



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2023**

ON THE FOLLOWING MEASURE:

H.B. NO. 1442, H.D. 1, RELATING TO REHABILITATION.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

DATE: Wednesday, February 15, 2023 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

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

Chair Tarnas 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, assisted community treatment (ACT), and the expansion of the diversionary program implemented by Act 26, Session Laws of Hawaii 2020, and known as "Act 26."

The Department takes no position on section 2.

The Department opposes the elimination of the 120-day limit on commitment on page 6, lines 13-17, and page 7, lines 2-5. Removing this 120-day limit on commitment will result in committed defendants being in limbo and the elimination of 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, lines 15-18, 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 supports the bill's intent to provide mental health treatment to those arrested for crimes "not involving violence or the threat of violence" (note: these terms are not defined so it is unclear which crimes would or would not qualify for the Act 26 diversion program), but we are concerned whether those defendants who are diverted from criminal prosecution under Act 26 are actually receiving meaningful mental health treatment. According to the Department of the Prosecuting Attorney for the City and County of Honolulu, in the two years that Act 26 has been in effect, in most cases where the defendant was referred to the Act 26 diversion program and found unfit to proceed, the prosecutions were dismissed with prejudice and the defendants were discharged from the Hawaii State Hospital within 7 days. According to the Hawaii Criminal Justice Information System (CJIS), almost all those defendants were rearrested for criminal offenses after they had been through the Act 26 program. Additionally, it is unclear if those discharged received any meaningful mental health treatment once discharged from the Hawaii State Hospital. The Department

understands that the Prosecutor is recommending a delay in the expansion of the Act 26 diversion program to see if the other changes proposed in this bill will accomplish the goals of diverting criminal defendants with mental health issues from criminal prosecution into meaningful mental health treatment and protecting the public from defendants committing new criminal offenses.

The Department has no position on expanding placement of defendants committed to the director of health to "an outpatient facility" (page 9, line 6). However, the Department opposes releasing defendants pending placement on conditions (page 9, lines 7-14). 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, on page 11, line 3, through page 14, line 5, of this bill, to require the Director 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 page 13, line 8, through page 14, line 2, starting from "[t]he defendant may be held at the" This amendment to section 704-421 proposed in the bill would 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 opposes section 6, on page 14, lines 9-11, 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 proposes deleting the amendment on page 20, lines 2-6. 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 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, in section 17 of the bill, on page 22, lines 1-21, 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 18-20), 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
Judiciary & Hawaiian Affairs**

February 15, 2023

H.B. No. 1442, HD1 (HSCR267): RELATING TO REHABILITATION

Chair: David A. Tarnas, Vice Chair: Gregg Takayama 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.

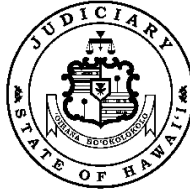
We support that part of H.B. No. 1442, which would expand the criminal justice diversion program, and the funding necessary to support such changes, to include certain misdemeanors and the class C felony offense of Promoting a Dangerous Drug in the Third Degree for those left unfit by a mental disease, 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 that can benefit from diversion from the criminal justice system. We also expect that for those that qualify to participate 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. Furthermore, in some instances, successful diversion, which would include successful mental health treatment, can result in the dismissal of criminal charges. This type of resolution is quite just when it is a mental illness that triggers the entry into the criminal justice system.

However, the OPD cannot support that part of H.B. No. 1442 which seeks to amend HRS section 706-625, by allowing 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 does not 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. The language of this bill does not require any other finding of misconduct by the probationer for this clause to take effect. 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. Subjecting an individual to incarceration for suffering from mental illness is a regression in our understanding of mental illness and its treatment. Even under civil commitment procedures an individual cannot be held in a hospital setting unless they are both suffering from a mental illness and are a danger to themselves or others.

Thank you for the opportunity to comment on this measure.



The Judiciary, State of Hawai‘i

Testimony to the Thirty-Second State Legislature, 2023 Session

House Committee on Judiciary & Hawaiian Affairs

Representative David A. Tarnas, Chair

Representative Gregg Takayama, Vice Chair

Wednesday, February 15, 2023, 2:00 p.m.

State Capitol, Conference Room 325 & via Videoconference

by

Brandon Kimura

Deputy Administrative Director of the Courts

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 1442, H.D. 1, Relating to Rehabilitation.

Purpose: Expands the criminal justice diversion program. Amends the allowable period of court-ordered assisted community treatment and extensions. Clarifies the authority of 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 this measure's 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



House Bill No. 1442, H.D. 1, Relating to Rehabilitation
House Committee on Judiciary & Hawaiian Affairs
Wednesday, February 15, 2023
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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.

