

Honolulu, Hawaii

FEB 18 2016

RE: S.B. No. 2888
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Eighth State Legislature
Regular Session of 2016
State of Hawaii

Sir:

Your Committee on Commerce, Consumer Protection, and Health,
to which was referred S.B. No. 2888 entitled:

"A BILL FOR AN ACT RELATING TO FORENSIC MENTAL HEALTH
PROCEDURES,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Ensure the timely administration of mental health examinations by establishing separate evaluations for fitness to proceed and for penal responsibility, with certain exceptions;
- (2) Support the process of expedient administration of justice; and
- (3) Clarify the procedure for reevaluation of fitness to proceed after a finding of unfitness and attempts at restoration.

Your Committee received testimony in support of this measure from the Department of Health, Hawai'i Psychological Association, and one individual. Your Committee received testimony in opposition to this measure from the Department of the Prosecuting Attorney of the City and County of Honolulu. Your Committee received comments on this measure from the Hawaii Disability Rights Center.



Your Committee finds that under section 704-404, Hawaii Revised Statutes, when a defendant's fitness to proceed comes into question, the criminal proceedings are stopped, and the court must order a physical or mental examination of the defendant to determine the defendant's fitness to proceed and whether the defendant was penally responsible for the alleged crime. During this period of time, a pretrial defendant, who may have a serious mental disease or defect, may be held in state custody for more than thirty days awaiting the evaluation due to the complexity of conducting an evaluation that examines both fitness to proceed and penal responsibility. It is in the best interest of the defendants for the examination process to proceed in a timely, expedient manner by separating the fitness to stand trial and the penal responsibility components of examinations and codifying procedures for appointing examiners for reevaluation of fitness.

Your Committee has amended this measure by:

- (1) Inserting language that clarifies that when a court orders an examination related to a defendant's physical or mental condition at the time of the conduct, all proceedings in the prosecution shall be suspended pending the completion of the examination;
- (2) Clarifying that examinations for fitness to proceed and penal responsibility shall be conducted separately unless a combined examination has been ordered by the court upon a request by the defendant or upon a showing of good cause to combine the examinations; provided that if the examinations are separate, the examination for penal responsibility shall not be ordered after thirty days of a finding of fitness to proceed;
- (3) Clarifying that after obtaining all existing medical, mental health, social, police, and juvenile records of a defendant under examination with respect to physical or mental disease, disorder, or defect excluding penal responsibility, the court shall make the records available to the examiners in hard copy or digital format; provided that the court may order that the records be made available to the prosecuting attorney and counsel for the defendant in either format;
- (4) Amending language to clarify that examiners for fitness to proceed report upon the defendant's fitness to



proceed, rather than the physical and mental condition of the defendant;

- (5) Amending language that requires examiners of an examination of a defendant alleged to be affected by a physical or mental disease, disorder, or defect to form and render an opinion on the defendant's fitness to proceed independently from other examiners;
- (6) Clarifying that the examinations for fitness to proceed and penal responsibility shall be conducted separately unless a combined examination has been ordered by the court upon a request by the defendant or upon showing of good cause to combine the evaluations;
- (7) Clarifying that any examiner shall be permitted to make a separate explanation reasonably serving to clarify the examiner's opinion;
- (8) Clarifying that after obtaining all existing medical, mental health, social, police, and juvenile records of a defendant under examination with respect to physical or mental disease, disorder, or defect excluding fitness to proceed, the court shall make the records available to the examiners in hard copy or digital format; provided that the court may order that the records be made available to the prosecuting attorney and counsel for the defendant in either format;
- (9) Clarifying that if a court is satisfied that a defendant may be released on conditions without risk of substantial danger to the defendant or to the person or property of others, the court shall order the defendant's release on conditions the court determines necessary;
- (10) Clarifying that for a defendant charged with offenses other than murder in the first or second degree, attempted murder in the first or second degree, or a class A felony, the court may appoint one qualified examiner to examine and report upon the physical and mental condition of the defendant;
- (11) Amending language that allows the court to order that a defendant remain in the custody of the Director of

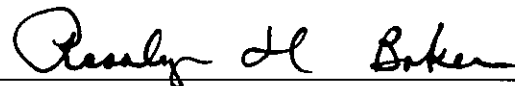


Health subject to bail or until a judgment on the verdict or a finding of guilt after a plea of guilty or nolo contendere; provided that the court may consider a request from the Director of Health to rescind its order for maintaining the defendant in the Director's custody;

- (12) Inserting conforming amendments in sections 704-411 and 704-414, Hawaii Revised Statutes; and
- (13) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Commerce, Consumer Protection, and Health that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2888, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2888, S.D. 1, and be referred to your Committees on Judiciary and Labor and Ways and Means.

Respectfully submitted on
behalf of the members of the
Committee on Commerce, Consumer
Protection, and Health,



ROSALYN H. BAKER, Chair



The Senate
 Twenty-Eighth Legislature
 State of Hawai'i

Record of Votes
Committee on Commerce, Consumer Protection, and Health
CPH

Bill / Resolution No.:* SB 2888	Committee Referral: CPH, JDL/WAM	Date: 2-9-16		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
BAKER, Rosalyn H. (C)	/			
KIDANI, Michelle N. (VC)	/			
ESPERO, Will	/			
IHARA, Jr., Les				/
NISHIHARA, Clarence K.	/			
RUDERMAN, Russell E.				/
SLOM, Sam				/
TOTAL	4			3
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <i>Michelle N. Kidani</i>				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes