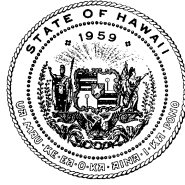


SB145

Measure Title: RELATING TO EXAMINATIONS OF FITNESS TO PROCEED.
Report Title: Fitness to Proceed
Description: Clarifies provisions regarding examinations of defendants' fitness to proceed in the prosecution.
Companion:
Package: None
Current Referral: CPH, JDL
Introducer(s): BAKER



STATE OF HAWAII
DEPARTMENT OF HEALTH
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**Testimony in SUPPORT of SB145
RELATING TO EXAMINATIONS OF FITNESS TO PROCEED**

SENATOR ROSALYN H. BAKER, CHAIR
SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION
AND HEALTH

Hearing Date: FRIDAY, JANUARY 27, 2017

Room Number: 229

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

2 **Department Testimony:**

3 The purpose of this bill is twofold:

4 With respect to Section 1, the purpose of this bill is to ensure that transfers to
5 Hawaii State Hospital (HSH) for evaluation and treatment are due to the need for acute
6 hospital level psychiatric treatment for mental illness. The Department of Health (DOH)
7 strongly supports this concept, offers comments and alternative language.

8 With respect to Section 2, the purpose of this bill is to make permanent, the time-
9 limited statutory changes enacted by the legislature last session stemming from the
10 2016 Penal Code Task Force review, intended to provide flexibility for the DOH to
11 assign work to forensic examiners during a period of temporary staffing deficit. The
12 DOH does not support this section.

13 We anticipate that demand for forensic services, including the need for secure
14 settings to deliver them, will continue and that our state must pursue a variety of
15 initiatives focused on the safe, effective and efficient delivery of mental health supports
16 and forensic evaluations. We anticipate that these initiatives, once pursued, will have a
17 positive impact on the HSH census, length of stay, and the safety of both patients and

1 staff. This measure, SB 145, will ensure that pretrial commitment orders to the HSH for
2 evaluation are due to the need for acute hospital level psychiatric treatment for mental
3 illness.

4 In current practice, the court has discretion to order that a defendant be
5 transferred to a hospital (HSH) “when necessary” to receive a pretrial forensic
6 evaluation pursuant to HRS 704-404. There currently are no clearly defined criteria for
7 determining necessary level of care, which can result in a defendant being ordered to
8 the HSH who does not need a hospital level of care; nor is there available, at that
9 juncture in the court proceedings, a mental health professional to assess the level of
10 care a defendant might need.

11 A legislative approach to address this gap in statute and in situation is to revise
12 HRS 704-404 to indicate that such transfers to the HSH for evaluation and treatment
13 are due to the need for acute hospital level psychiatric treatment for mental illness.
14 SB145 provides that defendants awaiting forensic examinations may only be transferred
15 from jail to the HSH pursuant to HRS 334-74, a statute pertaining to the transfer of
16 “residents” of correctional facilities who are in need of acute psychiatric treatment for
17 mental illness to a facility operated by the DOH. However, we believe that this provision
18 needs to be amended. In this context, “resident” applies to inmates located in prison
19 facilities and does not apply to detainees located in jail settings. The DOH and the
20 Department of Public Safety (PSD) have an agreement, formalized in a Memorandum of
21 Agreement (MOA), that pertains to the transfer of detainees located in jail correctional
22 facilities who are need of acute psychiatric treatment for mental illness to a facility
23 operated by the DOH. The procedures outlined in the MOA include psychiatric
24 assessment of need for hospital level of care and coordination between the PSD and
25 the DOH.

1 The DOH strongly supports the concept of ensuring that transfers to the HSH for
2 evaluation and treatment are due to the need for acute hospital level psychiatric
3 treatment for mental illness and we recommend consideration of alternative language.

4 In late 2015 and early 2016, in parallel to rebuilding the DOH Courts Branch
5 staffing (which is now complete), the Penal Code Review Taskforce developed an
6 omnibus bill that contained a provision intended to provide flexibility for the DOH to
7 assign work to independent, non-state employed forensic examiners during that specific
8 period of temporary staffing deficit. This provision, as passed in HB2561/Act 231, is
9 scheduled to be sunsetted on July 1, 2018. Section 2 of SB145 repeals that change,
10 leading to sunsetting that would go into effect on July 1, 2018 and makes this flexible
11 assignment permanent.

12 The DOH thanks the Legislature for its support of the DOH and opposes the concept
13 of making permanent the time-limited statutory changes enacted by the legislature last
14 session. The DOH does not support the provisions in Section 2 of this bill which makes
15 changes to Act 231, Session Laws of Hawaii 2016.

16 Thank you for the opportunity to testify.

17 **Offered Amendments:**

18 We propose to strike all of Section 2 from this bill.

19 We propose an effective date of July 1, 2017, or when enacted.

20 For your consideration, our amendment is as follows:

21 [“SECTION 5. Section 704-404, Hawaii Revised Statutes, is amended by amending
22 subsection (2) to read as follows:

23 “(2) Upon suspension of further proceedings in the prosecution, the court shall appoint
24 three qualified examiners in felony cases, and one qualified examiner in nonfelony
25 cases, to examine and report upon the physical and mental condition of the defendant.

1 In felony cases, the court shall appoint at least one psychiatrist and at least one
2 licensed psychologist. The third member may be a psychiatrist, licensed psychologist,
3 or qualified physician. One of the three shall be a psychiatrist or licensed psychologist
4 designated by the director of health from within the department of health. In nonfelony
5 cases, the court may appoint either a psychiatrist or a licensed psychologist. All
6 examiners shall be appointed from a list of certified examiners as determined by the
7 department of health. The court, in appropriate circumstances, may appoint an
8 additional examiner or examiners. The examination may be conducted while the
9 defendant is in custody or on release or, ~~[in the court's discretion,]~~ when necessary ~~[the~~
10 ~~court may order]~~ the defendant ~~[to]~~ may be [committed] transferred to a hospital or other
11 suitable facility, pursuant to section 334-74 regarding transfer of residents of
12 correctional facilities, or pursuant to any agreements entered into between the
13 department of health and the department of public safety regarding transfer of detainees
14 of community correctional centers, for the purpose of the examination ~~[for a period not~~
15 ~~exceeding thirty days, or a longer period as the court determines to be necessary for the~~
16 ~~purpose.]~~ The court may direct that one or more qualified physicians or psychologists
17 retained by the defendant be permitted to witness the examination. As used in this
18 section, the term "licensed psychologist" includes psychologists exempted from
19 licensure by section 465 3(a) (3)."]

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, January 25, 2017 3:09 PM
To: CPH Testimony
Cc: louis@hawaiidisabilityrights.org
Subject: Submitted testimony for SB145 on Jan 27, 2017 09:30AM

SB145

Submitted on: 1/25/2017

Testimony for CPH on Jan 27, 2017 09:30AM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Louis Erteschik	Hawaii Disability Rights Center	Comments Only	Yes

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 Section 1 of 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 would urge the Committee to obtain data to see how many of these inmates are found fit or unfit to determine if the current system really needs to be revised or not. 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.

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.

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