DAVID Y. IGE
GOVERNOR OF HAWAII

VIRGINIA PRESSLER, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. Box 3378
Honolulu, HI 96801-3378
doh.testimony@doh.hawaii.gov

Testimony SUPPORTING SB2888, S.D. 2
Relating to Forensic Mental Health Procedures

REPRESENTATIVE DELLA AU BELATTI, CHAIR
HOUSE COMMITTEE ON HEALTH
Hearing Date: March 16, 2016, 8:30 a.m. Room Number: 329

Fiscal Implications: Undetermined at this time.

Department Testimony: The Department of Health (DOH) is generally supportive of this measure as amended in S.D. 2, but opposes it in some very limited (but important) ways. We would like to offer comments and to request proposed amendments. The amendments are offered at the end of this testimony.

The primary purpose of this bill is to ensure the timely and relevant administration of mental health examinations, support the process of expedient administration of justice, and clarify the procedure for re-evaluation of fitness to proceed after a finding of unfitness and the delivery of fitness restoration services from clinical professionals and treatment teams. This may be accomplished by separating the fitness to proceed and the penal responsibility components of examinations ordered pursuant to HRS §704-404 and codifying procedures for the determination of a defendant's regained fitness to proceed pursuant to HRS §704-406.

This measure, as it was proposed in SB 2888, provided a more efficient pretrial process leading to a decrease in the amount of delays defendants experience due to the examination process and enables a more expedient administration of justice. Within the past year, a

complaint was lodged with the Special Litigation Section of the U.S. Department of Justice (DOJ) alleging a violation of the Civil Rights of Institutionalized Persons Act (CRIPA) due to lengthy delays in court-ordered examinations related to several position vacancies within the DOH. This drew the attention of the Hawaii Disability Rights Center. If not remedied, the DOJ could launch a full investigation leading to legal action and oversight. This measure should also assist in ensuring a defendant's right to a speedy trial.

We have indicated to you previously and indicated to other stakeholders that our current path is not sustainable. Policy change will be required. We have determined that adjustments in statute pertaining to, in this instance, forensic exam procedures will be critical in improving the efficient utilization of resources, addressing public safety and supporting the rights of defendants. Consistent with this, we supported the earlier S.D. 1.

We are opposed to the changes in SB2888 S.D. 2, (page 20, lines 4 – 5), that inserted "or a felony for which charging by written information is not permitted by section 806-83," to the definition of defendants who must be examined by three evaluators instead of one, because the means by which someone is charged with an offense has nothing to do with the seriousness of the offense nor the mental capacity of the defendant. Furthermore, we do not support adding "or a felony for which charging by written information is not permitted by section 806-83," (page 21, lines 4 – 6), to expand the number of individuals who have been found fit remaining in the custody of the department of health, pending trial, which is also a component of S.D. 2. This could have a severely negative impact on the already high census at the Hawaii State Hospital.

Under current section HRS §704-404(4), if the defendant's fitness to proceed comes into question, a court must order an examination of a defendant to determine the defendant's fitness to proceed and penal responsibility simultaneously. 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, and the judiciary, for the examination process to proceed in a timely, expedient manner.

Furthermore, while evaluations of fitness to proceed are utilized by the court in each instance that they are ordered, only some of the evaluations of penal responsibility are utilized. The reason for this is because the evaluations of penal responsibility only become relevant if the affirmative defense of lack of penal responsibility is argued by the defendant. We estimate that penal responsibility evaluations are used in only a minor fraction of the cases for which these exams are ordered and completed. Pairing them together is more burdensome to the examination process, lengthens the time to complete the evaluation and report to the court, and generates a product that may not be utilized during adjudication.

