

STATE OF HAWAII
DEPARTMENT OF HEALTH
KA 'OIHANA OLAKINO
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Honolulu, HI 96801-3378
doh.testimony@doh.hawaii.gov

**Testimony in SUPPORT of H.B. 1442
RELATING TO REHABILITATION**

REPRESENTATIVE DELLA AU BELATTI, CHAIR
HOUSE COMMITTEE ON HEALTH AND HOMELESSNESS

Hearing Date, Time and Room: Friday, February 3, 2023 at 9:30 a.m. in Room 329/VIDEO

1 **Fiscal Implications:** The Department of Health (“Department”) respectfully requests that
2 funding for this measure be considered as a vehicle to expand services, including staff support,
3 so long as it does not supplant the priorities and requests outlined in the Governor’s executive
4 budget request.

5 **Department Position:** The Department of Health (“Department”) supports this measure and
6 offers comments.

7 **Department Testimony:** The Adult Mental Health Division (AMHD) provides the following
8 testimony on behalf of the Department.

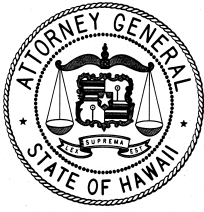
9 The purpose of this measure is to amend §704, Hawaii Revised Statutes and to expand
10 the scope of the criminal justice diversion program for nonviolent petty misdemeanants whose
11 fitness to proceed in criminal proceedings remains and outstanding issue, and to include
12 nonviolent misdemeanants and defendants charged with promoting a dangerous drug in the
13 third degree while also establishing a mechanism for diverted defendants to be automatically
14 screened for involuntary hospitalization or assisted community treatment with funding for
15 positions.

1 The Department supports diversion programming that provides an opportunity for
2 individuals to link with appropriate treatment supports. We are committed to addressing the
3 needs of individuals experiencing behavioral health challenges who interact with the justice
4 system. For example, we continue to engage in an ongoing collaboration with the Judiciary to
5 develop effective responses that provide “off-ramps” from the criminal justice pathway into
6 treatment and services to enhance both the individual’s recovery and public safety.

7 The Department supports this measure which enhances the Act 26 (Session Laws of
8 Hawaii 2020) diversion program by expanding the criteria for eligibility to include nonviolent
9 misdemeanants, providing options for outpatient facilities/release on conditions, extending the
10 timeline for reporting requirements, and incorporating Assisted Community Treatment (ACT)
11 procedures. We strongly support this measure’s creation of a diversion alternative for those
12 defendants intending to rely on the defense of a condition that excludes penal responsibility
13 and for defendants violating probation when the violation is associated with a mental disease,
14 disorder or defect.

15 Lastly, we point to and recognize that behavioral health crisis centers are a critical
16 component of the health care continuum that provides an opportunity for diversion from the
17 justice system. We support the development of this crisis care capacity in each county through
18 the Department’s establishment of or contract for the needed services.

19 **Offered Amendments:** In regard to appropriating funds for program support, we will need
20 additional positions for court-based clinicians, coordination, monitoring, and funding for
21 contracted sites for additional evaluations/assessments. It may be important to consider
22 adding bill language that acknowledges the need for locations that will have an increased
23 number of evaluations be fully operational prior to program implementation. These staffing
24 supports and resources are essential for program success. A start date no sooner than July 1,
25 2024, is recommended. Thank you for the opportunity to testify on this measure.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-SECOND LEGISLATURE, 2023**

ON THE FOLLOWING MEASURE:

H.B. NO. 1442, RELATING TO REHABILITATION.

BEFORE THE:

HOUSE COMMITTEE ON HEALTH AND HOMELESSNESS

DATE: Friday, February 3, 2023

TIME: 9:30 a.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Albert Cook, Deputy Attorney General

Chair Belatti and Members of the Committee:

The Department provides the following comments regarding this bill.

This bill proposes numerous changes to how criminal defendants who have mental diseases, disorders, or defects that affect their mental competency to participate in a criminal trial will be addressed, including the use of involuntary hospitalization and assisted community treatment (ACT).

The Department takes no position on section 2.

The Department opposes the elimination of the 120-day limit on commitment on page 6, lines 10-14 and line 20, to page 7, line 2. Removing this 120-day limit on commitment will result in committed defendants being in limbo and forgoes a review of their status by the court each 120 days.

