

## *The Judiciary, State of Hawai'i*

**Testimony to the Thirty-Second State Legislature, 2024 Regular Session**

**House Committee on Judiciary and Hawaiian Affairs**

Representative David A. Tarnas, Chair  
Representative Gregg Takayama, Vice-Chair

February 13, 2024 at 2:00 p.m.  
Conference Room 325 and Via Videoconference

by  
Rodney A. Maile  
Administrative Director of the Courts

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**Bill No. and Title:** House Bill No. 2451, H.D. 1, Relating to Mental Health.

**Purpose:** Authorizes examination of defendants via telehealth. Amends conditions for certain petty misdemeanants' release or examination of fitness to proceed. Appropriates funds. Effective 7/1/3000. (HD1)

### **Judiciary's Position:**

The Judiciary strongly supports the overall intent of this legislation and specifically supports Sections 1, 2, 4, 5, and 6. The Judiciary supports the authorization for the use of telehealth for evaluations ordered pursuant to Chapter 704, and the appropriation of funds for the resources to effectuate those evaluations, as this will greatly aid in the completion of those examinations ordered by the court. The Judiciary supported these provisions last session when they were a part of the larger House Bill (HB) 1442, HD2, SD1, which went to conference committee and was carried over to this session.

However, the Judiciary believes there may have been an oversight in the drafting of HD1 in Section 3, which is the proposed amendment to section 704-421 of the Hawai'i Revised Statutes, as the provisions of Section 3 now contradict the amendments made by the House Committee on Health and Homelessness to the same statutory section contained in Section 10 of

House Bill 2159, HD1. The Judiciary requests that the provisions of Section 3 be amended consistent with Section 10 of HB2159, HD1, which is also before the Committee today.<sup>1</sup>

Regarding Section 3, the Judiciary respectfully requests that, if it is necessary to include that section in this measure, the bill be amended to replace Section 3 with the language from Part III, Section 10 of HB2159, HD1. This additional language is critical to ensuring that the defendants who are diverted from the criminal justice system are properly evaluated and assessed to determine what types of services they may require and be offered, whether inpatient, outpatient, or community based, upon the dismissal of the case. Specifically, the Judiciary requests that the amended provision state:

**"[+]§704-421[+] Proceedings for defendants charged with petty misdemeanors not involving violence or attempted violence; criminal justice diversion program.** (1) In cases where the defendant is charged with a petty misdemeanor not involving violence or attempted violence, if, at the hearing held pursuant to section 704-404(2) (a) or at a further hearing held after the appointment of an examiner pursuant to section 704-404(2) (b), the court determines that the defendant is fit to proceed, then the proceedings against the defendant shall resume. In all other cases under this section where fitness remains an outstanding issue, the court shall continue the suspension of the proceedings and either commit the defendant to the custody of the director of health to be placed in a hospital or other suitable facility, including an outpatient facility, for further examination and assessment~~[-]~~ or, in cases where the defendant was not subject to an order of commitment to the director of health for the purpose of the fitness examination under section 704-404(2), the court may order that the defendant remain released on conditions the court determines necessary for placement in a group home, residence, or other facility prescribed by the director of health for further assessment by a clinical team pursuant to subsection (3).

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<sup>1</sup> Section 10 of HB2159 HD1 provides for the same process set forth in HB1442 HD2 SD1.

(2) [~~Within seven days from the commitment of the defendant to the custody of the director of health, or as soon thereafter as is practicable, the director of health~~] In cases under this section where the defendant's fitness to proceed remains an outstanding issue at the hearing held pursuant to section 704-404(2) (a) or a further hearing held after the appointment of an examiner pursuant to section 704-404(2) (b), as applicable, the director of health, within fourteen days of that hearing or as soon thereafter as is practicable, shall report to the court on the following:

- (a) The defendant's current capacity to understand the proceedings against the defendant and defendant's current ability to assist in the defendant's own defense[-];
- (b) Whether, after assessment of the defendant pursuant to subsection (3) (a) or (b), the defendant's clinical team believes that the defendant meets the criteria for involuntary hospitalization under section 334-60.2 or assisted community treatment under section 334-121; and
- (c) The date that the director of health filed a petition for involuntary hospitalization or assisted community treatment on behalf of the defendant pursuant to subsection (3) (a) or (b), as applicable.

If, following the report, the court finds defendant fit to proceed, the proceedings against defendant shall resume. In all other cases, the court shall dismiss the charge with or without prejudice in the interest of justice. [~~The director of health may at any time proceed under the provisions of section 334-60.2 or 334-121.~~]

(3) During the defendant's commitment to the custody of the director of health or release on conditions pursuant to subsection (1):

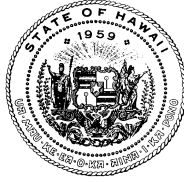
- (a) If the defendant's clinical team determines that the defendant meets the criteria for involuntary hospitalization set forth in section 334-60.2, the director of health, within seven days of the clinical team's determination, shall file a petition for involuntary hospitalization pursuant to section 334-60.3 with the family court. If the petition is granted, the defendant shall remain hospitalized for a time period as provided by section 334-60.6;
- (b) If the defendant's clinical team determines that the defendant does not meet the criteria for involuntary hospitalization, or the court denies the petition for involuntary hospitalization, the defendant's clinical team shall determine whether an assisted community treatment plan is appropriate pursuant to part VIII of chapter 334. If the clinical team determines that an assisted community treatment plan is appropriate, the psychiatrist 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. If the defendant declines to accept the mental health services described in the certificate prepared pursuant to this paragraph, then the director of health, within ten days of the defendant's refusal of services described in the certificate, shall file the assisted community treatment petition described in section 334-123 with the family court. When a petition for assisted community treatment has been filed for a defendant, the defendant committed to the custody of the director of health shall remain in custody until the family court issues a decision on the petition.

