



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

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 843, S.D. 1, H.D. 1, RELATING TO SENTENCING.

**BEFORE THE:**

HOUSE COMMITTEE ON FINANCE

**DATE:** Friday, April 3, 2009 **TIME:** 2:00 PM

**LOCATION:** State Capitol, Room 308

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

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Chair Oshiro and Members of the Committee:

The Attorney General will strongly support this bill, if one important amendment is made.

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 assessing the condition of defendants and determining appropriate sentencing provisions.

In 2005, the statutory provision was apparently inadvertently repealed by Act 112, Session Laws of Hawaii 2005. Act 112 enacted 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.

Since 2005, the repeal of the statutory provision has caused confusion and uncertainty. Some defense attorneys have argued that the repeal of the provision means that the courts no longer have the

authority to order mental or medical examinations of defendants for purposes of presentence evaluation. Some courts, recognizing the importance and necessity of the examinations, have continued to order the examinations under their inherent authority.

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.

However, section 2 of this bill must be deleted because it is inappropriate and will cause more confusion. The provision in section 2 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 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. This would be the case no matter how necessary and important an examination may be to the sentencing decision of the court.

This bill is intended to clarify and affirm the court's authority to conduct necessary presentence examinations. We respectfully request passage of this measure without the savings clause in section 2 of the bill.



*The Judiciary, State of Hawaii*

**Testimony to the Twenty-Fifth Legislature, Regular Session of 2009**

House Committee on Finance

The Honorable Marcus R. Oshiro, Chair

The Honorable Marilyn B. Lee, Vice Chair

Friday, April 3, 2009. 2:00 p.m.

State Capitol, Conference Room 308

by

Janice Yamada

Administrator, Adult Client Services Branch

**WRITTEN TESTIMONY ONLY**

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**Bill No. and Title:** Senate Bill No. 843, S. D. 1, 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 Senate Bill No. 843, S. D. 1, H. D. 1.

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

April 3, 2009

**RE: S.B. 843, S.D. 1, 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 comments on SB 843, SD 1, H.D. 1.

The purpose of SB 843, SD 1, 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 restoration of the provision. Given that the repealed 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 would request that the savings clause in section 2 of the bill be deleted as it is unnecessary and may cause difficulties in fashioning appropriate sentences in cases currently pending sentencing.

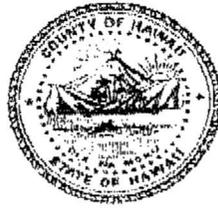
The savings clause in section 2 is unnecessary since restoration of the presentence examination does not violate the ex post facto clause of either the state or federal constitution as it does not: 1) punish previously committed acts as a crime which were not crimes when committed; 2) make the punishment of the crime more burdensome after its commission; or 3) deprive a person charged with a crime of any defense available according to the law at the time the crime was committed. Since the court has always had the sentencing authority to impose needed treatment as a condition of sentence, the presentence examination provision does not expand the possible sentence by the court. Instead, the presentence examination is intended to be used to determine if the particular defendant is need of treatment or services so an appropriate sentence that includes the treatment or service can be imposed. We are concerned that if S.B. 843, S.D. 1, H.D. 1 should pass with the savings clause in section 2, that it may be inferred that the court did not and does not have the authority to order and conduct presentence examinations

in cases sentenced since 2005 and in cases which are currently pending sentence. Given this concern, we would prefer that this bill be held if the savings clause in section 2 is not removed.

Thank you for this opportunity to testify.



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**OFFICE OF THE PROSECUTING ATTORNEY**

April 3, 2009

Honorable Marcus Oshiro  
Chair, Committee on Finance  
House of Representatives

Dear Chair Oshiro and Committee members:

Thank you for allowing this testimony in **support of SB 843, SD 1, HD 1, Relating to Sentencing.**

The purpose of SB 843 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 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.

We hope for your favorable action on this bill.

Very truly yours,

JAY T. KIMURA  
Prosecuting Attorney  
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