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STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES

P. O. Box 339
Honolulu, Hawaii 96809-0339

March 15, 2018

TO: The Honorable Senator Clarence K. Nishihara, Chair
Senate Committee on Public Safety, Intergovernmental, and Military Affairs

The Honorable Senator Rosalyn H. Baker, Chair
Senate Committee on Commerce, Consumer Protection, and Health

FROM: Pankaj Bhanot, Director

SUBJECT: **HB 2147 HD2 – RELATING TO HEALTH**

Hearing: Thursday, March 15, 2018, 1:30 p.m.
Conference Room 229, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the intent of this bill, requests clarification, and offers comments.

PURPOSE: The purpose of this bill establishes a pre-arrest diversion pilot project for individuals with mental health or substance abuse challenges who allegedly commit nonviolent, nonfelony offenses on state property. Appropriates funds.

DHS appreciates the year of planning included in this measure, though, as previous testimony has noted, there are other efforts currently in development that encompass the population described; this measure differentiates the population by the condition that the trespass occurs on state land. Last session the legislature passed Act 55 (2017) (SB718 SD1 HD1 CD1) Relating to the Community Court Outreach Project, that has a similar goal "to help nonviolent offenders who face problems such as drug abuse and mental health challenges to obtain basic services and necessities, like food and shelter." The Act 55 (2017) project is based in the City and County of Honolulu, though may include individuals that trespass on state land.

DHS is concerned that further splintering of the target population by jurisdiction of the land upon which the violation occurs, duplicates efforts, slows learning, and hampers the overall progress of a coordinated homeless services systems. Identifying the population by where the violation occurs will require development of additional administrative processes that would not support the housing or other service needs of the individual or families. Rather, DHS respectfully suggests the legislature provide the requested support for the ongoing efforts that seek to address the same set of problems from the lens of the individual's or families' needs versus redirecting resources to address needs of individuals and families who trespass on state land.

With regard to Section 7 that pertains to DHS, as the measure is drafted, DHS would require additional administrative processes as the proposal's condition that the individual "voluntarily" participate or be arrested or receive a citation conflicts with the Housing First programs statute. Section 346-378(2), Hawaii Revised Statutes, directs the department to provide "robust support services for program participants, predicated on assertive engagement instead of coercion." The proposal's mandate to voluntarily participate or be arrested is clearly coercive.

DHS requests clarification: how many individuals and family members are proponents of this measure anticipating will be served by the pilot? If this population is in addition to the population of individuals and families currently being served by the state's homeless services programs, DHS will require additional funds to develop additional administrative procedures, provide outreach, rental subsidies, and support services, including civil legal services.

The proposed measure also identifies transitional housing. DHS clarifies that it no longer administers transitional housing programs as a strategy to end homelessness. The introduction and expansion of Rapid Re-housing and use of Housing First principles across the board invests in placement in and maintenance of permanent housing; transitional housing is not permanent as it anticipates an additional move.

The best strategy to end homelessness is to find people safe and affordable housing. Housing First has been successfully implemented on Oahu and DHS Homeless Programs Office has expanded the Housing First program to the neighbor islands. From May to December 2017, Housing First served a total of 181 unduplicated households and 241 unduplicated

individuals: 87 unduplicated households and 125 unduplicated participants on Oahu; 75 unduplicated households and 88 unduplicated participants on Hawaii Island; 6 unduplicated households and 7 unduplicated participants on Kauai; and 13 unduplicated households and 21 unduplicated participants on Maui. Based upon the last contract year (which overlaps two state fiscal years) for Housing First on O'ahu, the estimated average housing cost per Housing First household was \$15,958 per year.

DHS also requires clarification of how the anticipated population will engage with the Coordinated Entry System and the Continuum of Care; this will need to be discussed with providers and community stakeholders. Currently, as required by the U.S. Department of Housing & Urban Development, Hawaii has an established Coordinated Entry System (CES) implemented and managed by the two Continuum of Care (CoC) in Hawaii, Partners in Care on Oahu and Bridging the Gap on the Neighbor Islands; the CoC coordinate services and maximize resources available to individuals and families. The CES is the only way to access transitional shelters, rapid re-housing, and permanent supportive housing. The common assessment used statewide to access homeless services is the Vulnerability Index Service Prioritization Decision Assistance Tool (VI-SPDAT). Placement in programs are prioritized based on the VI-SPDAT score that determines a person's vulnerability and appropriate intervention.

Lastly, the measure may violate Article III, section 14 of the Hawaii State Constitution as the measure embraces more than one subject and the scope of the title, Relating to Health, may be considered too narrow for the breadth of the measure's parts.

Thank you for the opportunity to testify on this bill.

