

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

**Testimony COMMENTING on HB786**  
**RELATING TO MENTAL HEALTH EXAMINATIONS**

REPRESENTATIVE GREG TAKAYAMA, CHAIR  
HOUSE COMMITTEE ON PUBLIC SAFETY, VETERANS, & MILITARY AFFAIRS

Hearing Date and Time: Wednesday, February 6, 2019 at 10:00 a.m. Room: 430

1 **Fiscal Implications:** Undetermined.

2 **Department Testimony:** HB786 proposes that evaluation of fitness to stand trial be completed  
3 within 30 days. If the evaluation is not completed in 30 days, then the court determines if the  
4 defendant is eligible to be placed on supervised release or remanded back to the Department of  
5 Public Safety (PSD). The Department of Health offers comments on this measure and provides  
6 the following information for consideration.

7 The DOH thanks the committee for hearing this measure. At this time, we respectfully  
8 request that the committee defer decision making on this measure so that the DOH may confer  
9 with its partners, the PSD and the Judiciary.

10 The DOH looks forward to continued collaboration with the House Committee on Public  
11 Safety, Veterans, & Military Affairs, other legislators, and community stakeholders in addressing  
12 the intent and spirit of this measure. Thank you for the opportunity to testify.



**LATE**

*The Judiciary, State of Hawai'i*

**Testimony to the House Committee on Public Safety,  
Veterans, and Military Affairs**

Representative Gregg Takayama, Chair  
Representative Cedric Asuega Gates, Vice Chair

Wednesday, February 6, 2019 10:00 AM  
State Capitol, Conference Room 430

**WRITTEN TESTIMONY ONLY**

By

Shirley M. Kawamura

Deputy Chief Judge, Criminal Administrative Judge, Circuit Court of the First Circuit

---

**Bill No. and Title:** House Bill No. 786 Relating to Mental Health Examinations

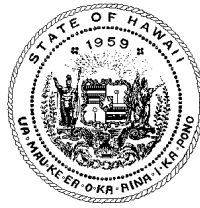
**Purpose:** Prohibits a court from committing a defendant to a suitable facility for a mental health examination for more than 30 days. Provides that if the required examinations cannot be conducted within 30 days, the court shall determine whether the defendant is eligible for supervised pretrial release or should be remanded to the custody of the Department of Public Safety. Provides that the court has continuing discretion to approve any agreement or stipulation of the parties to determine the fitness of a defendant to proceed with less than the number of required examinations.

**Judiciary's Position:**

The Judiciary respectfully notes a concern with the provision requiring the mandatory transfer of a defendant committed to a hospital or other suitable facility, who has been found to require mental health treatment and is considered to be dangerous to the public so as to not be eligible for supervised pretrial release, to the custody of the department of public safety when one, or any, of the appointed examiners cannot complete his or her report in thirty days. This would appear to essentially stop any treatment that was ongoing pending the examinations and would likely lead to a further delay in the ultimate goal of obtaining a defendant's fitness to proceed. In effect, this provision would impede defendant's treatment through no fault of his own.

Thank you for the opportunity to testify on this measure.

DAVID Y. IGE  
GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF PUBLIC SAFETY**

919 Ala Moana Boulevard, 4th Floor  
Honolulu, Hawaii 96814

**NOLAN P. ESPINDA**  
DIRECTOR

**Maria C. Cook**  
Deputy Director  
Administration

**Jodie F. Maesaka-Hirata**  
Deputy Director  
Corrections

**Renee R. Sonobe Hong**  
Deputy Director  
Law Enforcement

No. \_\_\_\_\_

TESTIMONY ON HOUSE BILL 786  
RELATING TO MENTAL HEALTH EXAMINATIONS.

By

Nolan P. Espinda, Director  
Department of Public Safety

House Committee on Public Safety, Veterans, and Military Affairs  
Representative Gregg Takayama, Chair  
Representative Cedric Asuega Gates, Vice Chair

Wednesday, February 6, 2019; 10:00 a.m.  
State Capitol, Conference Room 430

Chair Takayama, Vice Chair Gates, and Members of the Committee:

The Department of Public Safety (PSD) respectfully requests the Committee on Public Safety, Veterans, and Military Affairs defer decision making on House Bill (HB) 786, to provide time for PSD staff to confer with staff of the Department of Health and the Courts on the bill.

Thank you for the opportunity to testify on this measure.



## Office of the Public Defender State of Hawaii



### Testimony of the Office of the Public Defender, State of Hawaii to the House Committee on Public Safety, Veterans, & Military Affairs

February 4, 2019

H.B. No. 786: RELATING TO MENTAL HEALTH EXAMINATIONS

Chair Takayama, Vice Chair Gates, and Members of the Committee:

The Office of the Public Defender opposes H.B. 786.