The Department has strong concerns about the changes to section 704-421, Hawaii Revised Statutes (HRS), in section 5 of the bill on page 8, expanding the crimes for which a defendant may be diverted from criminal prosecution. The proposed changes could allow defendants charged with a host of misdemeanors to avoid prosecutions. Those misdemeanors include negligent homicide in the third degree, section 707-704, HRS; resisting arrest, section 710-1026, HRS; resisting an order to stop a motor vehicle, section 710-1027, HRS; animal cruelty in the second degree, section 711-1109, HRS; negligent injury in the second degree, section 707-706, HRS; reckless endangering in the second degree, section 707-714, HRS; terroristic threatening in the second degree, section 707-717, HRS; unlawful imprisonment in the

second degree, section 707-722, HRS; custodial interference in the second degree, section 707-726, HRS; sex assault in the fourth degree, section 707-733, HRS; indecent electronic display to a child, section 707-759, HRS; violation of privacy in the second degree, section 711-111, HRS; promoting minor-produced sexual images in the first degree, section 712-1215.5, HRS; extortion in the third degree, section 707-767, HRS; criminal property damage in the third degree, section 708-822, HRS; criminal property damage in the fourth degree, section 708-823, HRS; disorderly conduct, section 711-1101, HRS; harassment involving physical contact, section 711-1106(a), HRS; criminal tampering in the second degree, section 708-827, HRS; unauthorized entry into a motor vehicle in the second degree, section 708-836.5, HRS; arson in the fourth degree, section 708-8254, HRS, and many others. The change also allows those charged with the felony offense of promoting a dangerous drug in the third degree to avoid prosecution. The Department believes that allowing diversion of these crimes will adversely affect public safety.

The Department has no position on expanding placement of defendants committed to the director of health to "an outpatient facility" on page 9, line 3. However, the Department opposes releasing defendants pending placement on conditions, page 9, lines 4-11. Releasing criminal defendants, who have possible mental health issues severe enough to require commitment, back into the community, even while on conditions, is a danger to the safety of the public.

The Department has concerns about the amendments to section 704-421, HRS, by section 5 on page 11 of this bill to require the Department of Health to file a petition for involuntary hospitalization if the defendant's clinical team believes the criteria under section 334-60.2, HRS, is satisfied. This could lead to the unnecessary filing of petitions for commitment periods already covered by a criminal commitment order. While section 334-60.6, HRS, allows a period of detention to commence from the end of an existing commitment order, a court is unlikely to consider this unless the current order has expired or is about to expire due to the requirement of imminent danger under section 334-60.2, HRS.

The Department proposes deleting lines 5-20 on page 13, starting from "The defendant may be held at the" This amendment to section 704-421 is to permit a defendant to be held at an institution pending a hearing on a petition for ACT. As such, this wording could allow a defendant to be held past the expiration of a current commitment order. This is problematic as there must exist clear and convincing evidence that an individual is mentally ill and dangerous prior to commitment. In re Doe, 102 Hawai'i 528, 548-49 (Haw. Ct. App. 2003). While section 334-59(e), HRS, permits the holding of a patient in a facility pending a hearing on a petition for involuntary hospitalization, those petitions allege mental illness and dangerousness, and come after an individual has been held for emergency hospitalization because a qualified medical professional has found the presence of mental illness and dangerousness. In contrast, the elements of ACT petitions under section 334-121, HRS, require only a determination that dangerousness will "predictably result" if an individual did not receive treatment.

The Department proposes deleting the amendment on page 19, lines 20-21, and page 20, lines 1-3. This section amends section 334-133, HRS, to permit the court to continue an existing ACT order without considering or making any finding of a previously established factor. This would contradict the ACT hearing requirements under section 334-127, HRS, by allowing the court to issue a new order without any supportive findings.

The Department opposes section 6, which reduces the penalty of Escape in the Second Degree, section 710-1021, HRS, for those in custody pursuant to section 704-421(1), HRS, from a class C felony to a petty misdemeanor. The Department believes that reducing the penalty will adversely affect public safety.

The Department takes no position on the proposed changes in sections 13 and 14.

The Department strongly opposes the amendments to section 704-407.5(1), HRS, by section 17 on page 21, line 5, to page 22, line 17, which, in effect, remove the prosecutor from the decision to divert a defendant, and requires only the defendant's consent. As the representative of the people of the State of Hawaii, and all victims of

crime in Hawaii, the prosecution should be involved in determining whether a defendant is appropriate for inclusion in a diversion program. To remove the prosecution's ability to do so would adversely affect public safety and the State's ability to effectively prosecute crime in Hawaii. To require the consent of the defendant, where the court and parties have "reason to believe that the physical or mental disease, disorder, or defect of the defendant will or has become an issue in the case", page 21, lines 15-27, is not practicable. If the defendant is not mentally fit, he or she cannot legally consent to any legal proceeding.

