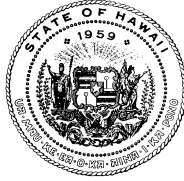


JOSH GREEN, M.D.  
GOVERNOR OF HAWAII  
KE KIA'ĀINA O KA MOKU'ĀINA 'O HAWAII'



KENNETH S. FINK, M.D., M.G.A., M.P.H.  
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**Testimony in SUPPORT of H.B. 2451  
Relating to Mental Health**

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

Friday, February 2, 2024, Conf. Room 329 9:45AM

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 11-12 "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.



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

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

**House Committee on Health & Homelessness**

Representative Della Belatti, Chair

Representative Jenna Takenouchi, Vice-Chair

Friday, February 2, 2024 at 9:45 a.m.

Conference Room 329 and Via Videoconference

by

Rodney A. Maile

Administrative Director of the Courts

### **WRITTEN TESTIMONY ONLY**

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

**Purpose:** Authorizes examination of defendants via telehealth. Amends conditions for a defendant's release or examination of fitness to proceed. Authorizes the Department of Health to implement behavioral health crisis centers. Effective 7/1/2024.

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

The Judiciary strongly supports the overall intent of this legislation and specifically supports Part I, Sections 1, 2, and 4, as well as Parts II and III. The Judiciary supported these provisions last session when they were a part of House Bill (HB) 1442, HD2, SD1, which went to conference committee and was carried over to this session. However, the Judiciary requests that the provisions of Part I, Section 3 be amended as noted below to reflect the preferable language from HB1442, HD2, SD1 and Section 8 of House Bill 2628 also before the Committee today.

As noted, 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. Further, the establishment and use of behavioral health crises centers will improve the government response to individuals suffering from serious mental illness, particularly for those who may become, or already are, involved in the criminal justice system. Early access to, and the provision of, mental health care and services is integral to diverting those individuals who, but for their mental health crisis, would not be involved with the criminal justice system.

Regarding Part I, Section 3, the Judiciary respectfully requests that the bill be amended to replace Section 3 with the language from Part I, Section 4 of House Bill 1442, HD2, SD1 and Part III, Section 8 of House Bill 2628. Specifically, it would 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).

(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, 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.

Thank you for the opportunity to testify on this measure.

**HB-2451**

Submitted on: 1/31/2024 4:09:40 PM

Testimony for HLT on 2/2/2024 9:45:00 AM

<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 support the behavioral crisis centers as noted in other testimony.

We support the idea of having the flexibility in the case of non violent petty misdemeanors to not commit Defendants to the custody of the Health Director as well as the ability to dismiss the charges if fitness cannot be restored.

We are not clear how or why the telehealth fitness examinations would be conducted and would like to hear more of an explanation for the rationale. Is it simply a matter of speed and/or convenience? While it may be appropriate we would just want to make sure that the accuracy of the assessment is not diminished by the lack of an in person contact.





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

### COMMITTEE ON HEALTH & HOMELESSNESS

Rep. Della Au Belatti, Chair

Rep. Jenna Takenouchi, Vice Chair

Friday, Feb 2, 2024: 9:45 : Room 329 Videoconference

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

*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 are cited or arrested when it would be **better to provide crisis services for stabilization and then refer or help them to start treatment so they can recover from their illness.**

1. Department of Health to establish or contract to start a behavioral health crisis center.
2. Develop a first responder drop off area to redirect persons with mental health issues or substance abuse issues to a healthcare center system.
3. To provide stabilization services that provide screening, assessment and/or referrals to an appropriate behavioral health services.
4. **HSAC recommends that referrals be to a mental health, substance use disorder, or co-occurring disorder treatment center.**
5. DOH to develop all the criteria needed for a crisis drop off center.

This idea has strong evidential support across the nation.

We appreciate the opportunity to provide testimony.