

LATE
SB2538

RELATING TO
CRIMINAL
PROSECUTIONS

DEPARTMENT OF THE PROSECUTING ATTORNEY
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THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR
Twenty-Eighth State Legislature
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State of Hawai'i

February 17, 2016

RE: H.B. 2538; RELATING TO CRIMINAL PROSECUTIONS.

Chair Keith-Agaran, Vice-Chair Shimabukuro, and members of the Senate Committee on Judiciary and Labor, the Department of the Prosecuting Attorney of the City and County of Honolulu submits the following testimony in opposition to S.B. 2538.

The purpose of S.B. 2538 is to provide courts with the discretion to appoint one (1) or three (3) qualified examiners to conduct a mental health evaluation in a felony case. The implementation of this bill would inherently decrease the reliability of the results when conducting a mental health evaluation. If this change went into law, presumably every class B and class C felony case that calls for a mental fitness determination would be decided on the opinion of one (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—the most serious crimes in Hawai'i—could be determined by one (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 one (1) examiner would be detrimental to accurately determining whether these individuals are fit to stand trial.

Decreasing the number of examiners from three (3) down to one (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.

The Department strongly believes that HRS §707-704 currently contains appropriate safeguards that are crucial to ensuring the most accurate result in felony mental examinations, 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 opposes S.B. 2538. Thank for you the opportunity to testify on this matter.