The Department takes no position on sections 19 and 21.

Thank you for the opportunity to provide comments on the bill.

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai‘i to the House Committee on
Health & Homelessness**

February 3, 2023

H.B. No. 1442: RELATING TO REHABILITATION

Chair Della Au Belatti, Vice Chair Jenna Takenouchi, and Members of the Committee:

The Office of the Public Defender supports in-part and opposes in-part H.B. No. 1442, which relates to mental health issues and the criminal justice system.

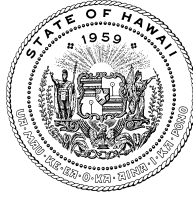
We support that part of H.B. No. 1442, which would expand the criminal justice diversion program, and the funding necessary to support such changes, to include certain misdemeanors and the Class C felony offense of Promoting a Dangerous Drug in the Third Degree for those left unfit by a mental disease, disorder or defect.

Currently, the Criminal Justice Diversion Program, as it applies to those left unfit by a mental disease, disorder or defect, is limited to certain petty misdemeanor offenses. Because of this limitation, there have not been many defendants able to participate in the program. However, with the expansion of qualifying offenses, the program should have more participants who can benefit from diversion from the criminal justice system. We also expect that for those who qualify, there will be a much faster route to resolution of their cases, and treatment and support for their mental health needs that contribute to their involvement with the criminal justice system.

However, we cannot support that portion of H.B. No. 1442 that seeks to amend HRS section 706-625 to allow a Court to amend the conditions of probation by requiring a defendant to undergo a mental health evaluation and treatment. As stated in the bill, if a probationer fails to comply with orders for an evaluation and treatment, or it is determined that said probationer cannot benefit from suitable treatment, the probationer shall be subject to revocation of probation and incarceration. Thus, a probationer shall be subject to incarceration if he/she does not comply with a prescribed plan for mental health treatment or is beyond the help of said treatment.

The OPD believes that subjecting an individual to incarceration for suffering from mental illness is a regression in our understanding of mental illness and its treatment.

Thank you for the opportunity to comment on this measure.



EXECUTIVE CHAMBERS
KE KE'ENA O KE KIA'ĀINA

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA

Testimony of **James Koshiba**
Governor's Coordinator on Homelessness
Before the
House Committee on Health & Homelessness
February 3, 2023
9:30 a.m., Via Video Conference
Conference Room 329

In consideration of
House Bill No. 1442
RELATING TO REHABILITATION

Aloha Chair Belatti, Vice Chair Takenouchi, and Committee Members,

I am writing in support of HB1442 to expand the scope of the criminal justice diversion program for nonviolent petty misdemeanants to include nonviolent misdemeanants and defendants charged with promoting a dangerous drug in the third degree.

The legal definition of "promoting a dangerous drug in the third degree" is expansive. Per HRS 712-1243, "A person commits the offense of promoting a dangerous drug in the third degree if the person knowingly possesses any dangerous drug in any amount."

According to recent Point-In-Time Count data (the annual census of people experiencing homelessness), roughly one-in-five people experiencing homelessness struggle with substance use. Criminalizing and incarcerating these individuals for their addiction makes it more difficult for them to obtain housing or employment, and more difficult to leave the street permanently, making it harder to end homelessness in Hawaii.

I also support the inclusion of medical examination via telehealth as this is a needed alternative for many people experiencing homelessness.

Regarding provisions related to involuntary placement into a hospital or other treatment facility, I would offer the following for consideration: Any effort to expand placement of people into treatment should first ensure that adequate facility space and staffing capacity exist to provide the care being mandated. If a shortage of space and capacity exists, then increased referrals will cause bottlenecks where people languish in settings that are inappropriate for their condition, including incarceration.

Such experiences are not only damaging to individuals experiencing homelessness. As word of them spreads, these instances undermine trust in the homeless services and shelter system. Fear of abuse of power within a shelter is one reason why unhoused people often choose to avoid shelters. Expanding the ability of shelter staff to mandate treatment, without providing clear safeguards for

Recipient Name
February 2, 2023
Page Two of Two

clients, could exacerbate fears of abuse and result in fewer people utilizing shelters. This would naturally increase unsheltered homelessness.