(4) This section shall not apply to any case under the jurisdiction of the family court unless the presiding judge orders otherwise."

With this amendment, this bill will improve the government response to individuals suffering from mental health challenges involved in the criminal justice system (i.e., individuals at intercept 2 and 3 on the sequential intercept model). Taken together with other bills designed to address the mental health needs of individuals at other intercept points, such as HB1831, HD1 and HB2159, HD1, the proposed amendment to HB2451, HD 1 will help to close the proverbial revolving door by building a comprehensive government response that addresses each intercept point.

Thank you for the opportunity to testify on this measure.



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

**Testimony in SUPPORT of H.B. 2451 HD1  
Relating to Mental Health**

REPRESENTATIVE DAVID A. TARNAS, CHAIR  
HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

Tuesday, February 13, 2024, 2:00 P.M. Conf. Room 325/video

1 **Fiscal Implications:** The Department of Health (Department) requests funding for this measure  
2 be considered as a vehicle to expand services, including staff support, provided it does not  
3 supplant the requests outlined in the Governor's executive budget request.

4 **Department Position:** The Department supports this measure and offers comments and  
5 amendments.

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

8 The Department supports this measure, which proposes telehealth services, including  
9 real-time video conferencing provided at any facility under the jurisdiction of the Director of  
10 Health, Director of Law Enforcement, or the Chief Justice, and establishes behavioral health  
11 crisis centers.

12 This bill adds much needed flexibility in allowing the use of telehealth services. This will  
13 maximize time efficiency and minimize travel costs.

14 The Department also supports the establishment of behavioral health crisis centers.

15 **Offered Amendments:**

1           The Department recommends broadening the scope of the current proposed bill,  
2 specifically, page 1, lines 12-13 "Examiners who have been appointed by the court under  
3 section 704-404" to all court appointed examiners under Chapter 704. Therefore, the  
4 Department respectfully requests the language be replaced with, "An examiner who is  
5 appointed by the court under HRS chapter 704."

6           The Department also recommends adding facilities under jurisdiction of the Director of  
7 Corrections and Rehabilitation to the list of facilities at which telehealth may be conducted.  
8 Specifically, on page 1, line 17, the Department proposes, "... enforcement, the director of  
9 corrections and rehabilitation, or the chief justice."

10           The Department respectfully requests that the time frame to report to the court on the  
11 defendant's capacity remains at seven days. Increasing this to fourteen days may adversely  
12 impact the Hawaii State Hospital with increased length of stays and further increased census.  
13 Therefore, the Department requests the deletion of the amendment on page 3, lines 9-17.

14           Thank you for the opportunity to testify on this measure.

**JON N. IKENAGA**  
STATE PUBLIC DEFENDER

**DEFENDER COUNCIL**  
1130 NORTH NIMITZ HIGHWAY  
SUITE A-254  
HONOLULU, HAWAII 96817

**HONOLULU OFFICE**  
1130 NORTH NIMITZ HIGHWAY  
SUITE A-254  
HONOLULU, HAWAII 96817

**APPEALS SECTION**  
TEL. No. 586-2080

**DISTRICT COURT SECTION**  
TEL. No. 586-2100

**FAMILY COURT SECTION**  
TEL. No. 586-2300

**FELONY SECTION**  
TEL. No. 586-2200

**FAX (808) 586-2222**



**STATE OF HAWAII**  
**OFFICE OF THE PUBLIC DEFENDER**

**HAYLEY CHENG**  
ASSISTANT PUBLIC  
DEFENDER

**HILO OFFICE**  
275 PONAHAHAWAI STREET  
HILO, HAWAII 96720  
TEL. No. 974-4571  
FAX No. 974-4574

**KONA OFFICE**  
82-6127 MAMALAHOA HIGHWAY  
P.O. BOX 1219  
CAPTAIN COOK, HAWAII 96704  
TEL. No. 323-7562  
FAX No. 323-7565

**KAUAI OFFICE**  
3060 EIWA STREET  
LIHUE, HAWAII 96766  
TEL. No. 274-3418  
FAX No. 274-3422

**MAUI OFFICE**  
81 N. MARKET STREET  
WAILUKU, HAWAII 96793  
TEL. No. 984-5018  
FAX No. 984-5022

February 9, 2024

Committee on Judiciary & Hawaiian Affairs  
Rep. David A. Tarnas, Chair  
Rep. Gregg Takayama, Vice Chair  
415 South Beretania Street, Conf. Rm. 325  
State Capital  
Honolulu, HI 96813  
[via email: JDCtestimony@capitol.hawaii.gov](mailto:JDCtestimony@capitol.hawaii.gov)

