



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

**Testimony in SUPPORT of SB145 SD1
RELATING TO EXAMINATIONS OF FITNESS TO PROCEED**

SENATOR GILBERT S.C. KEITH-AGARAN, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR

Hearing Date: Wednesday, February 22, 2017

Room Number: 016

1 **Fiscal Implications:** Undetermined at this time.

2 **Department Testimony:** The Department of Health (DOH) supports this measure and
3 offers comments.

4 The purpose of this bill is to ensure that transfers to the custody of the director of
5 health for evaluation of fitness are due to the need for acute hospital level psychiatric
6 treatment for mental illness.

7 The DOH anticipates that demand for forensic services, including the need for
8 secure settings to deliver them, will continue and that our state must pursue a variety of
9 initiatives focused on the safe, effective and efficient delivery of mental health supports
10 and forensic evaluations. We acknowledge the importance of providing some
11 individuals, whose fitness is to be evaluated, with this fitness assessment in a treatment
12 as opposed to detention setting. This measure, SB145 SD1, will ensure that pretrial
13 commitment orders to the custody of the director of health for evaluation are the result
14 of a clinical determination.

15 In current practice, the court has discretion to order that a defendant be
16 transferred to a hospital "when necessary" for a pretrial forensic evaluation pursuant to
17 HRS 704-404. There currently are no clearly defined criteria for determining
18 "necessary" level of care, which can result in a defendant being ordered to the HSH who

1 does not need a hospital level of care; nor is there available, at that juncture in the court
2 proceedings, a mental health professional to assess the level of care a defendant might
3 need.

4 A legislative approach to address this gap in statute is to revise HRS 704-404 to
5 indicate that such transfers to the custody of DOH for evaluation of fitness and
6 treatment are due to the need for acute hospital level psychiatric treatment for mental
7 illness. Pursuant to already established law (HRS 334-74), as well as a formalized in a
8 Memorandum of Agreement (MOA) between the DOH and the PSD, a person in the
9 custody of the Director of Public Safety, in need of acute psychiatric treatment for
10 mental illness may be transferred to a facility operated by the DOH. The procedures
11 outlined in the MOA include psychiatric assessment of need for hospital level of care
12 and coordination between the PSD and the DOH.

13 Furthermore, bail proceedings are suspended for persons ordered to the HSH for
14 evaluation. Bail proceedings are not suspended for persons awaiting evaluation while
15 in the custody of the PSD.

16 The DOH supports the policy of ensuring that transfers to DOH custody for
17 evaluation of fitness and treatment are due to the need for acute hospital level
18 psychiatric treatment for mental illness.

19 Thank you for the opportunity to testify in support of this measure.

20 **Offered Amendments:** None.

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

NOLAN P. ESPINDA
DIRECTOR

Cathy Ross
Deputy Director
Administration

Jodie F. Maesaka-Hirata
Deputy Director
Corrections

Renee R. Sonobe Hong
Deputy Director
Law Enforcement

No. _____

**TESTIMONY ON SENATE BILL 145, SENATE DRAFT 1
RELATING TO EXAMINATIONS OF FITNESS TO PROCEED**

by

Nolan P. Espinda, Director
Department of Public Safety

Senate Committee on Judiciary and Labor
Senator Gilbert S.C. Keith-Agaran, Chair
Senator Karl Rhoads, Vice Chair

Wednesday, February 22, 2017; 9:15 a.m.
State Capitol, Conference Room 016

Chair Keith-Agaran, Vice Chair Rhoads, and Members of the Committee:

The Department of Public Safety (PSD), upon consideration of this bill in its current form, respectfully submits testimony in opposition to Senate Bill (SB) 145, Senate Draft (SD) 1. This non-administration bill proposes to amend Section 704-404, Hawaii Revised Statutes, to clarify the provisions relating to examinations of defendants' fitness to proceed in the prosecution. As drafted, SB 145, SD 1 would also restrict the courts' ability to direct defendants with severe mental health issues to the custody of the Department of Health's (DOH) Hawaii State Hospital (HSH). The courts' authority to decide placement pending evaluation and the defending attorneys' ability to advocate for desired placement should not be prohibited through statute.

PSD acknowledges that, notwithstanding any collaborative or cooperative agreements between PSD and DOH, delaying treatment for patients requiring mental health hospitalization could potentially pose danger to the patient, other patients, and staff. The recent Department of Justice (DOJ), Oahu Community Correctional Center (OCCC), Settlement Agreement clearly prescribed the more

timely transfer of patients requiring hospital mental health treatment not available at OCCC.

PSD respectfully notes that the management of the HSH census directed in SB 145, SD 1 will result in conversely increasing the number of admissions of mental health patients as inmates to PSD's Community Correctional Centers (CCC) throughout the State. This will impact the presently over-crowded CCC system by admitting additional special needs inmates whose presence will increase demands on the already overtaxed mental health housing and treatment resources and expose the inmate population, staff, the facility and the State to greater risk. SB 145, SD1 purports to address the HSH census but unfortunately, does not consider its ramifications upon the CCC system.

In addition, this measure might adversely impact any DOJ follow-up on the recent American Civil Liberties Union (ACLU) letter of complaint as it pertains to overcrowding and PSD's ability to provide appropriate mental health care to its inmate population.

Thank you for the opportunity to present this testimony.

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: louis@hawaiidisabilityrights.org
Subject: Submitted testimony for SB145 on Feb 22, 2017 09:15AM
Date: Thursday, February 16, 2017 5:25:29 PM

SB145

Submitted on: 2/16/2017

Testimony for JDL on Feb 22, 2017 09:15AM in Conference Room 016

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

Comments: We are sympathetic to the fact that the Hawaii State Hospital is overcrowded and that having many residents there who are merely being evaluated for fitness may be taxing their resources. However, we are equally concerned that this bill may make it more difficult to transfer inmates to the State Hospital who are genuinely in need of mental health treatment. The treatment they receive at the prison is not as comprehensive and they may languish for several months waiting for their evaluation and that obviously does not serve them well. We also believe that retaining the Judge's flexibility is generally a good policy. If the concern is that Judges are too frequently committing prisoners to the State Hospital when it is not necessary, then the better approach may be to work with the Judiciary to provide appropriate guidelines and parameters for those actions. But the ability of the Judge to Order a defendant to the State Hospital should not be repealed as this bill does.

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