If the goals of any proposed law can be accomplished through changes in practice, training, or improved clarity of instruction rather than through changes in law, the former may offer a more efficient path with lower risk of unintended consequences.

Mahalo,

James Koshiba
Governor's Coordinator on Homelessness



STATE OF HAWAII
HAWAII CORRECTIONAL SYSTEM OVERSIGHT COMMISSION
235 S. Beretania Street, 16th Floor
HONOLULU, HAWAII 96813
(808) 587-4160

TO: The Honorable Della Au Belatti, Chair
The Honorable Jenna Takenouchi, Vice Chair
House Committee on Health and Homelessness

FROM: Mark Patterson, Chair
Hawaii Correctional System Oversight Commission

SUBJECT: House Bill 1442, Relating to Rehabilitation
Hearing: Friday, February 3, 2023; 9:30 a.m.
State Capitol, Room 329

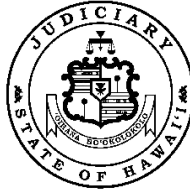
Chair Belatti, Vice Chair Takenouchi, and Members of the Committee:

The Hawaii Correctional System Oversight Commission (HCSOC) supports House Bill 1442 relating to Rehabilitation. This bill would expand the criminal justice diversion program, amend the allowable period of court-ordered assisted community treatment and considerations for extensions, allows courts to require certain probation violators to undergo mental health evaluation and treatment as a condition of continued probation, requires the Department of Health to contract with behavioral health crisis centers, and appropriates funds.

Hawaii Revised Statute 353L requires that the HCSOC “[E]stablish maximum inmate population limits for each correctional system and formulate policies and procedures to prevent the inmate population from exceeding the capacity of each correctional facility.” One of the major factors in the overcrowding in our four Community Correctional Centers (CCC) is the frequent arrest and detention of persons who are unsheltered, or have substance use disorders, or who are mentally impaired, or any combination thereof. In carrying out their duties, law enforcement officers often have no alternative but to arrest, even for low level crimes. In our view, our jails have become the default service for the chronic cases involving this group. This contributes to the ongoing overcrowding at the Oahu CCC, Hawaii CCC, Maui CCC and Kauai CCC. These facilities do not have the physical facilities or staff to provide the services required.

House Bill 1442 is meant to divert people away from incarceration, and instead, create avenues for care that these individuals desperately need. For these reasons, we support this bill.

Should you have additional questions, the Oversight Coordinator, Christin Johnson, can be reached at 808-900-2200 or at christin.m.johnson@hawaii.gov. Thank you for the opportunity to testify.



The Judiciary, State of Hawai‘i

Testimony to the Thirty-Second State Legislature, 2023 Session

House Committee on Health & Homelessness
Representative Della Au Belatti, Chair
Representative Jenna Takenouchi, Vice Chair

Friday, February 3, 2023, 9:30 a.m.
State Capitol, Conference Room 329

by
Brandon Kimura
Deputy Administrative Director of the Courts

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 1442, Relating to Rehabilitation.

Purpose: Expands the criminal justice diversion program. Amends the allowable period of court-ordered assisted community treatment and extensions. Allows courts to require certain probation violators to undergo mental health evaluation and treatment as a condition of continued probation. Requires the Department of Health to contract with behavioral health crisis centers. Appropriates funds.

Judiciary's Position:

The Judiciary strongly supports this measure. Each of these parts, and all of them together, will improve the government response to individuals suffering from mental health challenges, particularly for those who may become, or already are, involved in the criminal justice system.

The substantive parts of this measure may be summarized as follows:

Part I of the measure expands the criminal justice diversion program established by Act 26, Session Laws of Hawai‘i 2020, which provided nonviolent petty misdemeanants with expedited examinations for fitness to proceed in criminal proceedings, and then dismissal of the