Re: Testimony in Support of H.B. 2159  
Hearing: February 13, 2024, 2:00 PM

Dear Chair Tarnas, Vice Chair Takayama and Committee Members:

This letter is mainly in support of H.B. 2159 which would (1) amend the law to effectively maintain consistency and uniformity with the mandates of the Office of the Public; (2) provide the court with additional treatment and placement options for those undergoing fitness examinations; (3) creates a petty misdemeanor offense of escape under certain circumstances; and (4) allows the court to order a defendant to undergo a mental health evaluation and treatment when there is reason to believe that a probation violation is associated with a mental disease, disorder or defect.

H.B. 2159 amends the law for consistency and uniformity by omitting the Office of the Public Defender in cases involving petitions for assisted community treatment under Hawaii Revised Statutes Chapter 334. This omission is consistent with the mandates of the Office of the Public Defender in providing legal representation for those whose liberty interests are at risk because assisted community treatment does not fall under those parameters.

H.B. 2159 also provides mental health treatment options including involuntary hospitalization, assisted community treatment and release with conditions while a defendant is undergoing a fitness examination. Similarly, where there is a reason to believe that a mental health issue is associated with a probation violation, the probation violation is appropriately addressed through a mental health evaluation and possible treatment. Although this assessment could be beneficial to the defendant, it may be detrimental for the defendant to be saddled with the financial cost of the assessment and treatment. In addition, should the defendant not comply with mental health treatment, additional treatment options should be explored and employed, including the aforementioned treatment options, prior to revoking the defendant's probation.

Finally, the creation of a petty misdemeanor offense of escape for nonviolent petty misdemeanor offenders under the custody of the director of health would be beneficial to those individuals where fitness is not an issue. A petty misdemeanor escape charge is more appropriate than a class C felony charge. Although fitness is likely an issue for everyone who is in the custody of the director of health, those who are not fit should not be penally responsible. The focus of individuals in the custody of the director of health continues to be mental health treatment, fitness restoration and long term stability. To the extent that H.B. 2159 furthers those goals, the Office of the Public Defender is in support of those measures.



Thank you for taking these comments into consideration.

Sincerely,  
/s/ Taryn Tomasa  
Deputy Public Defender

**HB-2451-HD-1**

Submitted on: 2/10/2024 1:57:36 PM

Testimony for JHA on 2/13/2024 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Louis Erteschik	Hawaii Disability Rights Center	Comments	Remotely Via Zoom

Comments:

We think telehealth has great potential in the clinical/medical setting. That said, we are not clear how exactly the telehealth fitness examinations would be conducted and would like to hear more of an explanation on the process and protocols. We totally understand that there are long delays in the evaluation process and agree that steps need to be taken so that they can be expedited. While this may be an appropriate step we just want to make sure that the accuracy of the assessment is not diminished by the lack of an in person contact so we would urge the Committee to explore this question and receive sufficient assurances.



## **HB2451 HD1 Telehealth Defendant and Crisis Center**

### COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

Rep. David A. Tarnas, Chair

Rep. Gregg Takayama, Vice Chair

Tuesday, Feb 13, 2024: 2:00 : Room 325 Videoconference

### **Hawaii Substance Abuse Coalition supports HB2451 HD1:**

*ALOHA CHAIRS, VICE CHAIRS, AND DISTINGUISHED COMMITTEE MEMBERS. My name is Alan Johnson. I am the current chair of the Hawaii Substance Abuse Coalition (HSAC), a statewide organization for substance use disorder and co-occurring mental health disorder treatment and prevention agencies and recovery-oriented services.*

In this day and age, allowing the Dept. of Health, Law Enforcement and Chief Justice to use telehealth to conduct examinations is part of keeping up with the times, especially for petty misdemeanors not involving violence or attempted violence.

**HSAC supports that telehealth be used for criminal justice diversions programs, except in cases where a fitness examination is warranted.**

### **CRISIS INTERVENTION**

HSAC agrees that many people who suffer from drugs, alcohol or mental illness can be examined through **telehealth**

1. Expand Criminal Justice Diversion to other petty misdemeanors.
2. An appropriation would be given to DCR for telehealth.
3. **HSAC appreciates the amendment to include substance use disorders with mental health conditions.**

Unfortunately, the development of a crisis center was removed. However, there are other bills that could cover this provision.

We appreciate the opportunity to provide testimony.

**HB-2451-HD-1**

Submitted on: 2/12/2024 1:34:36 PM

Testimony for JHA on 2/13/2024 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Dara Carlin, M.A.	Individual	Oppose	Written Testimony Only

Comments:

No, standing in OPPOSITION because defendants MUST be seen directly, face-to-face and in-person in order for an evaluator to make his/her best clinical assessment. For case management purposes, telehealth is fine but critical information can be missed if a defendant is not seen directly and in-person for examination, assessment or evaluation purposes.