In addition, pairing fitness to proceed and penal responsibility in one evaluation creates an ethical dilemma for the examiners and legal concerns for the defendant. An unfit defendant may not have sufficient capacity to consult with defense counsel to determine the implications of providing information to the examiner during the penal responsibility component of the examination. The American Bar Association's Criminal Justice Mental Health Standards

(Standard 7-4.4; see attachment #1) recommends that an evaluation of the defendant's mental condition at the time of the alleged offense to determine penal responsibility should not be combined in any evaluation to determine fitness to proceed unless the defense requests it or unless good cause is shown. Examiners typically provide a warning to defendants regarding the forensic examiner's role and the non-confidential nature of the examination; a sample is provided for the committee's review (see attachment #2). However, the warning makes it clear that a defendant who is not fit to proceed would not have the capacity to understand the ramifications and agree to the interview for the penal responsibility examination.

We support the revisions that include modifying the availability of records gathered pursuant to HRS §704-404 to include prosecution and defense counsel, including a risk assessment of danger in the requirements for a fitness examination, and the revision in S.D. 2 clarifying that the court's consideration of release on conditions is to be based on risk of danger to the defendant or another, or "risk of substantial danger to property of others."

Except as mentioned above, we support SB 2888 S.D. 2, which separates the fitness to proceed and the penal responsibility components of examinations pursuant to HRS §704-404 and does not change the current one panel and three panel structure of assignment to examiners. With regards to the determination of a defendant's regained fitness to proceed under HRS §704-406, the current statute is silent with respect to the procedure to determine a defendant's regained fitness to proceed after the delivery of fitness restoration services from clinical professionals and treatment teams. SB 2888 S.D. 1 codifies a procedure to re-examine a defendant's fitness to proceed that includes: 1) the court may appoint a one qualified examiner for all petty

misdemeanors, misdemeanors, class B felonies, and class C felonies to be designated by the director of health from within the DOH and 2) the court shall appoint three qualified examiners for charges of murder in the first and second degrees, attempted murder in the first and second degrees and class A felony cases with one of the three designated by the director of health from within the DOH. The proposed changes only narrowly impact the re-examination of fitness for defendants with Class B and C felonies. The one examiner appointed by the director of health from within the DOH for all petty misdemeanors, misdemeanors, and Class B and C felonies will have access to the reports from the original three examiners appointed pursuant to HRS §704-404 and the recommendations and records from the inpatient or outpatient treatment teams. The proposed changes do not alter the three panel assignment in felony cases for initial assessment of fitness to proceed and penal responsibility, placement into conditional release status, or discharge from conditional release status.

The DOH has met with key stakeholders including representatives of Criminal Justice Division of the Department of the Attorney General, the state Office of the Public Defender, and county Department of the Prosecuting Attorney to receive their feedback on the proposals contained within this bill. Feedback received during this process led to the DOH's support of this measure as previously drafted in SB 2888, S.D. 1. Most issues have been resolved. We recently received suggested revisions from the City and County of Honolulu Department of the Prosecuting Attorney. The DOH does not agree with its suggestions to weaken the provisions with respect to the separation of fitness to proceed evaluations from penal responsibility

evaluations, and to make three panel evaluations the default for re-evaluations for fitness to proceed for all felony charges. We believe the reasons for those two proposals are sound.

We continue to be open to working with the legislature and other key stakeholders to address any specific issues in this key policy area.

We thank the Legislature for its continued support for providing an effective continuum of mental health services. Clearly all branches of government play a critical role in making this system function effectively.

Thank you for the opportunity to testify.

Offered Amendments:

On page 4, line 8 – 9:

"or mental disease, disorder, or defect excluding [~~fitness to proceed~~] penal responsibility."

On page 4, lines 16 – 19:

[~~All proceedings in the prosecution shall be suspended pending the completion of the examination as to the defendant's physical or mental condition at the time of the conduct~~] The time pending the completion of the examination as to the defendant's physical or mental condition at the time of the conduct shall be excluded in computing the time for trial commencement.

On page 9, lines 15 – 16:

"physical or mental disease, disorder or defect [~~.~~] excluding [~~penal responsibility~~] fitness to proceed."

On page 12, line 7, add:

The report of the examination for fitness to proceed shall be separate from the report of the examination for penal responsibility; unless a combined examination has been ordered.

On page 15, line 6, add:

No further disclosure of records shall be made except as permitted by law.