criminal charge if the court did not find the defendant fit to proceed to trial. The expedited fitness examinations and dismissal remedy reduced the time that defendants would spend in custody during mental fitness determinations and provided defendants with faster access to mental health treatment. The positive impact of Act 26 has been clear and profound. Since the enactment into law of Act 26 on September 15, 2020, and through the December 9, 2022 submission date of the Judiciary's annual report to the Legislature regarding the effectiveness of Act 26, the First Circuit District Court had ordered expedited fitness examinations for 135 defendants encompassing 192 criminal offenses. In most of these cases, the court ordered expedited fitness examinations with a turnaround time of two days. One hundred fourteen of the 135 defendants were found unfit to proceed. Of those, 107 were able to avoid incarceration and receive treatment instead. Eighty-six defendants were discharged and linked to services. Approximately 76% of those discharged to the community have not been re-arrested. This part seeks to build upon the success of the Act 26 diversion program in two main ways: (1) by expanding the program to include nonviolent misdemeanants and defendants charged with Promoting A Dangerous Drug In The Third Degree; and (2) by automatically screening participating defendants for involuntary hospitalization or assisted community treatment. This part also requires the establishment of rules and procedures for mental fitness examinations of defendants via telehealth to ensure the widest availability of telehealth resources feasible at state health, correctional, and judicial facilities, and appropriates funds to provide job positions and additional resources to implement this part.

Part II of the measure lengthens the allowable period of court-ordered assisted community treatment for persons who are suffering from mentally illness or substance use, and extensions of the court order. This part also eliminates the need for courts, in deciding petitions to extend periods of assisted community treatment, to consider or make any finding as to any unchanged factor that has been previously established in the existing order for treatment.

Part III of the measure seeks to improve the effectiveness of a provision of Act 26, Session Laws of Hawai'i 2020 (separate from the diversion program utilizing expedited fitness examinations of defendants under Part I of this measure) that authorizes courts to enter into agreements with the parties in a criminal case to divert the case into an evaluation and treatment of the defendant whenever there is reason to believe that the physical or mental disease, disorder, or defect of the defendant will or has become an issue in the case. Under current law, this provision does not provide for dismissal of the charge upon successful completion of the diversion, which may explain, at least in part, why as of the December 9, 2022 submission date of the Judiciary's annual report to the Legislature regarding the effectiveness of Act 26, in the First Circuit there had been no cases diverted utilizing solely this provision and the court had not been presented with, by either the State or the Defense, any requests nor agreements to divert applicable defendants into treatment under this provision. This part addresses two aspects of the diversion provision to improve its effectiveness. First, it eliminates the requirement of an



agreement of the parties for diversion, and only requires the defendant's consent. Second, it provides for dismissal of the criminal charge upon successful completion of the diversion conditions for nonviolent misdemeanors and petty misdemeanors. For all other offenses, this part authorizes courts to divert the case for evaluation or treatment with the defendant's consent only.

Part IV of the measure clarifies authority for courts to require a probation violator to undergo mental health evaluation and treatment as a condition of continued probation if the probation violation is associated with the defendant's mental illness.

Part V of the measure requires and appropriates funds for the Department of Health to contract with behavioral health crisis centers to provide intervention and stabilization services in each county for persons experiencing a mental illness or substance use disorder crisis. This proposal follows the example of crisis stabilization units in other states that provide immediate care to individuals in crisis, with the goal of quickly stabilizing the individual and then referring that individual to available community resources as an alternative to emergency rooms and incarceration, as is often the case for individuals in crisis who come into contact with law enforcement. The key features of these crisis centers are: (1) the provision of services 24-hours-a-day, 7-days-a-week; (2) acceptance of all walk-in clients and referrals and a no-wrong-door approach; and (3) a dedicated drop-off area for clients delivered by first responders.

Part VI of the measure restores funding for probation officer services for the mental health court.

Finally, the Judiciary respectfully suggests that the Committee amend the following provisions in the bill for clarity:

SECTION 2, addition of new section to Chapter 704:

The Judiciary respectfully proposes that page 2, lines 4-11 of the bill should be changed to read as follows (changes in bold font):

(2) With regard to examinations of defendants conducted via telehealth and pursuant to this chapter:

- (a) The director of health, in the case of any facility under the jurisdiction of the director of health;
- (b) The director of public safety, in the case of **any facility under the jurisdiction of the director of public safety;** and



House Bill No. 1442, Relating to Rehabilitation
House Committee on Health & Homelessness
Friday, February 3, 2023
Page 4

- (c) The chief justice, in the case of any facility under the jurisdiction of the chief justice,...

SECTION 3, amendment of section 704-404(2):

The Judiciary respectfully proposes that page 4, lines 3-12 of the bill should be changed to amend subsection (2)(b) for clarity:

- (b) In ~~[all other nonfelony]~~:
- (i) Nonfelony cases[;] where the offense charged is not listed under section 704-421(1); and
 - (ii) Any case under paragraph (a) where a court-based certified examiner is not available [~~in cases under paragraph (a)~~],
the court shall appoint one qualified examiner to examine and report upon the defendant's fitness to proceed. The court may appoint as the examiner either a psychiatrist or a licensed psychologist designated by the director of health from within the department of health; and...

