

STATE OF HAWAII
DEPARTMENT OF HEALTH
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Testimony in SUPPORT of H.B. 1442, H.D. 2
RELATING TO REHABILITATION

SENATOR KARL RHOADS, CHAIR
SENATE COMMITTEE ON JUDICIARY

SENATOR JOY A. SAN BUENAVENTURA, CHAIR
SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES

Hearing Date, Time and Room: Friday, March 17, 2023 at 9:30 a.m. in Room 016/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

1 screened for involuntary hospitalization or assisted community treatment with funding for
2 positions.

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

9 The Department supports this measure which enhances the Act 26 (Session Laws of
10 Hawaii 2020) diversion program providing options for outpatient facilities/release on
11 conditions, extending the timeline for reporting requirements, and incorporating Assisted
12 Community Treatment (ACT) procedures. We strongly support this measure’s creation of a
13 diversion alternative for those defendants intending to rely on the defense of a condition that
14 excludes penal responsibility and for defendants violating probation when the violation is
15 associated with a mental disease, disorder or defect. We respectfully defer to the Judiciary on
16 items in this bill that impact judicial proceedings and defer to the Department of the Attorney
17 General for legal matters, such as Section 5, pages 8-13 of this measure. With respect to
18 inserting ACT related procedures into the Act 26 program, the Department’s preference is to
19 include assessing the need for ACT and generating the certificate, followed by petitioning and
20 initiating treatment when appropriate, and/or coordinating next steps in the petitioning and
21 treatment process with community providers as a part of discharge planning.

22 Lastly, we point to and recognize that behavioral health crisis centers are a critical
23 component of the health care continuum that provides an opportunity for diversion from the
24 justice system. We support the development of this crisis care capacity in each county through
25 the Department’s establishment of or contract for the needed services. For example, the
26 AMHD is exploring the option to procure a statewide Hawaii Urgency Response Center (HURC)

1 to provide 24 hours a day, 7 days a week access to mental health professionals, peer specialists,
2 nurses, and physicians to assist individuals experiencing a behavioral health crisis.

3 The primary goals of the HURC is to process necessary interventions and supports to
4 reduce the expense and utilization of hospital emergency departments, and to divert
5 individuals from incarceration. The Department believes that the HURC is a positive and
6 immediate, albeit temporary crisis response option for individuals. Site locations and
7 contracted service providers will be identified by the Department.

8 If expansion of the scope of the criminal justice diversion program is supported by this
9 Committee, the Department estimates that the cost to establish and operate a HURC is \$10
10 million annually. We also ask for consideration of staff to support expansion efforts directly
11 related to assisting individuals identified under Act 26, Session Laws of Hawaii 2020. We
12 estimate needing an appropriation of \$665,000 annually for five FTE court-based clinicians, and
13 \$250,000 annually for one FTE coordinator and one FTE specialist with paralegal experience
14 who will assist with Act 26 data and reporting.

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

16 **Offered Amendments:** We offer the following amendments that align with our testimony.

17 PART VII

18 SECTION 25. The purpose of this part is to increase support for the Act 26 (Session Laws
19 of Hawaii 2020) diversion program.

20 SECTION 26. There is appropriated out of the general revenues of the State of Hawaii
21 the sum of \$ or so much thereof as may be necessary for fiscal year 2023-2024 and the
22 same sum or so much thereof as may be necessary for fiscal year 2024-2025 to purchase, staff,
23 and operate a statewide Hawaii Urgency Response Center (HURC).



The Judiciary, State of Hawai‘i

Testimony to the Thirty-Second State Legislature, 2023 Session

Senate Committee on Judiciary

Senator Karl Rhoads, Chair

Senator Mike Gabbard, Vice Chair

Senate Committee on Health and Human Services

Senator Joy A. San Buenaventura, Chair

Senator Henry J.C. Aquino, Vice Chair

Friday, March 17, 2023, 9:30 a.m.

Conference Room 016 & Via Videoconference

by

Brandon Kimura

Deputy Administrative Director of the Courts

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 1442, H.D. 2, Relating to Rehabilitation.