DAVID Y. IGE
GOVERNOR



NOLAN P. ESPINDA
DIRECTOR

Cathy Ross
Deputy Director
Administration

Jodie F. Maesaka-Hirata
Deputy Director
Corrections

Renee R. Sonobe Hong
Deputy Director
Law Enforcement

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STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

No. _____

TESTIMONY ON HOUSE BILL 2147, HOUSE DRAFT 2
RELATING TO HEALTH

by

Nolan P. Espinda, Director
Department of Public Safety

Senate Committee on Public Safety, Intergovernmental, and Military Affairs
Senator Clarence K. Nishihara, Chair
Senator Glenn Wakai, Vice Chair

Senate Committee on Commerce, Consumer Protection, and Health
Senator Rosalyn H. Baker, Chair
Senator Jill N. Tokuda, Vice Chair

Thursday, March 15, 2018; 1:30 p.m.
State Capitol, Conference Room 229

Chairs Nishihara and Baker, Vice Chairs Wakai and Tokuda, and Members of the
Committee:

The Department of Public Safety (PSD) offers comments regarding House Bill (HB) 2147, House Draft (HD) 2, which seeks to establish a pre-arrest diversion pilot project for individuals with mental health or substance abuse challenges who allegedly commit nonviolent, non-felony offense on state property. PSD respectfully requests that this measure be deferred.

First, PSD is aware that the Department of Health (DOH) has executed a contract with the Community Health Outreach Work (CHOW Project) to implement a pilot project with the Honolulu Police Department. Although a LEAD pilot project has not been formalized for PSD, the Sheriff Division, as first responders, are included in DOH's contract. Deputy sheriffs will be able to contact the service provider in circumstances where the deputy sheriff believes mental health or substance abuse outreach and/or services are appropriate. Rather than initiate a

a separate pilot project, it would be more effective and efficient to focus on the pilot project already being implemented by DOH, and to evaluate and assess this project to successfully expand it.

Second, PSD welcomes and appreciates the opportunity to be able to contact a DOH service provider made available by DOH through the LEAD pilot program. HB 2147, HD 2, however, would mandate that a deputy sheriff preliminarily determine if the alleged violator has been convicted within the past three years of an offense involving violence against a person. This determination may require time to do a criminal history check. If the person has not been convicted within the past three years, the deputy sheriff is mandated to refer the alleged violator to DOH for assessment and is statutorily prohibited from citing or arresting that person. The law enforcement decision to cite or arrest must be evaluated on a case-by-case basis, specific to the facts and circumstances surrounding the incident. It would not be reasonable to eliminate any law enforcement officer's discretion to determine whether a citation or arrest is warranted. Further, law enforcement cannot detain a person for longer than is appropriate while mental health or substance abuse assessments are completed.

Third, HB 2147, HD 2 would require a "deputy sheriff who is appropriately trained" to determine if an alleged violator is a potential participant in this program. This measure does not address who or how the deputy sheriffs will be trained, nor does it identify who will certify the sufficiency and substance of such training. PSD notes that Section 11 provides for an appropriation. PSD would request sufficient monies to "appropriately train" deputy sheriffs in this pilot program, to include not only the training costs but also all costs to be incurred from overtime to attend training while fulfilling the daily operational needs of the division.

Finally, PSD defers to the Department of Health as to other concerns offered.

Thank you for the opportunity to testify on this measure.



HB2147 HD2
RELATING TO HEALTH

Senate Committee on Public Safety, Intergovernmental, and Military Affairs
Senate Committee on Commerce, Consumer Protection, and Health

March 15, 2018

1:30 p.m.

Room 229

The Office of Hawaiian Affairs (OHA) offers the following **COMMENTS** on HB2147 HD2, which would establish a pilot program to divert low-level, nonviolent offenders with mental health or substance abuse issues away from the criminal justice system and toward services. **OHA believes that the pilot program proposed by this measure can demonstrate the effectiveness, cost-efficiency, and revolutionary approach of Law Enforcement Assisted Diversion (LEAD) programs in reducing the costly and growing impacts of the criminal justice system on our society.**

The War on Drugs and decades of a traditional criminal justice approach have led to the highest prison population in Hawai‘i’s history. Between 1977 and 2008, the number of people incarcerated in Hawai‘i increased by more than 900 percent; between 1977 and today, our incarcerated population has increased by 1,400 percent.¹ The Native Hawaiian community has been particularly impacted by this increase, making up 40% of our current prison population.²

OHA notes that Native Hawaiians are disproportionately penalized with imprisonment for drug-related offenses.³ In addition, since Native Hawaiians may be at particular risk of being or becoming homeless,⁴ they are at a greater risk of being among

¹THE OFFICE OF HAWAIIAN AFFAIRS, THE DISPARATE TREATMENT OF NATIVE HAWAIIANS IN THE CRIMINAL JUSTICE SYSTEM 17 (2010), available at http://www.oha.org/wp-content/uploads/2014/12/ir_final_web_rev.pdf.

