



STATE OF HAWAII
DEPARTMENT OF HEALTH
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In reply, please refer to:
File:

House Committee on Public Safety

HB2318, Related to Records for Forensic Examinations

Testimony of Gary L. Gill
Acting Director of Health

Thursday, January 30, 2014, 10:00 a.m., Room 309

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 the Hawaii State Hospital pending these evaluations. The DOH
6 requests the expeditious passing of this measure.

7 Thank you for the opportunity to testify.

NEIL ABERCROMBIE
GOVERNOR



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

House Committee on Public Safety
Representative Henry J. C. Aquino, Chair
Representative Kaniela Ing, Vice Chair

Thursday, January 30, 2014; 10:00 a.m.
State Capitol, Conference Room 309

Chair Aquino, Vice Chair Ing, 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 the Department's correctional facility.

The Department of Public Safety 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 the Department's mental health care system.

Thank you for the opportunity to present this testimony.