Purpose: Expands the criminal justice diversion program. Amends 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 DOH to contract with behavioral health crisis centers. Appropriates funds. Effective 7/1/3023. (HD2)

Judiciary's Position:

The Judiciary strongly supports this measure, which will improve the government response to individuals suffering from mental health challenges, particularly those who may or have become involved in the criminal justice system.

A multi-pronged approach is necessary to address the many challenges presented by the prevalence of serious mental illness in our community. This measure provides tools that strengthen the government's ability to respond to these challenges at different points along the



continuum—in the community and when one is in crisis with the addition of crisis centers, with improvements to laws regarding assisted community treatment, and enhanced opportunities to ensure treatment of individuals remains a viable alternative to the criminal justice system and is provided, as appropriate, throughout one’s involvement in the criminal justice system.

As a result of continuous efforts to make improvements along the continuum, encouraging developments since the introduction of this measure at the beginning of this legislative session lead the Judiciary to recommend revisions to House Draft 2 of this measure. Specifically, in light of agreements on post-booking jail diversion programs that stakeholders recently reached in late February 2023, we recommend certain modifications to the measure that would provide stakeholders the opportunity to implement and evaluate the effectiveness of the agreements.

The agreements, which establish procedures for post-booking jail diversion programs for district and circuit court in the first judicial circuit, were signed by representatives of Department of the Prosecuting Attorney for the City and County of Honolulu, the Office of the Public Defender, the Department of Health, and the Judiciary. The diversion agreements apply to nonviolent misdemeanors and promoting a dangerous drug in the third degree (PDD 3), as approved by the prosecutor, and other offenses the parties agree to on a case-by-case basis.

They establish procedures for screening and assessing defendants for serious mental illness, determining whether defendants qualify for involuntary hospitalization, entry of defendants into diversion programs for treatment, dismissal of the charge if the defendant complies with the diversion plan, and regular meetings among stakeholders.

The agreements were based on post-booking jail diversion programs successfully implemented in Miami-Dade County in Florida. The Miami-Dade programs direct defendants with serious mental illnesses away from competency determination proceedings and into comprehensive treatment programs, where their underlying mental health challenges can more effectively be addressed.

Given the diversion agreements, the Judiciary recommends modifying Part I to remove the amendments to HRS 704-404(2), 704-406(1), and 704-421 that would have added non-violent misdemeanors and PDD 3 to non-violent petty misdemeanors as offenses eligible for expedited competency examinations and dismissal of the charge for defendants not found competent. We also recommend removing Part III, which contains amendments to HRS 704-407.5. The diversion agreements, if successfully implemented, would appear to obviate the need for these amendments and provide more opportunities to encourage defendants to participate in treatment. Accordingly, the Judiciary recommends that the stakeholders be given the opportunity to implement the diversion agreements. In place of the statutory amendments, we recommend a new Part II that would impose reporting and data collection requirements on the



Judiciary, in consultation with other stakeholders, that will permit the legislature to monitor and evaluate the effectiveness of the diversion agreements.

Attached for your consideration is a Proposed Senate Draft 1 that incorporates the Judiciary's recommended modifications to HB 1442 HD2.

Subject to our recommended modifications, the substantive parts of the measure may be summarized as follows.

Part I of the measure 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. It provides for nonviolent petty misdemeanor defendants, whose fitness to proceed in criminal proceedings remains an outstanding issue, to be automatically screened for involuntary hospitalization or assisted community treatment. It therefore improves Act 26, Session Laws of Hawai'i, which has been effective in reducing the time that such defendants remain in custody, resulting in over \$8.5 million in cost savings, and providing them with faster access to mental health treatment. It also appropriates funds to provide job positions and additional resources to implement this part.

Part II (based upon our recommended modifications) would be a new part that requires the Judiciary, in consultation with other stakeholders, to submit reports to the legislature to permit it to monitor and evaluate the effectiveness of the stakeholders' recent agreements on post-booking jail diversion programs.

Part II of measure (as it currently exists) 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 (as it currently exists) would be removed under the Judiciary's recommended modifications.

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 law enforcement and other first responders.