First, we dispute the language in the preamble to this bill that claims the state hospital is “currently used primarily to house persons...who are awaiting a determination of whether they are fit to proceed with trial under 704-404, Hawaii Revised Statutes.” This statement is misleading. The vast majority of defendants who are awaiting a determination of whether they are fit to proceed with trial are housed in a jail facility like the Oahu Community Correctional Center or in the community on some type of supervised release.

Most defendants moved to the state hospital have either been acquitted and committed for care and treatment or they have already been found to be unfit to proceed by a court and have been moved from a jail to the hospital for care and treatment in the hopes that with a higher level of care, they can regain fitness.

Only in very severe cases, where a defendant is experiencing severe episodes of instability and psychosis, do the courts consider moving a defendant from a jail facility to the state hospital prior to a finding of unfitness to proceed. This is often done when it is clear that the limited mental health staff and services in a jail facility is clearly inadequate to stabilize and treat a patient suffering from a severe mental illness. The jail facilities provide the minimum level of care to the mentally ill and there have been situations when hospital level care is simply more appropriate.

We are deeply concerned that H.B. 786 seeks to remove language that gives the courts the flexibility and ability to consider severe cases for movement from the jail to the state hospital.

It is important to note that fitness examinations are often scheduled 6 weeks out – in other words, it takes 6 weeks to make arrangements for the fitness examination, to appoint the examiner(s), for them to meet with the individual, and to generate a written report for the court. The requirement in H.B. 786 that requires a “thirty day” time frame fails to take this into consideration. Eligibility for supervised release is already available and often used; however, in severe cases where a person simply can’t get fit in 30 days and where supervised release is inappropriate, there should not be an arbitrary rule that allows the state hospital to control their census by transferring that patient back into the limited and equally overcrowded jail mental health system – which in many cases causes a person to relapse and decompensate and thus prolong the process of stabilization. This bill is a not-so-veiled attempt to get rid of complicated patients rather than provide serious mental health treatment to the most severely affected.

Thank you for the opportunity to comment on H.B. 786.



# Hawai'i Psychological Association

## *For a Healthy Hawai'i*

---

P.O. Box 833  
Honolulu, HI 96808

[www.hawaiipsychology.org](http://www.hawaiipsychology.org)

Email: [hpaexec@gmail.com](mailto:hpaexec@gmail.com)  
Phone: (808) 521-8995

### Committee on Public Safety, Veterans and Military Affairs

Representative Gregg Takayama, Chair

Representative Cedric Asuega Gates, Vice Chair

Wednesday February 6, 2019, 10:00AM  
Room 430

### **Testimony in OPPOSITION to HB786**

Hawai'i Psychological Association (HPA) is opposed to HB786. This bill attempts to reduce the census at Hawaii State Hospital by transferring a small number of forensic patients, who are awaiting court ordered evaluations of fitness to proceed, to jail and also sets a 30-day time limit on fitness evaluations, which is unrealistic and can harm the quality of the evaluations.

HPA is very concerned that HB786 will further exacerbate the criminalization of mental illness as it appears to be driven by the lack of inpatient space at the State Hospital, rather than the mental health needs of mentally ill defendants. Most legal fitness evaluations take longer than 30 days to complete (1) because it usually takes at least 30 days for the Adult Client Services Branch to gather collateral treatment and criminal history records for examiners to review and (2) due to the shortage of qualified examiners. The Department of Health should increase the timeliness of examinations by hiring and training more evaluators. In addition, this bill would also allow non-licensed psychologists to evaluate fitness to proceed. Given the complexity of fitness to proceed evaluations they should not be allowed to be conducted by unqualified people.

Most evaluations of fitness to proceed are performed in jails or in outpatient settings. Judges order the exams to be done at the State Hospital in a relatively small number of cases when it is readily apparent that defendants are presenting with acute symptoms of severe mental illness, with a clinical need for hospitalization, a condition which typically takes weeks (if not months) to stabilize. Therefore, some patients would be harmed if HB786 becomes law because they would be transferred back to jail while still unstable. Furthermore, it is very likely these patients

would return to the State Hospital when found Unfit to Proceed in court, adding inefficiency through redundant admission to jails and the State Hospital.

HPA strongly urges you not to pass HB786.

Thank you for your consideration.

Julie Takishima-Lacasa, PhD  
Chair, HPA Legislative Action Committee

**HB-786**

Submitted on: 2/5/2019 3:17:39 PM

Testimony for PVM on 2/6/2019 10:00:00 AM



<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Eric Schrager	Individual	Support	No

Comments:

Aloha!

I am strongly in support of this measure! People should not be detained more than 30 days without being evaluated for pretrial release. That practice often just makes a bad situation even worse, affecting not just the individual detained, but her or his family and the prospects for the person to remain or gain employment in the future.

Thank You,

Eric Schrager

Ewa Beach

808-772-3740