

STAND. COM. REP. NO. **2602**

Honolulu, Hawaii

MAR 03 2016

RE: S.B. No. 2888
S.D. 2

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

Sir:

Your Committees on Judiciary and Labor and Ways and Means, to which was referred S.B. No. 2888, S.D. 1, entitled:

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

beg leave to report as follows:

The purpose and intent of this measure is to:

- (1) Amend section 704-404, Hawaii Revised Statutes (HRS), to bifurcate the examination for penal responsibility from the examination for fitness to proceed and establish procedures for the determination of a defendant's penal responsibility and fitness to proceed;
- (2) Establish procedures for the determination of a defendant's regained fitness to proceed pursuant to section 704-406, HRS; and
- (3) Make conforming amendments to reflect the amendments made to section 704-404, HRS.

Your Committees received testimony in support of this measure from the Department of Health. Your Committees received testimony in opposition to this measure from the Department of the Prosecuting Attorney, City and County of Honolulu. Your Committees received comments on this measure from the Hawaii Disability Rights Center and two individuals.



Your Committees find that under section 704-404, HRS, 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 possesses the penal responsibility 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 fitness to proceed and penal responsibility. Your Committees further find that 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.

Accordingly, your Committees have amended this measure by:

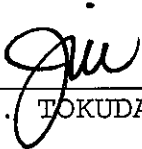
- (1) Clarifying that a court is required to order the examination for penal responsibility no later than thirty days after a finding of a defendant's fitness to proceed, if the examinations are separate;
- (2) Clarifying that only the relevant records of a defendant shall be made available to examiners and no further disclosure of these records shall be made except as permitted by law;
- (3) Adopting the language suggested by the Department of Health that clarifies that a defendant may be released on conditions if the court is satisfied that the defendant may be released on conditions without danger to the defendant or another or risk of substantial danger to property, rather than without risk of danger to the defendant or the person or property of others;
- (4) To address the concerns raised by the Department of the Prosecuting Attorney of the City and County of Honolulu, adding a felony for which charging by written permission is not permitted by section 806-83, HRS, to the list of offenses with which a defendant must be charged in order for the three-panel examination to determine whether the defendant has regained fitness to proceed pursuant to procedures proposed by this measure to apply;



- (5) Inserting an effective date of January 7, 2059, to encourage further discussion; and
- (6) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the records of votes of the members of your Committees on Judiciary and Labor and Ways and Means that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 2888, S.D. 1, as amended herein, and recommend that it pass Third Reading in the form attached hereto as S.B. No. 2888, S.D. 2.

Respectfully submitted on
behalf of the members of the
Committees on Judiciary and
Labor and Ways and Means,



JILL N. TOKUDA, Chair



GILBERT S.C. KEITH-AGARAN, Chair



The Senate
 Twenty-Eighth Legislature
 State of Hawai'i


Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:* SB 2888 SD1	Committee Referral: OPH, JDL/WAM	Date: 2/24/16		
<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
KEITH-AGARAN, Gilbert S.C. (C)	✓			
SHIMABUKURO, Maile S.L. (VC)	✓			
GABBARD, Mike	✓			
KAHELE, Kaiali'i	✓			
KIM, Donna Mercado	✓			
THIELEN, Laura H.	✓			
SLOM, Sam	✓			
TOTAL	7			
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes

The Senate
 Twenty-Eighth Legislature
 State of Hawai'i

Record of Votes
Committee on Ways and Means
WAM

Bill / Resolution No.:* SB 2888, SDI	Committee Referral: CPH, SDL/WAM	Date: 2/24/16		
<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
TOKUDA, Jill N. (C)	/			
DELA CRUZ, Donovan M. (VC)	/			
CHUN OAKLAND, Suzanne	/			
ENGLISH, J. Kalani	/			
GALUTERIA, Brickwood	/			
HARIMOTO, Breene				/
INOUYE, Lorraine R.	/			
RIVIERE, Gil	/			
TANIGUCHI, Brian T.	/			
WAKAI, Glenn	/			
SLOM, Sam	/			
TOTAL	10			X
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

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