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

As modified by our recommendations, this measure provides funding for behavioral health crisis centers where individuals can be taken for stabilization and treatment, rather than arrested, thereby avoiding unnecessary entanglement in the criminal justice system. It enhances the ability to use assisted community treatment to help those in need, facilitates telehealth examinations, and ensures that incompetent defendants charged with nonviolent petty misdemeanors will be screened for involuntary hospitalization or assisted community treatment before their cases are dismissed. It gives stakeholders the opportunity to implement recently-reached agreements on post-booking jail diversion programs, and the legislature the ability to monitor the progress made under the agreements. Finally, it clarifies that convicted defendants who violate probation can be required to undergo mental health treatment and provides funding support for mental health court.

We strongly support this measure, offer our recommended modifications, and thank you for the opportunity to testify.

A BILL FOR AN ACT

RELATING TO REHABILITATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 PART I

2 SECTION 1. The purpose of this part is to provide for the
3 examination of defendants through telehealth and provide a
4 mechanism for nonviolent petty misdemeanor defendants, whose
5 fitness to proceed in criminal proceedings remains an
6 outstanding issue, to be automatically screened for involuntary
7 hospitalization or assisted community treatment.

8 This part also appropriates funds to provide additional job
9 positions and resources for the implementation of this part.

10 SECTION 2. Chapter 704, Hawaii Revised Statutes, is
11 amended by adding a new section to be appropriately designated
12 and to read as follows:

13 "§704- Examination of defendants via telehealth. (1)
14 The director of health shall prescribe by rule the requirements,
15 terms, conditions, and circumstances under which examinations of
16 defendants conducted pursuant to this chapter may be
17 administered via telehealth.

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

3 (a) The director of health, in the case of any facility
4 under the jurisdiction of the director of health;

5 (b) The director of public safety, in the case of any
6 facility under the jurisdiction of the director of
7 public safety; and

8 (c) The chief justice, in the case of any facility under
9 the jurisdiction of the chief justice, shall establish
10 procedures regarding the provision and use of
11 telehealth resources at appropriate facilities. The
12 procedures shall comply with the rules prescribed by
13 the director of health pursuant to subsection (1) and
14 ensure the widest availability of telehealth resources
15 feasible at appropriate facilities.

16 (3) For the purposes of this section, "telehealth" means
17 health care services provided through telecommunications
18 technology by a health care professional who is at a location
19 other than where the defendant is located."

20 SECTION 3. Section 704-404, Hawaii Revised Statutes, is
21 amended by amending subsection (2) (a) to read as follows:

1 "(2) Upon suspension of further proceedings in the
2 prosecution:

3 (a) In cases where the defendant is charged with a petty
4 misdemeanor not involving violence or attempted
5 violence, if a court-based certified examiner is
6 available, the court shall appoint the court-based
7 certified examiner to examine and provide an expedited
8 report solely upon the issue of the defendant's
9 capacity to understand the proceedings against the
10 defendant and defendant's ability to assist in the
11 defendant's own defense. The court-based certified
12 examiner shall file the examiner's report with the
13 court within two days of the appointment of the
14 examiner, or as soon thereafter is practicable. A
15 hearing shall be held to determine if the defendant is
16 fit to proceed within two days of the filing of the
17 report, or as soon thereafter as is practicable[+].
18 This paragraph shall not apply to any case under the
19 jurisdiction of the family court unless the presiding
20 judge orders otherwise;"

21
22

1 SECTION 4. Section 704-421, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"[+]§704-421[+] Proceedings for defendants charged with**
4 **petty misdemeanors not involving violence or attempted violence;**
5 **criminal justice diversion program.** (1) In cases where the
6 defendant is charged with a petty misdemeanor not involving
7 violence or attempted violence, if, at the hearing held pursuant
8 to section 704-404(2)(a) or at a further hearing held after the
9 appointment of an examiner pursuant to section 704-404(2)(b),
10 the court determines that the defendant is fit to proceed, then
11 the proceedings against the defendant shall resume. In all
12 other cases under this section where fitness remains an
13 outstanding issue, the court shall continue the suspension of
14 the proceedings and either commit the defendant to the custody
15 of the director of health to be placed in a hospital or other
16 suitable facility, including an outpatient facility, for further
17 examination and assessment~~[-]~~ or, in cases where the defendant
18 was not subject to an order of commitment to the director of
19 health for the purpose of the fitness examination under section
20 704-404(2), the court may order that the defendant remain
21 released on conditions the court determines necessary for
22 placement in a group home, residence, or other facility

1 prescribed by the director of health for further assessment by a
2 clinical team pursuant to subsection (3).