On page 20, lines 4 – 5:

[~~(~~](3)[~~)~~] When the court, on its own motion or upon the application of the director of health, the prosecuting attorney, or the defendant, [~~determines, after a hearing if a hearing is requested,~~] has reason to believe that the defendant has regained fitness to proceed, [~~the penal proceeding shall be resumed.~~] for a defendant charged with the offense of murder in the first or second degree, attempted murder in the first or second degree, a class A felony, [~~or a felony for which charging by written information is not permitted by section 806-83,~~] the court shall appoint three qualified examiners and may appoint in all other cases one qualified examiner, to examine and report upon the physical and mental condition of the defendant.

And, on page 21, lines 4 – 6:

In cases where a defendant is charged with the offense of murder in the first or second degree, attempted murder in the first or second degree, a class A felony, [~~or a felony for which charging~~

~~by written information is not permitted by section 806-83,~~] upon the request of the prosecuting attorney or the defendant, and in consideration of information provided by the defendant's clinical team, the court may order that the defendant remain in the custody of the director of health, for good cause shown, subject to bail or until a judgment on the verdict or a finding of guilt after a plea of guilty or nolo contendere.

PART I.

MENTAL HEALTH, MENTAL RETARDATION, AND CRIMINAL JUSTICE: GENERAL PROFESSIONAL OBLIGATIONS

Standard 7-4.4. Judicial order for competence evaluation

(a) Whenever, at any stage of the proceedings, a good faith doubt is raised as to the defendant's competence to stand trial, the court should order an evaluation and conduct a hearing into the competence of the defendant to stand trial. The court should follow this procedure whether the doubt arises from a motion of counsel, from information supplied by counsel, from the court's own observation of the defendant, or from any information otherwise known to the court.

(i) An evaluation of defendant's competence to stand trial should not be ordered by the court before there has been a judicial determination of probable cause for criminal prosecution unless the early evaluation is requested by defense counsel. If the court finds that the requisite probable cause for criminal prosecution does not exist, there should be no further inquiry into the defendant's competence to stand trial.

(ii) An evaluation to determine competence to stand trial should not be ordered before the defendant is represented by counsel who has had an opportunity to consult with the defendant and to be heard by the court.

(iii) The evaluator(s) appointed to perform the evaluation of the defendant's competence to stand trial should be persons qualified by training and experience to offer testimony to the court on matters affecting competence. A mental health or mental retardation professional who is appointed as an evaluator should have the qualifications set forth in standard 7-3.10.

(b) The order for evaluation should specify the nature of the evaluation to be conducted and should specify the legal criteria to be addressed by the evaluator in accordance with the requirements set forth in standard 7-3.5(d). Unless a joint evaluation has been requested by the defendant or for good cause shown in accordance with standard 7-3.5(c), the evaluation should not include an evaluation into the defendant's sanity at the time of the offense, civil commitment, or other matters collateral to the issues of competence to stand trial.

(c) Each jurisdiction should establish time periods by which the evaluation should be concluded and a report returned to the court. Such periods normally should not exceed [seven] days in the case of a defendant in custody nor [fourteen] days in the case of a defendant at liberty. For good cause, the time periods might be extended but should never exceed [thirty] days.

Sample Statement
Regarding Forensic Examiner's Role and Non-Confidential Nature of Examination

I am a psychologist/psychiatrist who has been ordered by the court to answer the following questions:

1. Do you understand the legal proceedings you are facing and can you assist your attorney in your defense?
2. What was your mental state at the time of the crimes you have been charged with committing?
3. Did you have a mental disorder?
4. At the time of the crime you are charged with committing, were you so mentally ill that the court should find you not criminally responsible?

Although I am a psychologist/psychiatrist, I will not be treating you. My purpose is to provide an honest evaluation, which you or your attorney may or may not find helpful.

You should know that anything you tell me is not confidential, as I have to prepare a report to submit to the court that the judge, the prosecutor, and your attorney will read. I may be asked to testify about the results of this evaluation and my opinion. It is important for you to be honest with me.

You don't have to answer every question, but if you choose not to answer one or do no cooperate, your refusal will be noted in my report.

