

**Testimony of the Office of the Public Defender,
State of Hawaii to the Senate Committee on
Judiciary and Labor**

February 17, 2016

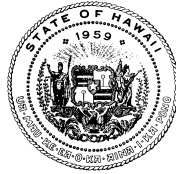
S.B. No. 2538: RELATING TO CRIMINAL PROSECUTIONS

Chair Keith-Agaran and Members of the Committee:

We oppose passage of S.B. No. 2538 which allows for one or three examiners to be appointed in felony cases on the issue of the physical or mental condition of a criminal defendant. Currently a panel of three examiners is required in all felony cases for both the determinations of fitness to proceed and penal responsibility.

We would oppose the option to decrease the numbers of examiners in fitness examinations from the current required number of three. Even though the bill provides criteria for the number of examiners, we fear that, in the name of judicial economy, the norm will become the appointment of a single examiner. We find that oftentimes, there is a disagreement on current panels between the examiners. Given the high stakes involved in felony prosecutions (i.e. extended periods of hospitalization, long prison terms), we believe the current standard of three examiners should remain. When there is disagreement on the panel, only a full litigation of the issue leads to justice being served. The appointment of a single examiner would not assure a correct resolution on this issue.

Thank you for the opportunity to provide testimony in this matter.



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DEPARTMENT OF HEALTH**

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**Testimony COMMENTS ONLY on SB2538
Relating to Criminal Prosecutions**

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

Hearing Date: February 17, 2016, 9:30 a.m. Room Number: 016

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

2 **Department Testimony:** The Department of Health (DOH) supports the intent of this bill and
3 would like to offer comments.

4 We thank the Legislature for its continued support. Only through a combination of
5 support in building a new facility, support in rebuilding community programs, and fundamental
6 policy changes will Hawaii be able to effectively address the needs of its citizens, the operation
7 of the Hawaii State Hospital (HSH), and be able to provide an effective continuum of mental
8 health supports. Clearly, all three branches of government play a critical role in making this
9 system function effectively.

10 The primary purpose of this bill is to address examinations of defendants in criminal
11 cases by authorizing courts to appoint either one or three qualified examiners to examine and
12 report on the physical and mental condition of a defendant in a felony case and sets forth general
13 factors to be used by the court to determine the number of qualified examiners to appoint for a
14 particular felony case.

1 Under current section HRS §704-404(2), the court is required to appoint three qualified
2 examiners for a felony case with no discretion to appoint less than three. The DOH supports the
3 intent of this bill which seeks to provide discretion and flexibility to the court in assigning
4 examiners and supports changes that provide a more efficient pretrial process leading to a
5 decrease in the amount of delays defendants experience due to the examination process and
6 enables a more expedient administration of justice.

7 Reducing the number of appointed examiners, when appropriate, supports expediency
8 and efficiency of the examination process. However, the criteria proposed in this bill do not
9 provide enough guidance to the courts regarding determining the number of qualified examiners
10 to appoint for a particular case. The DOH supports consideration of policy changes in this
11 important area and thanks you for considering this bill.

12 The DOH prefers changes to HRS §704-404 proposed in SB2888 which is part of the
13 Administration's package. The primary purpose of SB2888 is to ensure the timely and relevant
14 administration of mental health examinations, support the process of expedient administration of
15 justice, and clarify the procedure for re-evaluation of fitness to proceed after a finding of
16 unfitness and attempts at restoration have been made. This is accomplished by separating the
17 fitness to stand trial and the penal responsibility components of examinations ordered pursuant to
18 HRS §704-404 and codifying procedures for appointing examiners for re-evaluation of fitness
19 pursuant to HRS §704-406 including the involvement of a state designated examiner from within
20 the DOH in each court ordered examination. The DOH requests that the committee consider the
21 changes proposed in SB2888 as an alternative to SB2538.

1 We have indicated to you previously and indicated to other stakeholders that **our current**
2 **path is not sustainable.** Policy change will be required. We have determined that adjustments
3 in statute pertaining to, in this instance, forensic examination procedures will be critical in
4 improving the efficient utilization of resources, addressing public safety and supporting the
5 rights of defendants. Consistent with this, we support the intent of this measure but prefer
6 SB2888 as an alternative to SB2538.

7 Thank you for the opportunity to testify.

8 **Offered Amendments:** None at this time.