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

13 (a) The defendant's current capacity to understand the
14 proceedings against the defendant and defendant's
15 current ability to assist in the defendant's own
16 defense[-];

17 (b) Whether, after assessment of the defendant pursuant to
18 subsection (3) (a) or (b), the defendant's clinical
19 team believes that the defendant meets the criteria
20 for involuntary hospitalization under section 334-60.2
21 or assisted community treatment under section 334-121;
22 and

1 (c) The date that the director of health filed a petition
2 for involuntary hospitalization or assisted community
3 treatment on behalf of the defendant pursuant to
4 subsection (3)(a) or (b), as applicable.

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

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

14 (a) If the defendant's clinical team determines that the
15 defendant meets the criteria for involuntary
16 hospitalization set forth in section 334-60.2, the
17 director of health, within days of the clinical
18 team's determination, shall file a petition for
19 involuntary hospitalization pursuant to section
20 334-60.3 with the family court. If the petition is
21 granted, the defendant shall remain hospitalized for a
22 time period as provided by section 334-60.6;

1 (b) If the defendant's clinical team determines that the
2 defendant does not meet the criteria for involuntary
3 hospitalization, or the court denies the petition for
4 involuntary hospitalization, the defendant's clinical
5 team shall determine whether an assisted community
6 treatment plan is appropriate pursuant to part VIII of
7 chapter 334. If the clinical team determines that an
8 assisted community treatment plan is appropriate, the
9 psychiatrist or advanced practice registered nurse
10 from the clinical team shall prepare the certificate
11 for assisted community treatment specified by section
12 334-123, which certificate shall include a written
13 treatment plan for the provision of mental health
14 services to the defendant. The clinical team shall
15 identify a community mental health outpatient program
16 that agrees to provide mental health services to the
17 defendant as the designated mental health program
18 under the assisted community treatment order. The
19 clinical team shall provide the defendant with a copy
20 of the certificate. If:
21 (i) On at least _____ separate occasions in the
22 past _____ months, the clinical team had

1 previously determined that an assisted community
2 treatment plan was appropriate for the defendant,
3 and the defendant declined to accept the
4 treatment plan on each occasion; and
5 (ii) The defendant declines to accept the mental
6 health services described in the certificate
7 prepared pursuant to this paragraph,
8 then the director of health, within days of the
9 defendant's refusal of services described in the
10 certificate, shall file the assisted community
11 treatment petition described in section 334-123 with
12 the family court. The defendant may be held at the
13 appropriate institution pending the court hearing on
14 the petition for assisted community treatment. If the
15 petition is granted, the defendant shall be released
16 for treatment with the designated mental health
17 program once the assisted community treatment order is
18 issued and the initial treatment consistent with the
19 assisted community treatment plan is administered to
20 the defendant; or
21 (c) If the petition for assisted community treatment is
22 not granted or the clinical team determines that an

1 assisted community treatment order is not appropriate,
2 the defendant shall be discharged from the appropriate
3 institution and referred to an appropriate outpatient
4 mental health program for continued support, care, and
5 treatment.

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

9 SECTION 5. Section 710-1021, Hawaii Revised Statutes, is
10 amended by amending subsection (2) to read as follows:

11 "(2) Escape in the second degree is a class C felony[~~-~~]
12 unless the offense was committed by a person while in the
13 custody of the director of health pursuant to section
14 704-421(1), in which case it is a petty misdemeanor."

15 SECTION 6. There is appropriated out of the general
16 revenues of the State of Hawaii the sum of \$ _____ or so
17 much thereof as may be necessary for fiscal year 2023-2024 and
18 the same sum or so much thereof as may be necessary for fiscal
19 year 2024-2025 for the establishment of one full-time equivalent
20 (1.0 FTE) law clerk position for the mental health calendar
21 judge presiding over matters under chapter 704, Hawaii Revised
22 Statutes.