Thank you for the opportunity to testify on this measure.



The Institute for Human Services, Inc.
Ending the Cycle of Homelessness

TO: Honorable Rep. Della Au Belatti
Chair, House Committee on Health and Homelessness

FROM: Connie Mitchell, Executive Director
IHS, The Institute for Human Services, Inc.

RE: [HB1442](#) – RELATING TO REHABILITATION

HEARING: February 3, 2023 at 9:30 AM

POSITION: IHS supports the passing of HB1442 with amendments

The Institute for Human Services (IHS) supports the intent of HB 1442 which diverts individuals from criminalization and incarceration for petty misdemeanors with the following amendments in red to include psychologist after psychiatrist as part of the clinical team that can prepare the assisted community treatment (ACT) certificate. There is great need for competent and qualified clinical professionals to assist with evaluations for decisional capacity that could help initiate treatment over object either through guardianship or ACT, particularly on the neighbor islands. Either would still require a clinical team including a prescribing provider to deliver treatment and to provide a treatment plan in the case of ACT. However, the evaluation would simply add another resource to the team to do assessments, often on the street or in emergency departments.

Section 5, 3(b): If the clinical team determines that an assisted community treatment plan is appropriate, the psychiatrist, **psychologist** or advanced practice registered nurse from the clinical team shall prepare the certificate for assisted community treatment specified by section 334-123, which certificate shall include a written treatment plan for the provision of mental health services to the defendant. The clinical team shall identify a community mental health outpatient program that agrees to provide mental health services to the defendant as the designated mental health program under the assisted community treatment order. The clinical team shall provide the defendant with a copy of the certificate.

Section 15 (a): The petition shall be filed, and unless the court determines the existence of a guardian, a guardian ad litem appointed, and notice provided in the same manner as under sections 334-123 and 334-125[-]; provided that the petition shall be accompanied by a declaration of the treating psychiatrist, **psychologist** or advanced practice registered nurse specifying which of the criteria set forth in section 334-121 are unchanged from the date of the existing order for assisted community treatment.

This measure would help connect the criminal justice diversion program with critical mental health interventions, in turn decreasing recidivism and frequent use of emergency services, while restoring decisional capacity more quickly. Clinical psychologists have also been conducting forensic evaluations for a long time.

TESTIMONY OF ELLEN GODBEY CARSON ON HB 1442

I write in support of HB 1442's provisions regarding Assisted Community Treatment.

While I write as an individual, I have served as President of Hawaii Women Lawyers, the Hawaii State Bar Association, and the Institute for Human Services. The major part of my legal career and thousands of hours of volunteer community work have been spent seeking to protect constitutional rights and the rights of vulnerable persons.

I support HB 1442 because it will make our Assisted Community Treatment ("ACT") law more effective for persons in our criminal justice system who are mentally ill and in need of treatment. HB 1442 will increase the likelihood that these persons will receive early intervention and appropriate care and treatment in the least restrictive setting, which is good for them and for the community.

HB 1442 will help us better address these needs in the following way:

For criminal defendants held because they are "unfit to proceed" (ie., experiencing mental illness that precludes moving forward with criminal trial), who do not meet criteria for involuntary hospitalization, their clinical team will be required to "determine whether an assisted community treatment plan is appropriate" pursuant to our ACT law. (page 8, section 3(b)).

This will assure these criminal defendants who are exhibiting mental illness will be considered for an ACT order to help them receive appropriate medical care in the community, in the least restrictive setting.

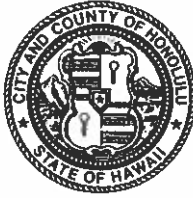
Thank you for your consideration of my testimony and helping protect our most vulnerable residents.

Ellen Godbey Carson
Honolulu, Hawaii

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
TELEPHONE (808) 529-3111 · INTERNET: www.honolulu.org

RICK BLANGIARDI
MAYOR



ARTHUR J. LOGAN
CHIEF

KEITH K. HORIKAWA
RADE K. VANIC
DEPUTY CHIEFS

OUR REFERENCE **MH-SK**

February 3, 2023

The Honorable Della Au Belatti, Chair
and Members
Committee on Health and Homelessness
House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 329
Honolulu, Hawaii 96813

Dear Chair Belatti and Members:

Subject: House Bill No. 1442, Relating to Rehabilitation

I am Manuel Hernandez, Captain of the Training Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD supports House Bill No. 1442, Relating to Rehabilitation, which expands diversion programs for nonviolent offenders who are found not fit to stand trial due to issues such as mental health or disease.

