the requirements of this section or there is other evidence that

12 hospitalization is appropriate, the mental health professional

13 shall report the matter to the probation officer of the person

14 granted conditional release. The probation officer may order the

15 person granted conditional release to be hospitalized for a

16 period not to exceed seventy-two hours if the probation officer

17 has probable cause to believe the person has violated the

18 requirements of this subsection. No person shall be hospitalized

19 beyond the seventy-two-hour period, as computed pursuant to

20 section 1-29, unless a hearing has been held pursuant to

21 subsection (4); provided that on or before the expiration of the

22 seventy-two-hour period, a court may conduct a hearing to

23 determine whether the person would benefit from further

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1 hospitalization, which may render a revocation of conditional
2 release unnecessary. If satisfied, the court may order further
3 temporary hospitalization for a period not to exceed ninety
4 days, subject to extension as appropriate, but in no event for a
5 period longer than one year. For any person ordered to be
6 hospitalized pursuant to this section, who was placed on a one-
7 year limited conditional release pursuant to this chapter, the
8 one year shall be tolled pending the person's time of
9 hospitalization. At any time within that period, the court may
10 determine that a hearing pursuant to subsection (4) should be
11 conducted."

12 (2) By amending subsection (4) to read as follows:

13 "(4) If, at any time after the order pursuant to this
14 chapter granting conditional release, the court determines,
15 after hearing evidence, that:

16 (a) The person is still affected by a physical or mental
17 disease, disorder, or defect, and the conditions of
18 release have not been fulfilled; or

19 (b) For the safety of the person or others, the person's
20 conditional release should be revoked,

21 the court may forthwith modify the conditions of release or
22 order the person to be committed to the custody of the director
23 of health, subject to discharge or release in accordance with

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1 the procedure prescribed in section 704-412. If the person's
2 conditional release is revoked, the period of conditional
3 release is terminated. If the person who was charged with a
4 petty misdemeanor, misdemeanor, or violation, not involving
5 violence or attempted violence, is placed on conditional release
6 subsequently, the period of conditional release shall be no
7 longer than one year."

8 SECTION 5. Section 704-415, Hawaii Revised Statutes, is
9 amended by amending subsection (2) to read as follows:

10 "(2) Any such hearing shall be deemed a civil proceeding
11 and the burden shall be upon the applicant to prove that the
12 person is no longer affected by a physical or mental disease,
13 disorder, or defect or may safely be either released on the
14 conditions applied for or discharged. According to the
15 determination of the court upon the hearing the person shall be:

16 (a) Discharged;

17 (b) Released on such conditions as the court determines to
18 be necessary; provided that for any defendant granted
19 conditional release pursuant to this section, and who
20 was charged with a petty misdemeanor, misdemeanor, or
21 violation, not involving violence or attempted
22 violence, the period of conditional release shall be
23 no longer than one year; or

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1 (c) Recommitted to the custody of the director of health,
2 subject to discharge or release only in accordance
3 with the procedure prescribed in section 704-412."

4 SECTION 6. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 7. This Act shall take effect upon its approval.

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Proposed HD1

Report Title:

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Description:

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The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

NEIL ABERCROMBIE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY

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TESTIMONY ON HOUSE BILL (HB) 2301
RELATING TO
FORENSIC MENTAL HEALTH
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; 10:30 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 2301, which would limit the length of conditional release to one year for all defendants acquitted by reason of mental disease or disorder, or defect of a misdemeanor, petty misdemeanor, or violation, not involving violence or attempted violence.

The limitations on the length of the conditional release will focus the resources of the Hawaii State Hospital on those who pose a greater risk to public safety and those who require inpatient hospital services.

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.



HAWAII DISABILITY RIGHTS CENTER

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THE HOUSE OF REPRESENTATIVES THE TWENTY-SEVENTH LEGISLATURE REGULAR SESSION OF 2014

Committee on Health Testimony on H.B. 2301 Relating to Forensic Mental Health

**Wednesday, February 12, 2014, 10:30 A.M.
Conference Room 329**

Chair Belatti and Members of the Committee:

The Hawaii Disability Rights Center testifies in support of the intent of the original version of this bill. However, we are opposed to the inclusion of the amendments in the Proposed HD1 offered by the Department of Health

The ostensible purpose of the bill is to establish a one year limit that an individual could remain on a post acquittal conditional release when the offense charged was a petty misdemeanor, misdemeanor or violation. Conditional release occurs for defendants found not guilty by reason of mental disease, disorder or defect. After such an acquittal, defendants can either be confined to an institution or placed in the community on "conditional release", which, as the term implies, requires that they adhere to a variety of conditions pertaining to mental health treatment, medications and conduct.

In Hawaii, "conditional release" tends to become a lifetime status because it is ordered for an indefinite period and for any level of offense. The result is that many such individuals remain subject to the terms of the conditional release and at risk of being in violation of its terms (and therefore subject to confinement at the state hospital) for a period of time far in excess of the maximum penalty allowed for the offense charged. This results in a disproportionate infringement upon their liberty, as well as an inefficient allocation of resources in the penal system and at the state hospital.

We feel this bill takes a sound approach. Since many of the crimes for which these individuals are placed on conditional release are minor in nature, and since data from the Department of Health indicates that most of these individuals actually pose little risk to the public, there is no reason to retain and monitor these individuals on conditional release for prolonged periods of time. Certainly it is unfair to the individual and represents both a needlessly punitive approach to addressing that individual, as well as a poor use of resources otherwise needed to address mental health needs as well as public safety in our community. For all those reasons, this bill is very sensible from the perspective of conserving penal resources as well as appropriate, humane treatment towards individuals with disabilities.