² In contrast, Native Hawaiians only represent 24% of the general public in Hawai‘i. *Id.* at 36. OHA’s 2010 study found that the disproportionate impact of the criminal justice system on Native Hawaiians accumulates at every stage noting that Native Hawaiians made up “24 percent of the general population, but 27 percent of all arrests, 33 percent of people in pretrial detention, 29 percent of people sentenced to probation, 36 percent admitted to prison in 2009, [and] 39 percent of the incarcerated population.” *Id.* at 10. Moreover, controlling for many common factors including type of charge, the study revealed that Native Hawaiians were more likely to be found guilty, receive a prison sentence, and receive a longer prison sentence or probation term than most other ethnic groups. *Id.* at 28-38.

³ *Id.* at 45.

⁴ Native Hawaiians account for almost one-third of those utilizing homeless services. See HOMELESS SERVICE UTILIZATION REPORT (2017) University of Hawai‘i Center on the Family, available at http://uhfamily.hawaii.edu/publications/brochures/b761f_HomelessServiceUtilization2016.pdf 14.1% of Native Hawaiian households, compared to 4.2% of state households have a hidden homeless family member. 24.8% of Native Hawaiian households, compared to 9.6% of state households include more than

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the nearly half (43%) of those held in HPD cell block who are homeless. Proactive efforts to reduce the number of non-violent inmates,⁵ including those who are arrested for non-violent offenses such as drug possession or trespassing, must continue to be prioritized to address the record-high and growing pa‘ahao population in Hawai‘i, as well as the disproportionate impact of the criminal justice system on Native Hawaiians.⁶

Accordingly, OHA is proud to participate in the LEAD program hui, which has brought this revolutionary and successful program to Hawai‘i by way of a pre-arrest diversion pilot program on O‘ahu. This LEAD program—executed on the city level in cooperation with the Honolulu Police Department, Honolulu City & County, the Office of the Governor, and community-based service providers-- is very similar to the state-level program proposed by HB2147 HD2.

HB2147 HD2 conceives of an alternative public safety system that rejects incarceration as the sole solution to our community’s social problems; instead, responding officers would refer low-level, non-violent offenders with substance abuse or mental health challenges to appropriate service-providers who are best equipped to help them. **OHA believes that such a pilot diversion program will prove to be more effective at improving public safety – while reducing recidivism, our incarcerated population, and costs associated with the same – than the traditional criminal justice approach, potentially leading the way to greater and much-needed reform of our criminal justice system.**

Mahalo for the opportunity to testify on this measure.

twogenerations or unrelated individuals. See SMS, HAWAI‘I HOUSING PLANNING STUDY, at 70 (2016), available at https://dbedt.hawaii.gov/hhfdc/files/2017/03/State_HHPS2016_Report_031317_final.pdf

⁵ A 2010 OHA study found that the disproportionate impact of the criminal justice system on Native Hawaiians accumulates at every stage, noting that Native Hawaiians made up “24 percent of the general population, but 27 percent of all arrests, 33 percent of people in pretrial detention, 29 percent of people sentenced to probation, 36 percent admitted to prison in 2009, [and] 39 percent of the incarcerated population.” Moreover, controlling for many common factors such as type of charge, the study revealed that Native Hawaiians were more likely to be found guilty, receive a prison sentence, and receive a longer prison sentence or probation term than most other ethnic groups. THE OFFICE OF HAWAIIAN AFFAIRS, THE DISPARATE TREATMENT OF NATIVE HAWAIIANS IN THE CRIMINAL JUSTICE SYSTEM 28-38 (2010), http://www.oha.org/wp-content/uploads/2014/12/ir_final_web_rev.pdf.

⁶ In its 2012 report, the Native Hawaiian Justice Task Force recommended several options to address systemic issues resulting in the disproportionate overrepresentation of Native Hawaiians in the criminal justice system. These included reconsidering several proposals from the 2011 Justice Reinvestment Initiative legislation that were not originally passed or implemented, investing in early intervention programs, increasing public defender funding, expanding implicit bias training, strengthening supervised release programs, executing compassionate release consistently, supporting indigenous models of healing alternatives such as pu‘uhonua, and bolstering reintegration programs and services to better prevent recidivism. OFFICE OF HAWAIIAN AFFAIRS, NATIVE HAWAIIAN JUSTICE TASK FORCE REPORT (2012), http://www.oha.org/wp-content/uploads/2012NHJTF_REPORT_FINAL_0.pdf.