Do you have any questions? Do you agree to continue with the interview?

Examiner Practice:

This "limits of confidentiality" warning is not the same thing as "informed consent" in that the defendants are not asked for permission for reports to be sent to the court as they have no legal right to prevent the court from receiving information from the examination. However, the defendant may refuse to participate in the examination.

The examination and subsequent report should include a brief assessment of the defendant's understanding of the information provided. When the warning is given, it is standard practice to assess the degree to which the defendant seems to have understood the warning. The report may include brief quotes from the defendant that suggest his or her understanding or confusion. Alternatively, the examiner may simply provide an opinion regarding whether the defendant appeared to comprehend the warning, if it is very clear that he or she did, for example by stating that "the defendant was able to accurately paraphrase the elements of this warning."

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 14, 2016 3:57 PM
To: HLTtestimony
Cc: louis@hawaiidisabilityrights.org
Subject: Submitted testimony for SB2888 on Mar 16, 2016 08:30AM

SB2888
Submitted on: 3/14/2016
Testimony for HLT on Mar 16, 2016 08:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Louis Erteschik	Hawaii Disability Rights Center	Comments Only	No

Comments: Separating the fitness evaluations from the penal responsibility evaluations seems like a good proposal. We are keeping an open mind on the issue of reducing the panels to one examiner as proposed in this bill.In general,we feel that one panels will not provide the same level of justice to the defendant or the same quality of information to the Court as would three panels.However, in the case of re-evaluations of fitness to proceed, the concept as set out seems to be reasonable.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

From: mailinglist@capitol.hawaii.gov
Sent: Monday, March 14, 2016 3:10 PM
To: HLTtestimony
Cc: mgrambs@hotmail.com
Subject: Submitted testimony for SB2888 on Mar 16, 2016 08:30AM

SB2888
Submitted on: 3/14/2016
Testimony for HLT on Mar 16, 2016 08:30AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Marya Grambs	Individual	Support	No

Comments: These changes will reduce the length of time defendants remain in jail or in Hawaii State Hospital awaiting evaluation, because the current process is unnecessarily long and cumbersome. Speeding up this process can also free up badly needed beds at Hawaii State Hospital.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

The Judiciary, State of Hawai'i

Testimony to the House Committee on Health
Representative Della Au Belatti, Chair
Representative Richard P. Creagan, Vice Chair

Wednesday, March 16 2016, 8:30 a.m.
State Capitol, Conference Room329

by

R. Mark Browning
Senior Judge, Deputy Chief Judge
Family Court of the First Circuit

Bill No. and Title: Senate Bill No. 2888, Senate Draft 2, Relating to Forensic Mental Health Procedures.

Purpose: Ensures the timely administration of mental health examinations; supports the process of expedient administration of justice; and clarifies the procedure for reevaluation of fitness to proceed after a finding of unfitness and attempts at restoration.

Judiciary's Position:

The Judiciary respectfully expresses concerns and offers the following comments on Senate Bill No. 2888, Senate Draft 2 that may have negative impacts in Family Court and District Court. The Family Court expresses concerns regarding provisions for the release of records when applied to juveniles that would be a violation of statutory mandates regarding confidentiality. The District Court also expresses concerns about provisions that may cause a defendant charged with a petty misdemeanor to remain in custody longer than the maximum jail sentence allowed.

We respectfully suggest the amendments below to address these concerns.

Impact on Family Court

Senate Bill No. 2888, S.D. 2 allows the prosecuting attorney and counsel for the defendant to petition the court for all the records collected for the mental health examiners. As applied to all defendants, this is overly broad. As applied to juveniles and juveniles records, this is overbroad and against statutory and public policy, both of which mandate confidentiality. This is particularly exacerbated by the possibility of releasing the confidential information and records in digital format. In either format, the "protective" ability of the court to apply "conditions the court determines appropriate" would be extremely difficult to enforce. For example, if a court orders that said information shall not be used, directly or indirectly, in any other case against the defendant, there would be no reasonable way for anyone to know about a breach. In fact, the person who allegedly disobeyed this order may not be aware of the origin of the information or the relevant court order. The same type of problem also applies to the prohibition against "further disclosure of records . . . except as permitted by law." Besides state law, we also need to confront the violation of federal laws such as HIPAA (medical records), FERPA (school records), and releasing records of substance abuse evaluations and reports.

