

**STATE OF HAWAII
DEPARTMENT OF HEALTH**

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**Testimony in SUPPORT of SB 309
RELATING TO MENTAL HEALTH EXAMINATIONS**

**SENATOR JOSH GREEN, CHAIR
COMMITTEE ON HEALTH
AND**

**SENATOR GILBERT KEITH-ARAGAN, CHAIR
COMMITTEE ON JUDICIARY AND LABOR**

Hearing Date: February 11, 2014 Room Number: 016
9:20 a.m.

1 **Fiscal Implications:** Indeterminate amount related to expense of added resources.

2 **Department Testimony:** The Department of Health (DOH) appreciates and supports the intent
3 of this bill.

4 In 2014, Hawaii Courts ordered 1443 evaluations assigned to Courts and Corrections
5 Branch (CCB) examiners, a 10% increase from 2013 and a 46% increase compared to five years
6 ago. This trend of increasing number of ordered evaluations has persisted over the last five
7 years.

8 It is clear that the Courts Branch will benefit from the allocation of additional resources
9 in order to deliver forensic services. How best to accomplish this is not clear. Specifically it is
10 unclear how the bill's enumerated purposes will be realized and operationalized within Hawaii
11 Administrative Rules and DOH protocol. For example, the mechanism which is needed to create
12 the proposed positions and to set and scale related compensation is unclear. The bill raises
13 technical questions, in position creation, position status, establishing class qualifications, and
14 related that the DOH will need time and assistance of other Executive Branch agencies to clarify.

15 The DOH is committed to revitalizing the Courts Branch and forensic services in general
16 and to more effectively address the needs of those individuals with serious mental illness and

1 criminal justice involvement. The DOH and the Adult Mental Health Division (AMHD) are
2 committed to coordinating with other agencies and with the Judiciary on processes that are
3 involved in that interface. The DOH appreciates the Legislature's support of proposing the
4 creation and financial support for staffing within the Courts Branch, as long as these are
5 consistent with the Administration's budgetary and other priorities.

6 **Offered Amendments:** None

7 Thank you for the opportunity to testify on this measure.



The Judiciary, State of Hawaii

**Testimony to the
Senate Committee on Health**
Senator Josh Green, Chair
Senator Glenn Wakai, Vice Chair

and

Senate Committee on Judiciary and Labor
Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

Wednesday, February 11, 2015, 9:20 a.m.
State Capitol, Conference Room 016

by
Sidney Nakamoto
Adult Client Services Branch Administrator

Bill No. and Title: Senate Bill No. 309, Relating to Mental Health Examinations.

Purpose: Establishes nine permanent full-time equivalent forensic psychologist positions and one permanent full-time equivalent manager position within the courts and corrections branch of the department of health for timely and proper administration of court ordered examinations.

Judiciary's Position:

The Judiciary supports the intent of Senate Bill 309.

Currently, there are only three full time forensic examiners and one part time examiner in the health department's courts and corrections branch, and they appear to be overwhelmed with work. Once a mental examination is ordered in a criminal case, proceedings are suspended until the required reports are received. Section 1 of the bill accurately notes that "The conclusions drawn in a court ordered examination are heavily considered by the judiciary, and accordingly, a significant factor in the legal claims and defenses available to a defendant." The number of cases referred by the courts for examination has increased steadily; from 992 in 2009 to 1,314 in



Senate Bill No. 309, Relating to Mental Health Examinations
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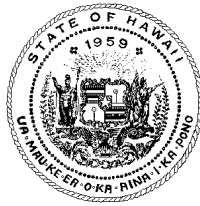
2014. To complete these reports, examiners must not only interview the defendant, but also review police reports and often voluminous psychiatric and medical records as well.