Thank you for the opportunity to testify on this measure.



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

TO: The Honorable David A. Tarnas, Chair
The Honorable Gregg Takayama, Vice Chair
House Committee on Judiciary & Hawaiian Affairs

FROM: Mark Patterson, Chair
Hawaii Correctional System Oversight Commission

SUBJECT: House Bill 1442 House Draft 1, Relating to Rehabilitation
Hearing: Wednesday, February 15, 2023; 2:00 p.m.
State Capitol, Room 325

Chair Tarnas, Vice Chair Takayama, and Members of the Committee:

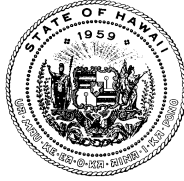
The Hawaii Correctional System Oversight Commission (HCSOC) **supports** House Bill 1442 House Draft 1, relating to Rehabilitation. This bill would expand the criminal justice diversion program, amend the allowable period of court-ordered assisted community treatment and considerations for extensions, 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 House Draft 1 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.

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
DIRECTOR OF HEALTH
KA LUNA HO'ŌKELE

STATE OF HAWAII
DEPARTMENT OF HEALTH
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**Testimony in SUPPORT of H.B. 1442, H.D. 1
RELATING TO REHABILITATION**

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

Hearing Date, Time and Room: Wednesday, February 15, 2023 at 2:00 p.m. in Room 325/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. We respectfully defer to the Judiciary on items in this bill that impact
15 judicial proceedings and defer to the Department of the Attorney General for legal matters,
16 such as Section 5, pages 8-13 of this measure.

17 Lastly, we point to and recognize that behavioral health crisis centers are a critical
18 component of the health care continuum that provides an opportunity for diversion from the
19 justice system. We support the development of this crisis care capacity in each county through
20 the Department’s establishment of or contract for the needed services. For example, the
21 AMHD is examining procuring a statewide Hawaii Urgency Response Center (HURC) to provide
22 24 hours a day, 7 days a week access to mental health professionals, peer specialists, nurses,
23 and physicians to assist individuals experiencing a behavioral health crisis. The primary goals of
24 the HURC is to process necessary interventions and supports to reduce the expense and
25 utilization of hospital emergency departments, and to divert individuals from incarceration.
26 The Department believes that the HURC is a positive and immediate, albeit temporary crisis

1 response option for individuals. Site locations and contracted service providers will be
2 identified by the Department.

3 **Offered Amendments:** In regard to appropriating funds for program support, we will need
4 additional positions for court-based clinicians, coordination, monitoring, and funding for
5 contracted sites for additional evaluations/assessments. It may be important to consider
6 adding bill language that acknowledges the need for locations that will have an increased
7 number of evaluations be fully operational prior to program implementation. These staffing
8 supports and resources are essential for program success. We estimate that five FTE court-
9 based clinician positions will cost \$575,000 annually. A start date for this measure no sooner
10 than July 1, 2024, is recommended.

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

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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



RICK BLANGIARDI
MAYOR

ARTHUR J. LOGAN
CHIEF

KEITH K. HORIKAWA
RADE K. VANIC
DEPUTY CHIEFS

OUR REFERENCE **MH-SK**

February 15, 2023

The Honorable David A. Tarnas, Chair
and Members
Committee on Judiciary and
Hawaiian Affairs
House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 325
Honolulu, Hawaii 96813

Dear Chair Tarnas and Members:

Subject: House Bill No. 1442, H.D. 1, 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, H.D. 1, Relating to Rehabilitation, to expand 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 David A. Tarnas, Chair
and Members

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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, H.D. 1, Relating to Rehabilitation.

Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to read 'Manuel Hernandez', written over a horizontal line.

Manuel Hernandez, Captain
Training Division

APPROVED:

A handwritten signature in black ink, appearing to read 'Arthur J. Logan', written over a horizontal line.
Arthur J. Logan
Chief of Police

DEPARTMENT OF THE PROSECUTING ATTORNEY
CITY AND COUNTY OF HONOLULU

ALII PLACE
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FIRST DEPUTY
PROSECUTING ATTORNEY

THE HONORABLE DAVID A. TARNAS, CHAIR
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS
Thirty-Second State Legislature
Regular Session of 2023
State of Hawai`i

February 15, 2023

RE: H.B. 1442, H.D. 1; RELATING TO REHABILITATION.