In a recent publication by the Justice Law Center, *Future Interrupted: The Collateral Damage Caused by Proliferation of Juvenile Records* (February 2016), the authors stated at page two "Research confirms—and the law recognizes—that youth have the capacity for change and rehabilitation, and yet records continue to erect barriers to youths' success as they grow into adulthood. Modern technology exacerbates the problem as it facilitates access . . . ." The publication examines the collateral consequences faced by juveniles in the areas of education and employment.

The Judiciary would respectfully recommend that Senate Bill No. 2888, S.D.2 be amended by adding the following language (in bold) from Section 2, page 8, from line 11:

> (9) The court shall obtain all existing relevant medical, mental health, social, police, and juvenile records, including those expunged, and other pertinent records in the custody of public agencies, notwithstanding any other statute, and make the records available for inspection by the examiners in hard copy or digital format. The court may order that the records so obtained be made available to the prosecuting attorney and counsel for the defendant in either format, subject to conditions the court determines appropriate[.] **provided that juvenile records shall not be made available unless constitutionally required**. No further disclosure of records shall be made except as permitted by law.

and from Section 3, page 15, from line 3:

> (9) The court shall obtain all existing relevant medical, mental health, social, police, and juvenile records, including those expunged, and other pertinent records in the custody of public agencies, notwithstanding any other [~~statutes,~~] statute, and make [~~such~~] the records available for inspection by the examiners[~~.~~] in hard copy or digital format. The court may order that the records so obtained be made available to the prosecuting attorney and counsel for the defendant in either format, subject to conditions the court determines appropriate[.] **provided that juvenile records shall not be made available unless constitutionally required**.

Impact on District Court

The bill would require the separation of the Fitness and Penal Responsibility issues in a HRS Chapter 704 exam. For District Court this will unnecessarily lengthen the potential detention and adjudication time for these defendants. In District Court defendants who are found fit to proceed immediately proceed to a bench trial on the issue of penal responsibility. If a separate report is ordered after a fitness determination, and if the defendant is in custody and unable to post bail, the defendant must be transferred from the State Hospital to the Oahu Community Correctional Center (OCCC) to await the examination. Therefore, a combined report allows the court to immediately proceed with a bench trial after a finding of fitness, which is timely and efficient. Many present court-appointed examiners do not opine on penal responsibility unless and until a defendant is almost fit to proceed.

The Judiciary would respectfully request that language indicating that the requirement of separate fitness and penal responsibility reports only apply to felony cases. The Judiciary would respectfully recommend that SB2888 SD2 be amended as follows (in bold) from Section 2, page 6 from line 7 as well as Section 3, page 12 from line 1:

> (4) **For defendants charged with felonies, the ~~The~~** examinations for fitness to proceed and penal responsibility under section 704- 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. The report of the examination for

fitness to proceed shall be separate from the report of the examination for penal responsibility. **For defendants charged with offenses other than felonies, a combined examination is permissible when ordered by the court**.

Thank you for the opportunity to provide testimony on this measure.

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 547-7400 • FAX: (808) 547-7515

KEITH M. KANESHIRO
PROSECUTING ATTORNEY

ARMINA A. CHING
FIRST DEPUTY PROSECUTING ATTORNEY

THE HONORABLE DELLA AU BELATTI, CHAIR
HOUSE COMMITTEE ON HEALTH
Twenty-Eighth State Legislature
Regular Session of 2016
State of Hawai`i

March 16, 2016

RE: S.B. 2888, S.D. 1; RELATING TO FORENSIC MENTAL HEALTH PROCEDURES.

Chair Au Belatti, Vice-Chair Creagan, 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 opposition to S.B. 2888, S.D. 2.