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Life Foundation & The CHOW Project

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TESTIMONY COMMENTING ON HB 2147 HD2: RELATING TO HEALTH

TO: Senator Clarence Nishihara, Chair; Senator Rosalyn Baker, Chair; Senator Glenn Wakai, Vice Chair; Senator Jill Tokuda, Vice Chair; Senate Committee(s) on Public Safety, Intergovernmental, and Military Affairs & Commerce, Consumer Protection, and Public Health

FROM: Heather Lusk, Executive Director, CHOW Project

Hearing: Friday, March 15, 2018 1:30 PM Conference Room 229, State Capitol

Dear Chair Clarence Nishihara, Chair Baker, and members of the Committee(s):

I thank you for the opportunity to provide testimony for HB 2147. While we strongly support the intent of this measure and believe in the efficacy of diversion programs, we have significant concerns about this bill.

As written, HB 2147 excludes the support of a crucial, robust law enforcement team and lacks necessary coordination and management through ADAD. I respectfully request your consideration of the following recommendations:

1. Amend the measure to include other law enforcement entities who voluntarily participate by changing the term “deputy sheriff” to “deputy sheriff and other participating law enforcement entities” throughout the entire bill.
2. Assign the ADAD as the “responsible state office” to coordinate and manage the activities of the pilot in partnership with the other entities mentioned in the measure. As mentioned, the ADAD has implemented and executed a contract for services and evaluation of the current LEAD pilot and would continue to work with the other state entities named to assure the pilot meets the needs of the state and the departments named while at the same time continuing positive partnerships with county law enforcement and the community. This change affects SECTION 4 but would not eliminate SECTION 11 because funds appropriated would still be administered through the Office of the Governor.
3. Include a minimum of \$500,000 in the appropriation section for the measure to assure effective implementation of the measure.

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4. Support the reinstatement of the Governor's Executive Budget request for appropriations of \$800,000 to HTH440 to continue and to sustain LEAD implementation and outreach services to homeless with substance use disorders to ensure multiple opportunities for the current pilot to be supported through fund appropriations.

According to the Honolulu Police Department¹, of the 16,000 arrests made on Oahu in 2016, 61% involved people who were severely mentally ill or abusing drugs and 43% of detainees in HPD's central cell block last year were homeless.

As of August 31, 2017, 51% of the people imprisoned at OCCC are pre-trial detainees costing the state more than \$2.5 million a month. 43% of the individuals held in the police cell block are houseless and 72% had a serious mental illness or substance abuse problem.

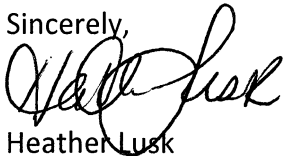
As Executive Director of the Community Health Outreach Work Project (CHOW) an organization dedicated to participant-centered harm reduction in communities affected by drug use, I would like to express CHOW's strong support for a diversion programs, such as LEAD. Law Enforcement Assisted Diversion, was established in Seattle in response to a need. Before LEAD's implementation in 2011, the Seattle Police Department was torn in a war on two fronts: A never-ending stream of the same offenders being arrested and a community frustrated by an enforcement policy that was both unjust and ineffective.

In the five years since it's been implemented, the collaboration between service providers and law enforcement in Seattle has gained national recognition for its work, with LEAD participants showing to be 58% less likely than other users to be arrested after being involved in the program.

Inspired by Seattle's success, CHOW has worked with community partners since 2016 to develop a pre-arrest diversion program that strives to integrate successful strategies from other localities into Hawaii's unique social ecosystem. It is our hope that this pilot, once implemented, will transition the burden of public health to those best suited to meet the needs of the community. We would appreciate the opportunity to evaluate the current LEAD pilot before appropriating funds for a different diversion program that may not be built upon best practices such as LEAD Hawaii.

I greatly appreciate the opportunity to provide testimony for recommendations for HB 2147 HD2, a critical next step in addressing mental health and drug use challenges but strongly encourage you to dedicate this funding to the existing LEAD pilot either through HTH440 or HB 2401.

Sincerely,



Heather Lusk

Executive Director

CHOW Project &

Life Foundation

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HB-2147-HD-2

Submitted on: 3/15/2018 1:11:43 PM

Testimony for PSM on 3/15/2018 1:30:00 PM

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|--|---------------------------|---------------------------|
| Carl Bergquist | Testifying for Drug Policy Forum of Hawaii | Oppose | No |

Comments:

The Drug Policy Forum respectfully requests that the good intentions behind this bill instead be focused on the existing diversion program known as Law Enforcement Assisted Diversion (LEAD). LEAD is already funded by the Legislature for one year, but unfortunately the additional proposed year of funding in the Governor's budget was recently removed by the House Finance Committee.

Accordingly, we believe that any funding envisioned by this bill for a similar diversion program on state landd should instead be directed towards LEAD. Currently [SB2401 SD2](#) contemplates funding LEAD and we ask that it be the primary vehicle for these efforts going forward. Alternatively, we would like to see the LEAD funding restored to the Governor's Budget.

Mahalo for the opportunity to testify.