Chair Rhoads, Vice Chair Gabbard, and members of the Senate Committee on Judiciary, the Department of the Prosecuting Attorney of the City and County of Honolulu ("Department") submits the following testimony in **opposition to multiple parts of H.B. 1442, H.D. 1, 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, especially if those individuals have had recurring contacts with the criminal justice system. That said, it is very unclear what kind of treatment "Act 26" (2020) participants are actually receiving, as the program currently exists, when participants are routinely released (and their cases dismissed) within nine days of entering the program. Thereafter, all but a handful of participants have continued to have subsequent incidents reported in the community; and the vast majority have also been re-arrested for subsequent offenses in the community. Thus, rather than expanding the program *at this time*, we respectfully **request that all proposed amendments on pages 6-8 of the bill be deleted.** while the proposed amendments on pages 9-14 proceed and hopefully provide the much-needed treatment mechanisms that are currently lacking.

As noted above, it does not appear that Act 26 participants are typically receiving the mental health treatment that we were hoping for, inasmuch as the Department would like all of the participants' mental health conditions to be stabilized before they are released back into the community; once they are stable, referrals to long-term services may then be more effective. While our research is still ongoing, it does not appear that Act 26 has been very effective in stabilizing or treating the mental health conditions of its participants. Of the 119 defendants who qualified for Act 26 (between September 15, 2020 and November 7, 2022):

- 15 - regained fitness within the 7-day assessment period (some of whom appear to have recovered from substance-induced issues);

- 2 - did not regain mental fitness, and were civilly committed to Hawaii State Hospital (note: for Act 26 matters, civil commitment may only be initiated by the Department of the Attorney General);
- 79 - did not regain mental fitness, their cases were dismissed after approximately 9 days, and they were then released, though encouraged to enter mental health treatment (while still mentally unfit at time of release); and
- 23 - individuals are not included in any of the counts above, because they actually came through Act 26 two or more times (occasionally with varying results).

Notably, the one thing that is consistent among Act 26 participants, is that *nearly all* of the 119 proceeded to have multiple reported incidents (based on police records) *after* their Act 26 case was dismissed and they were released back into the community. Moreover, it appears the vast majority have also been re-arrested for, and some were actually convicted of, subsequent charges.

To the credit of our Honolulu police officers—and the various avenues and resources that are now available to them—the majority of reported incidents did not result in any criminal citations or arrests, but were either diverted as “MH1” cases (i.e. individual referred directly 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). However, if these individuals continue to have mental health issues soon after they’re released from the Act 26 program, which then prompts numerous complaints from or problems for other members of the community, it is difficult to say that Act 26 participants are actually receiving effective treatment through the program.

To the extent that H.B. 1442, H.D. 1, proposes *additional mechanisms* that could potentially get these individuals into more *effective* mental health treatment, the Department supports those changes (i.e. p. 9, ln. 1, through p. 14, ln. 3). After a reasonable amount of time with the new procedures, we suggest re-evaluating then, to see if outcomes are more in-line with what everyone is hoping for, and consider where to go from there.

We do acknowledge that Act 26 has at least kept most of these individuals at mental health facilities for the duration of their mental fitness examination (now a 2-day process) and 7-day mental health assessment. During the period noted above, 8 of the 119 participants were held at Oahu Community Correctional Center, due to other pending charges. So long as the appropriate risk assessments can be done, for the protection of personnel and other patients, the Department has no objections to holding Act 26 participants at appropriate mental health facilities for the duration of their program participation.

Also, 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 and/or oversight, the Department applauds the 2-day turnaround time for fitness examinations, that is currently being done for Act 26 participants. That said, we **strongly recommend that the 7-day mental health assessment be extended to a more suitable period, perhaps “up to 30 days, as needed to assess and stabilize the individual’s condition.”** Over the course of our work with various mental health professionals, we have consistently been told that it takes at least 60-90 days to stabilize a patient with chronic, untreated mental health conditions; so perhaps 30 days presents a viable compromise between speed and effectiveness. In that time, our hope is that the additional mechanisms proposed by H.B. 1442, H.D. 1 (*see* page 9, line 4, through page 14, line 5) will succeed in providing these individuals with more effective treatment.

Nevertheless, the Department does maintain 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 all proposed amendments on pages 6-8 of this bill, until the Act 26 program is able to implement the additional mechanisms and evaluate whether those are successful in providing effective treatment for these individuals.**

As always, the Department is more than willing to meet with other stakeholders, to further discuss specific amendments or proposals as the bill continues to move through session. Please note, we will actually be part of a Hawaii contingency travelling to Miami, Florida—next week—to attend a workshop (hosted by the National Center for State Courts) entitled “Decriminalizing Mental Illness: The Miami Model.” The Miami model, which was the impetus for Act 26, was developed by the Honorable Steven Leifman, who will be closely involved in the workshop. In addition to the Miami model, the Department is also looking at other models that have had lasting success with mental health diversion.