The purpose of S.B. 2888, S.D. 2 is to ensure that mental health examinations are completed expeditiously and that defendants who may have mental health issues are afforded their due process rights. In achieving the objectives of S.B. 2888, S.D. 2, three (3) distinct issues arise. First, this bill seeks to eliminate the current process of conducting a concurrent evaluation for penal responsibility and a defendant's fitness to proceed. Second, it sets to establish distinct guidelines when a court shall require a three (3) panel and one (1) panel of health evaluators when a defendant regains fitness. Third, this bill raises the danger threshold to allow for the increase in release of defendants on conditional release.

In regards to the first issue, our Department believes that the current procedure, which is to conduct an evaluation for penal responsibility and fitness concurrently serves the specific purpose of ensuring accuracy in information. When conducting an evaluation for penal responsibility, the biggest concern is to ensure accuracy and reliable information. **To ensure such accuracy, collection of information as close in time to the incident is required.** Section 1 of this bill indicates that "only some the evaluations of penal responsibility are ever utilized…", however, the minor inconvenience of conducting both examinations concurrently and the minimal delay attributed to such procedure, is far outweighed by the necessity for accurate information. Our Department would point out that although section 1 indicates that the American Bar Association (ABA) recommends separate evaluations, as this committee is aware, this is merely a recommendation, and currently, the Department of Health does not comply with all recommendations outlined by the ABA regarding mental health. In addition, our judicial system routinely implements procedures that may be stricter then what the ABA recommends (ie. discoverable material, Tachibana colloquy, etc.). Our slight deviations from ABA recommendations are in place to ensure that a defendant's due process rights are upheld to the

highest degree. Therefore, to ensure that the information collected by health evaluators is accurate, the current procedure by which an evaluation for penal responsibility and fitness is completed together should be the preferred method.

Ensuring accurate information and providing a clear picture of the defendant's mental health as close in time to the incident is important when determining the legal ramifications of a finding of no penal responsibility. Section 704-411 of the Hawaii Revised Statutes outlines the legal effect of an acquittal on the grounds of physical or mental disease. If a determination is made that there is no penal responsibility of the defendant at the time of the alleged incident, a court may commit the defendant who is still affected by the mental disease to the director of health. However, alternatively, if the court finds that the defendant is no longer affected by the physical or mental disease, the court **SHALL** grant conditional release or discharge back to the community. Our Department believes that if an individual is going to be potentially discharged back to the community by way of mental disease, avoiding culpability for his or her actions and liability for any restitution to a victim, more information regarding a defendant's health is not just helpful, but should be a necessity.

The second issue that this bill intends to address is, when a court is to order a three (3) panel or a one (1) panel of health evaluators once a defendant has regained fitness to proceed. This bill would only require certain types of cases (murder in the first and second degree, attempted murder in the first and second degree, any Class A felony cases, or a felony for which charging by written information is not permitted by section 806-83) to utilize a three (3) panel of health evaluators, and all of other cases would be limited to a one (1) panel review. This proposal would take effect in cases in which a defendant was initially found unfit but subsequently regained fitness. To require such a reduction in the amount of health professionals – involved no matter what stage of the judicial proceeding – would inherently decrease the reliability of the results. If this change went into law, a number of class B and class C felony case in which a defendant was determined to regain fitness would be decided on the opinion of 1 examiner, without the benefit of a "second (or third / 'tie-breaker') opinion." Perhaps most alarming, is that some of the more serious crimes involving class B and class C felony offenses in Hawai'i would be determined by one (1) examiner.

Lastly, S.B. 2888, S.D. 2 adds the word "substantial" to the danger that the court must find is not present with regards to property prior to releasing the defendant on conditions. Our Department believes that this change from "risk of danger" to "risk of substantial danger" seeks to raise the danger threshold to allow for a more lackadaisical procedure for the court to grant a defendant conditional release. Therefore, a defendant would be allowed to be released if the defendant is not just a danger, but a "substantial" danger to the property of others. This change would effectively create unnecessary sacrifices to public safety and property.

The Department strongly believes that the existing statutes 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 opposes S.B. 2888, S.D. 2. Thank for you the opportunity to testify on this matter.