The HPD recognizes the importance of the proper diagnosis, treatment, and rehabilitation of those undergoing mental health or disease issues and the importance of reducing the recidivism rates of those individuals on release.

The HPD supports, when found applicable by the courts, the diversion of such individuals to treatment programs to include the commitment to the custody of the director of health for detention, assessment, care, and treatment. For the community, of which these individuals are members, this is a much more positive outcome than a release from custody without treatment only to possibly re-offend shortly thereafter.

The Honorable Della Au Belatti, Chair
and Members
Page 2
February 3, 2023

Furthermore, the HPD supports court-mandated conditions of release for individuals subject to treatment programs, furthering the accountability of these individuals in addition to their treatment and rehabilitation.

The HPD urges you to support House Bill No. 1442, Relating to Rehabilitation.

Thank you for the opportunity to testify.

Sincerely,



Manuel Hernandez, Captain
Training Division

APPROVED:



Arthur J. Logan
Chief of Police

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
1060 RICHARDS STREET • HONOLULU, HAWAII 96813
PHONE: (808) 768-7400 • FAX: (808) 768-7515

STEVEN S. ALM
PROSECUTING ATTORNEY



THOMAS J. BRADY
FIRST DEPUTY
PROSECUTING ATTORNEY

THE HONORABLE DELLA AU BELATTI, CHAIR
HOUSE COMMITTEE ON HEALTH AND HOMELESSNESS
Thirty-Second State Legislature
Regular Session of 2023
State of Hawai`i

February 3, 2023

RE: H.B. 1442; RELATING TO REHABILITATION.

Chair Bellati, Vice-Chair Takenouchi and members of the House Committee on Health and Homelessness, the Department of the Prosecuting Attorney, City and County of Honolulu (“Department”), submits the following testimony in **opposition to multiple parts of H.B. 1442, but also supporting in part.**

First, it should be known that the Department strongly supports any mechanism or strategy that effectively provides mental health treatment and/or substance abuse treatment to those who need it, particularly if those individuals have had recurring contacts with the criminal justice system. That said, we think it is still very premature to conclude that “Act 26” (2020)—one of the primary subjects of H.B. 1442—actually does that.

While we continue researching the specific outcomes of prior Act 26 cases, and would be excited to find that Act 26 is indeed the answer to providing mental health treatment that we are all hoping for, our research thus far is not as promising as things might have appeared on their face. As such, we respectfully ask the Committee to **delay further expansion of this program to misdemeanors or class C felonies** (i.e. delete Sections 4, and delete all proposed changes on p. 8), **but proceed with implementing additional mechanisms** that could effectively get these individuals into mental health treatment (i.e. keep p. 9, ln. 1, through p. 14, ln. 3). After a reasonable amount of time with the new procedures, we suggest re-evaluating, to see if the outcomes are more in-line with what everyone is hoping for, then consider where to go from there.

While our research is still ongoing, it appears that most Act 26 participants are not getting sufficient levels of treatment (within the 7-day evaluation period) to actually stabilize their mental health condition or get them into long-term treatment, and all or nearly all of them have numerous contacts with law enforcement, following their release. To the credit of our local law enforcement—and the various avenues and resources that are now available to them—the majority of those

contacts do not appear to be resulting in any criminal citation or arrest, but were either diverted as “MH1” cases (i.e. individual referred to service provider, with no citation/arrest) or recorded as a “misc pub” (i.e. officer elected not to cite/arrest, but most likely just spoke with the individual and any relevant complainants, and felt that the matter had been resolved, without needing any follow-up). Nevertheless, if these individuals continue to have mental health issues shortly after they’re released from the Act 26 program, which prompts numerous complaints from or problems for other members of the community, it is difficult to say that these individuals are actually receiving effective treatment through the Act 26 program.

