



TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FIFTH LEGISLATURE, 2009

ON THE FOLLOWING MEASURE:

H.B. NO. 1025, H.D. 1, RELATING TO SENTENCING.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Friday, February 27, 2009 **TIME:** 4:00 PM

LOCATION: State Capitol, Room 308

TESTIFIER(S): Mark J. Bennett, Attorney General
or Lance M. Goto, Deputy Attorney General

Chair Oshiro and Members of the Committee:

The Attorney General strongly supports this bill with one amendment.

The purpose of this bill is to restore a necessary statutory provision allowing for presentence mental or medical examination of defendants as part of the judiciary presentence investigation process. With respect to certain defendants, a mental or medical examination assists the court in determining appropriate sentencing provisions.

In 2005, the statutory provision was apparently inadvertently repealed by Act 112, Session Laws of Hawaii 2005. Act 112 created chapter 844D, Hawaii Revised Statutes (HRS), regarding forensic identification and the DNA database. Section 4 of Act 112 amended section 706-603, HRS, eliminating the DNA provisions that were incorporated into chapter 844D, and leaving only the provisions regarding the DNA analysis monetary assessment and the DNA registry special fund. Thus, while eliminating certain DNA provisions of section 706-603, Act 112 also apparently inadvertently removed the presentence examination provision.

This bill restores this important statutory provision by adding a new section to part I of chapter 706, HRS. The original wording of the statutory provision is derived from the Model Penal Code.

While supporting this bill, we recommend one amendment. Section 2 of the H.D. 1 version of this bill must be deleted because it is inappropriate and will cause confusion. Such a provision may be needed when new or greater punishment is being created in the law. But this bill does not do that. It is simply addressing a presentence process.

Section 2 of H.D. 1 suggests that prior to the effective date of this Act, the courts could not order presentence examinations of defendants. And it appears to prohibit such court orders for any defendants pending sentencing at the time this Act takes effect. But the provision being restored in this bill existed in our law until 2005. Since then, some courts have continued to order presentence mental or medical examinations of defendants under their inherent authority to do so. This bill is intended to clarify and affirm that authority.

We respectfully request passage of this measure without the savings clause in section 2 of the bill.



Testimony to the Twenty-Fifth State Legislature, 2009 Session

House Committee on Finance
The Honorable Marcus R. Oshiro, Chair
The Honorable Marilyn B. Lee, Vice Chair

Friday, February 27, 2009, 4:00 p.m.
State Capitol, Conference Room 308

by
Janice Yamada
Adult Client Services Branch Administrator
Hawaii State Judiciary

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 1025, H.D. 1, Relating to Sentencing

Purpose: This measure restores a statutory provision allowing for pre-sentence mental health or medical examinations of defendants for purposes of sentencing.

Judiciary's Position:

The Judiciary supports this measure that is intended to restore a necessary statutory provision allowing for pre-sentence mental or medical examinations of defendants. This bill will allow the court to order a mental or medical examination as needed in order to obtain sufficient information to render an appropriate sentencing provision for a defendant.

This bill will restore portions of Section 706-603 of the Hawaii Revised Statutes (Pre-sentence mental and medical examination) that were inadvertently repealed in 2005.

Thank you for the opportunity to testify on House Bill No. 1025, H.D. 1.

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Testimony In Support of HB 1025, HD1
Relating to Sentencing

Hearing before House Committee on Finance
February 27, 2009

Submitted by Charlene Y. Iboshi, First Deputy Prosecuting Attorney for
Jay T. Kimura, Prosecuting Attorney

TO: Chair Marcus R. Oshiro and Committee Members

We support the HB 1025, HD1

The purpose of HB 1025, HD1 is to restore portions of what was Hawaii Revised Statutes section 706-603. These portions, which statutorily authorized a court to order a presentence mental or medical examination, were inadvertently repealed in 2005. The judges handling our mental health offender calendars recommended restoration of this section.

We strongly support the passage of this bill. Given that the repealed sections set forth parameters for the length of the examinations, as well as how the examiners were to be selected, we believe that restoration of this section is necessary.

Thank you for this opportunity to testify.

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THE HONORABLE MARCUS OSHIRO, CHAIR
HOUSE FINANCE COMMITTEE
Twenty-fifth State Legislature
Regular Session of 2009
State of Hawai'i

February 27, 2009

RE: H.B. 1025, H.D. 1; RELATING TO SENTENCING.

Chair Oshiro, and members of the House Committee on Finance, the Department of the Prosecuting Attorney submits the following testimony in support of the intent of HB 1025, H.D. 1 but with a request for an amendment.

The purpose of HB 1025, H.D. 1 is to restore portions of what was Hawaii Revised Statutes section 706-603. These portions, which statutorily authorized a court to order a presentence mental or medical examination, were inadvertently repealed in 2005.

We strongly support the passage of this bill. Given that the repealed portions section set forth parameters for the length of the examinations, as well as the how the examiners were to be selected, we believe that restoration of this section is necessary.

However, we respectfully request that the savings clause in Section 2 be deleted as it would unduly restrict the use of the examinations by the court in fashioning appropriate sentences. Furthermore, as the provision was in the sentencing provisions of the penal code from 1972 to 2005 without any restrictions on its use for felony or misdemeanor defendants, we do not understand why such a restriction is necessary. Indeed, if it is left in the bill, this will lead to the incongruous situation where the court could not order persons previously convicted of felonies and misdemeanors to presentence mental or medical exams but could order similar defendants convicted after the effective date to such exams. We are unaware of any reasons that would justify this disparate treatment.

For this reason, we support the passage of HB 1025, H.D. 1 with the deletion of the savings clause and thank you for this opportunity to testify.