With regards to the other provisions of H.B. 1442, H.D.1, outside of those addressing Act 26, the Department **strongly opposes:**

- 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, Ins. 8-11) 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 or when penal responsibility becomes an issue. H.B. 1442, H.D. 1 would only require defendant’s consent, not prosecution’s (*see* p. 22, Ins. 2-4).

We respectfully request that these proposed amendments be deleted from the measure.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu **opposes multiple parts of H.B. 1442, H.D. 1, but also supports in part.** Thank you for the opportunity to testify on this matter.



HB1442 Diversion and ACT

COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

Rep. David A. Tarnas, Chair

Rep. Gregg Takayama, Vice Chair

Wednesday Feb 15, 2023, 2:00 Room 325

Hawaii Substance Abuse Coalition Strongly Supports HB1442:

ALOHA CHAIR, VICE CHAIR 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, prevention agencies and recovery-oriented services.

A comprehensive program that includes diversion to treatment and reentry to community services produces better outcomes and is more cost-effective.

HSAC strongly supports diversion alternatives for people subject to exclusion from charges or for violating their probation due to their mental health disease. It's time for Hawaii to expand our criminal justice diversion programs. The diversions include screening and evaluations for involuntary hospitalization or assisted community treatment. We also need more behavioral health crisis centers so that more diversions can happen in our justice systems.

- Often people who have severe substance use disorders, or who are mentally impaired that are frequently arrested are unsheltered homeless.
- It requires a lot of time of police officers who have to arrest them even if the crimes are misdemeanors. This is how jails become overcrowded because of this population.
- The alternative is a danger to public safety when criminal defendants, who could qualify for commitment due to severe mental health issues, are released back into the community.

Expanding the qualifying offenses will allow more people to be diverted and requiring screening or a mental health evaluation and treatment will enable a faster resolution of their cases and a sooner realized benefit from treatment and support for their mental health. Such treatment can reduce or eliminate their involvement with the criminal justice system.

By focusing on people who are reoccurring in the justice system, HSAC strongly supports diversion strategies to help people receive effective mental health treatment and/or substance abuse treatment. Providing treatment and supports will help people with mental health issues to better access housing, employment and possibly get off the street entirely. This is a clear path to help end homelessness.

We appreciate the opportunity to provide testimony and are available for question.



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

TO: Honorable Rep. David A. Tarnas,
Chair, House Committee on Judiciary and Hawaiian Affairs

Honorable Rep. Gregg Takayama,
Vice Chair, House Committee on Judiciary and Hawaiian Affairs

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

RE: HB1442HD1 – RELATING TO REHABILITATION

HEARING: Wednesday, February 15, 2023 at 2:00 PM.

POSITION: IHS supports the passing of HB1442 with amendments

As the homeless service provider that has had the most experience filing petitions for assisted community treatment in the State of Hawaii, the Institute for Human Service is in support of HB1442 which diverts individuals from criminalization and incarceration for petty misdemeanors and, when applicable, initiates assisted community treatment petitions. **We suggest amendments to include psychologist** after psychiatrist as part of the clinical team that can prepare the assisted community treatment (ACT) certificate, not just assess decisional capacity.

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.

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.

HB-1442-HD-1

Submitted on: 2/14/2023 10:55:01 AM

Testimony for JHA on 2/15/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Juanita Kawamoto Brown	Individual	Support	In Person

Comments:

Please support this much needed legislation and the mission to improve the many challenges and historical trauma we continue to suffer from due to the multi-generational ambivalence towards an entire Native Hawaiian Nation!

ALL NATIVE HAWAIIAN LIVES MATTER!

Respectfully

Mrs. Juanita Mahienaena Brown Kawamoto - 6th Generation Native Hawaiian

HB-1442-HD-1

Submitted on: 2/13/2023 8:02:16 PM

Testimony for JHA on 2/15/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Will Caron	Individual	Support	Written Testimony Only

Comments:

I support the intent of HB1442 HD1 to expand diversion away from the courts and incarceration. However, I did share some of the concerns that the Office of the Public Defender shared in its testimony before the previous committee. I hope that the changes made in this draft will satisfy the concerns of the Office.

HB-1442-HD-1

Submitted on: 2/14/2023 3:44:54 PM

Testimony for JHA on 2/15/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Dana Keawe	Individual	Support	Written Testimony Only

Comments:

Support