Knowing that the goal is not just to move these individuals in and out of the criminal justice system faster, but to actually stabilize their condition and connect them with long-term treatment or oversight, the Department acknowledges that Act 26 (as it currently exists) does appear to be addressing the first half of the goal. Our hope is that the additional mechanisms proposed by H.B. 1336 (*see* page 9, line 1, through page 14, line 3) can achieve the second half. That said, the Department maintains that it would be premature and unwise to expand Act 26 to misdemeanors—much less class C felonies—at this time, and again asks for deletion of Section 4 and page 8, until both halves of the solution have been identified.

In addition to the amendments recommended above, the Department **also opposes**:

- Eliminating the 120-day limit on commitment, for individuals charged with misdemeanor offenses who are then found unfit (*see* p. 6, lns 10-14). This timeline (even as a maximum) seems much more appropriate than the 9-day timeline currently involved in Act 26 (or the 16-day timeline contemplated by this bill), as the mental health professionals we have spoken to consistently state that it takes at least 60-90 days to stabilize someone with chronic, untreated mental health conditions.
- Downgrading the class C felony offense of Escape to a petty misdemeanor, if someone was in the custody of the Department of Health under Act 26 (*see* p. 14, lns. 6-9) at the time of incident. Due to the specific language, it is unclear whether defendant was actually mentally unfit at the time of escape, and—as with all criminal charges—lack of penal responsibility due to physical or mental disease, disorder or defect is always a possibility, with ample mechanisms in place to facilitate that.
- Deleting the current requirement that all parties must agree before a case can be diverted into evaluation, treatment or any other procedure/specialty court, if/when penal responsibility becomes an issue. H.B. 1442 would only require defendant’s consent, not prosecution’s (*see* p. 21, lns. 19-21; p. 22, lns, 5, 10, 12-14).

The Department respectfully asks that these 3 areas of the bill not be amended as proposed, and instead remain as-is.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu submits **opposes multiple parts of H.B. 1442, but also supports in part**. Thank you for the opportunity to testify on this matter.

HB-1442

Submitted on: 2/2/2023 11:34:05 AM

Testimony for HLT on 2/3/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Lindsay Ann Pacheco	Individual	Support	Written Testimony Only

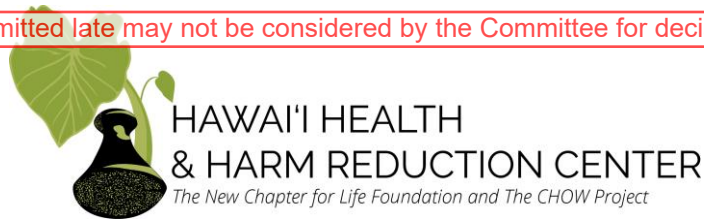
Comments:

Aloha Chair Belatti, Vice Chair Takenouchi, and Committee Members,

I support HB1442.

Thank you,

Lindsay Ann Pacheco



To: Committee on Health and Homelessness

Hearing Date/Time: Friday, February 3, 2023 8:30 AM

Re: Testimony in Strong Support of HB 1442

From: Heather Lusk, Hawaii Health and Harm Reduction Center

Dear Chair Belatti, Vice Chair Takenouchi and members of the committee

The Hawaii Health & Harm Reduction Center (HHHRC) strongly supports HB1442 which would expand the scope of the justice diversion program for non-petty misdemeanants. This will build upon early success of Act 26 and ensuring that people with behavioral health issues get the services they need and when the offenses they commit are low-level crimes. Research shows that people struggling with mental health and substance use who are incarcerated experience high levels of trauma and their records make it harder for them to reintegrate into society.

HHHRC's mission is to *reduce harm, promote health, create wellness and fight stigma in Hawaii and the Pacific*. We focus our efforts on those disproportionately affected by social determinants of health, including but not limited to: people living with and/or affected by HIV, hepatitis, substance use, and the transgender, LGBTQ and the Native Hawaiian communities.

HHHRC's has been running a small Law Enforcement Assisted Diversion project over the past three years and an independent evaluation has found that it is effective in facilitating housing, reducing emergency room utilization, reducing law enforcement touches and reducing methamphetamine and other substance use. Too many of our vulnerable community that have behavioral health issues are being incarcerated for low-level crimes that do not pose public safety risks. This cycle of incarceration makes it very hard to house people, support them in finding work and supporting their recovery. This bill will support this community in getting the needed services to help them thrive, which will also be cheaper than the \$50,000 a year that incarceration costs. For more information on LEAD, please visit www.hhhrc.org/lead.

Thank you for the opportunity to testify.

Heather Lusk, Executive Director, Hawaii Health and Harm Reduction Center