In felony cases, the court requires examiners to submit their reports within ten weeks initially. In virtually all of these cases, the examiner routinely requests extensions that delay the process by at least a month. For similar reasons, the court is rarely able to meet the sixty-day disposition requirement for conditional release, discharge, and modification applications. Timely preparation of the reports is critical as there are deadlines the courts must meet in these cases and delay can result in the filing of motions based upon the argument that the delays in completing the examination process have deprived the defendant of the right to a speedy trial.

The creation of a manager position, as proposed, is a good idea, especially in the area of certification. The certification process has not occurred with regularity in the past, and a permanent manager responsible for certification should improve in that process.

Thank you for the opportunity to testify on this bill.

DAVID Y. IGE
GOVERNOR



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DEPARTMENT OF PUBLIC SAFETY
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NOLAN P. ESPINDA
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Deputy Director
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Shawn H. Tsuha
Deputy Director
Law Enforcement

No. _____

COMMENTS ON SENATE BILL 309
A BILL RELATING TO MENTAL HEALTH EXAMINATIONS
Nolan P. Espinda, Director
Department of Public Safety

SENATE COMMITTEE ON HEALTH
Senator Josh Green, Chair
Senator Glenn Wakai, Vice Chair

SENATE COMMITTEE ON JUDICIARY AND LABOR
Senator Gilbert S.C Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

Wednesday, February 11, 2015, 9:20 AM
State Capitol, Conference Room 016

Chairs Green and Keith-Agaran, Vice Chairs Wakai and Shimabukuro and Members of the Committees:

The Department of Public Safety (PSD) supports the intent of Senate Bill (SB) 309, which proposes to establish nine (9) permanent full-time equivalent forensic psychologist positions and one (1) permanent manager position within the Courts and Corrections branch of the Department of Health (DOH). PSD welcomes the addition of management oversight and forensic psychology positions at DOH to assist in the processing of more timely court-ordered forensic examinations for pretrial detainees.

PSD would also like to request that the Committee consider amending SB 309 to include a reasonable performance metric to further clarify timeliness parameters.

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



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

The Twenty-Eighth Legislature, State of Hawaii
The Senate
Committee on Health
Committee on Judiciary and Labor

Testimony by
Hawaii Government Employees Association
February 11, 2015

**S.B. 309 - RELATING TO MENTAL HEALTH
EXAMINATIONS**

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports S.B. 309 which intends to establish nine permanent full-time equivalent forensic psychologist positions and one permanent full-time equivalent manager position within the Courts and Corrections Branch of the Adult Mental Health Division of the Department of Health. S.B. 309 further provides for funds for additional office space to require that the Courts and Corrections Branch be located near the courts in major populated areas, secretarial support and other supplies necessary to facilitate the forensically-related work product.

Due to the shortage of psychologists within the Courts and Corrections Branch, the existing caseload has increased, a backlog exists, employees have been subpoenaed and ordered to show cause as to why they should not be held in contempt of court. Passage of this measure would support timely and proper administration of court ordered examinations and alleviate the unnecessary stressors that has fallen upon the employees.

Thank you for the opportunity to provide testimony in support for S.B. 309.

Respectfully submitted,

Randy Perreira
Executive Director



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Senator Josh Green, Chair
Senator Glenn Wakai, Vice Chair
Committee on Health

Senator Gilbert S.C. Keith-Agaran, Chair
Senator Maile S.L. Shimabukuro, Vice Chair
Committee on Judiciary and Labor

Wednesday, February 11, 2015, 9:20 a.m., Room 016

TESTIMONY IN SUPPORT OF SB 309

Honorable Chairs Senator Green, Senator Keith-Agaran, Vice Chairs Senator Wakai and Senator Shimabukuro, and members of the committee, my name is Marie Terry-Bivens, Psy.D. and I am a psychologist and President of the Hawai'i Psychological Association. I would like to provide testimony in support of SB 309.