One concern we do have is that AMHD has been very restrictive in its eligibility guidelines. Once someone is no longer at the State Hospital, they may no longer be eligible for AMHD services. Along those lines we are concerned that AMHD might use the streamlined CR procedure as a way to rid itself of any obligation to care for these patients. We would like to see an amendment that would obligate the Department to provide services to these individuals indefinitely after they are discharged from conditional release.

Furthermore, we object to the process by which the Department of Health is attempting to add extraneous provisions that are unrelated to the issue of conditional release in testimony that has not been circulated at large on a bill which was noticed by this Committee less than 24 hours prior to the hearing. We don't believe that this is a thorough or transparent process to consider serious substantive changes to the current law surrounding forensic mental health examinations. We ask that the Committee not include these additional provisions. Our suggestion is that the Committee, if it sees fit, advance the bill in its current form to the Judiciary Committee and provide an opportunity for the stakeholders to weigh in on these issues if the Chair of the Judiciary Committee sees fit.

Thank you for the opportunity to testify on this measure.

Honorable House Speaker Joseph Souki and Committee Members

RE: SB 2301 Relating to Forensic Mental Health

Hearing Date: February 12, 2014

Time: 10:30 AM

Place: Room 329

My name is Wade Wolfe and I live and work on the Big Island of Hawaii. I am a graduate of U.H. Hilo and am currently completing my final semester of graduate school at U.H. Manoa.

I am testifying on SB 2301 and respectfully ask that you OPPOSE this bill in its current form.

Given our current fragmented mental health system, the lack of support and resources available to those in need, and the increasing numbers of individuals suffering from mental illness, reducing time on conditional release is not the answer to best serve this population. This would essentially limit access to available resources and in the long run, complicate this issue even more. Individuals on conditional release are non-violent offenders, who often lacked the cognitive capacity to make appropriate choices. Without the option of conditional release many of these individuals would end up serving jail time. This is not where they belong! Prisons should not be utilized as our new Psychiatric Hospitals. Due to many of these individual's diagnoses, they need added supervision to assist them on staying on track, not reduced supervision that this bill proposes.

In closing, I ask that you OPPOSE SB 2301 because individuals on conditional release must be accommodated for in an appropriate way. Reducing their time on conditional release is an assault against an already oppressed group. We must find ways to further assist these individuals and successfully integrate them into society.

Thank you for the opportunity to submit my testimony in opposition to SB 2301.

Wade Wolfe

Individual Testimony

808 937-7413

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

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THE HONORABLE DELLA AU BELATTI, CHAIR
HOUSE COMMITTEE ON HEALTH
Twenty-Seventh State Legislature
Regular Session of 2014
State of Hawai'i

February 12, 2014

RE: H.B. 2301; RELATING TO FORENSIC MENTAL HEALTH.

Chair Au Belatti, Vice-Chair Morikawa, and members of the House Committee on Health, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony, in strong opposition to Section 1 of the Proposed H.D. 1 submitted by the Department of Health (“DOH”), regarding House Bill 2301.

Section 1 of DOH’s Proposed H.D. 1 seeks to decrease the number of examiners necessary for fitness examinations in felony cases, from 3 examiners down to 1, which inherently decreases the reliability of the results. See page 1, line 4 – page 2, line 3. If this change went into law, every class B and class C felony case that calls for a mental fitness determination would be decided on the opinion of 1 examiner, without the benefit of a “second (or third / 'tie-breaker') opinion.” Perhaps most alarming, even the mental fitness of a defendant charged with class A felonies and/or murder—the most serious crimes in Hawai’i—could be determined by 1 examiner.

Because assessment of one’s mental condition is not a black-and-white science, and is often subject to differing opinions, it is crucial that the court and all stakeholders have the benefit of receiving multiple opinions in every felony case, to most accurately assess that defendant's mental condition. Please keep in mind that, while our criminal code categorizes offenses into class A, B and C felonies, that alone does not distinguish the "dangerousness" of an individual. In fact, there are very dangerous people coming through our court system at every level of felony crime, and limiting these mental examinations to the opinion of 1 examiner would be detrimental to accurately determining whether these individuals are fit to stand trial.

Decreasing the number of examiners from 3 down to 1 would also eliminate the additional precaution of having at least one psychiatrist and at least one psychologist per felony fitness examination. It is our understanding that psychiatrists and psychologists have different areas of expertise, and thus provide slightly different perspectives on each defendant.

As a final note, the Department opposes DOH's proposed changes to HRS §704-404(4), as all the components currently mandated in these examination reports—HRS §704-404(4)(a) through (d), and (f)—are necessary for the court's proper assessment of the defendant, and of the corresponding examination. See page 3, line 5 – page 4, line 11. It is certainly necessary for the court and all stakeholders to understand what the examination entailed, and what it did not entail, in order to develop a clear understanding of the examiner's conclusions.

The Department strongly believes that HRS §707-704 currently contains appropriate safeguards that are crucial to ensuring the most accurate result in felony fitness proceedings, and further believes that these safeguards are warranted for all class A, B and C felony cases where the defendant's mental fitness is in question.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu strongly opposes Section 1 of the Proposed H.D. 1, which was submitted by the Department of Health, regarding H.B. 2301. Thank for you the opportunity to testify on this matter.