Hawai'i suffers from a shortage of trained evaluators who can perform forensic evaluations for the purpose of determining a detainee's penal responsibility. This results in more and longer incarcerations of detainees prior to their trial due to delays. Additionally, this puts an undue burden upon the prison system, affecting prisoners and staff alike, due to the presence of un-evaluated and therefore potentially untreated mentally ill persons inside facilities that are not designed to handle such persons. At some point, the rights of prisoners, prison staff, and mentally disabled detainees are being upheld. This state of affairs creates a number of practical problems and liabilities that threaten the integrity of the penal system itself. In sum, slow and/or unavailable forensic evaluations lead to inefficiency, waste, demoralized penal staff, poorer case disposition, higher liability for the state, and recidivism.

SB 309 provides a rapid and enduring solution to the evaluator shortage by creating nine (9) permanent full-time equivalent forensic psychologist positions, one (1) full-time equivalent manager position as well as an apparatus for ensuring the timeliness and quality of the forensic evaluations completed. SB 309 will relieve a great deal of pressure that is currently being felt by prison staff for the reasons noted above, and empower judges and other deciders of fact with the information they need to properly charge criminal cases in which mental illness plays a significant role. The net result will hopefully be safer prisons, a more efficient judicial process, better treatment for mentally ill detainees, and less recidivism due to inadequate or inappropriate services for offenders.

Thank you for this opportunity to testify in support of SB 309.

Respectfully submitted,

Marie Terry-Bivens, Psy.D., President

Barbara Higa Rogers, LCSW, MPH, Psy.D.
Licensed Psychologist
Past President Hawaii Psychological Association-2011
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February 9, 2015

SB 309

As the past President of Hawaii Psychological Association (HPA), private practitioner and part time employee of the Hawaii State Department of Health (DOH), I possess significant assessment experience. In this role supporting the Judiciary I recognize the importance of accurate, thorough and timely reporting to the courts. However I have recently resigned from the DOH due to the staffing and workload imbalance that results in both untimely reporting and potentially the incomplete and inaccurate reporting that can result from this workload imbalance. I have become increasingly concerned about DOH ability to I meet court ordered deadlines without compromising quality and personal well being.

Upon joining DOH in 2012 caseloads were reasonable, but by December of 2014, after losing two examiners, all remaining examiners experienced increased workloads and my caseload almost tripled. This resulted late reports, defendants being held longer than necessary and increases the potential for incomplete or inaccurate assessments that are not comprehensive in assessing all risk factors.

In recent months, all Courts and Corrections Psychologists have been subpoenaed to show cause why they should not be held in criminal contempt due to late reporting or inability to complete a Mental Health Exam (HRS Chapter 704) within the time order by the court. By law exams have approximately a 45-day deadline. Based upon recent workload and reduction in examiners all Courts and Corrections Psychologists have been placed at risk to criminal charges (Contempt of Court) for their inability to properly perform assessments and meet court ordered deadlines.

State recognized Certification, as well as, examiner training has been on hold for several years. This results in a stagnant pool of examiners that are not receiving current training and not recognized for their expertise. Given the current workload it is likely these examiners will be increasing assigned to one panel assessments without peer review oversight.

Currently available examiner positions have been unable to be filled due to lack of parity between private and state psychologist salaries.

Caseloads have more than doubled since 2006 and subpoenas to testify have increased dramatically, which further exacerbates the workload. In 2014, the four examiners in Courts and Corrections received 1443 orders. Currently there are three DOH examiners supported by privatization of one-panel examiners, which is not cost effective and very expensive.

I offer testimony reluctantly as I prefer DOH take the lead in seeking positions however the status quo is unacceptable. A solution to his problem requires a mindful and conservative effort from the legislature, Administration, and Judiciary. I have a professional and ethical obligation to voice my concern to voice my concerns.

It is my hope, that Courts and Corrections/Department of Health, can not receive a Band-Aid but the attention, financial support, and leadership it deserves to best meet the needs of the defendant's and agencies we serve.

Respectfully,



BARBARA HIGA ROGERS

Licensed Psychologist