1 The sums appropriated shall be expended by the judiciary
2 for the purposes of this part.

3 SECTION 7. There is appropriated out of the general
4 revenues of the State of Hawaii the sum of \$ or so
5 much thereof as may be necessary for fiscal year 2023-2024 and
6 the same sum or so much thereof as may be necessary for fiscal
7 year 2024-2025 for the establishment of full-time
8 equivalent (FTE) positions (\$) and for
9 additional resources necessary to implement this part.

10 The sums appropriated shall be expended by the department
11 of health for the purposes of this part.

12 SECTION 8. There is appropriated out of the general
13 revenues of the State of Hawaii the sum of \$ or so
14 much thereof as may be necessary for fiscal year 2023-2024 and
15 the same sum or so much thereof as may be necessary for fiscal
16 year 2024-2025 for the establishment of full-time
17 equivalent (FTE) positions (\$) and for
18 additional resources necessary to accommodate telehealth
19 examinations of defendants pursuant to section 2 of this Act.

20 The sums appropriated shall be expended by the department
21 of health for the purposes of this part.

1 SECTION 9. There is appropriated out of the general
2 revenues of the State of Hawaii the sum of \$ or so
3 much thereof as may be necessary for fiscal year 2023-2024 and
4 the same sum or so much thereof as may be necessary for fiscal
5 year 2024-2025 for the establishment of full-time
6 equivalent (FTE) positions (\$) and for
7 additional resources necessary to accommodate telehealth
8 examinations of defendants pursuant to section 2 of this Act.

9 The sums appropriated shall be expended by the department
10 of public safety for the purposes of this part.

11 SECTION 10. There is appropriated out of the general
12 revenues of the State of Hawaii the sum of \$ or so
13 much thereof as may be necessary for fiscal year 2023-2024 and
14 the same sum or so much thereof as may be necessary for fiscal
15 year 2024-2025 for the establishment of full-time
16 equivalent (FTE) positions (\$) and for
17 additional resources necessary to accommodate telehealth
18 examinations of defendants pursuant to section 2 of this Act.

19 The sums appropriated shall be expended by the judiciary
20 for the purposes of this part.

21

1 PART II

2 SECTION 11. The legislature finds that other
3 jurisdictions, such as Miami-Dade County in Florida, have
4 implemented successful post-booking jail diversion programs to
5 divert defendants with serious mental illnesses away from the
6 criminal justice system and into community-based treatment and
7 support services. Treatment outcomes improve when participation
8 in post-booking jail diversion programs is based on the
9 defendants' agreement, and successful post-booking programs
10 require coordination and cooperation among stakeholders.

11 Recently, certain Hawai'i stakeholders entered into
12 agreements establishing procedures for post-booking jail
13 diversion programs for district and circuit court in the first
14 judicial circuit that are based on the Miami-Dade model. These
15 agreements were signed by representatives from the Department of
16 the Prosecuting Attorney for the City and County of Honolulu,
17 the Office of the Public Defender for the State of Hawai'i, the
18 Hawai'i State Department of Health, and the Hawai'i State
19 Judiciary. Collectively, the agreements apply to defendants
20 charged with non-violent misdemeanors and promoting a dangerous
21 drug in the third degree, as approved by the prosecution, and
22 other charges the parties agree to on a case-by-case basis. The

1 agreements establish procedures for screening and assessing
2 defendants for serious mental illness, determining whether
3 defendants qualify for involuntary hospitalization, entry of
4 defendants into diversion programs for treatment, dismissal of
5 the charge if the defendant complies with the diversion plan,
6 and regular meetings among stakeholders.

7 The purpose of this part is to require the judiciary, in
8 consultation with other stakeholders, to submit reports to the
9 legislature to permit it to monitor and evaluate the
10 effectiveness of the above-described agreements.

11 Section 12. At least twenty days prior to the convening of
12 the regular sessions of 2024, 2025, and 2026, the judiciary, in
13 consultation with the prosecuting attorney of the city and
14 county of Honolulu, the state public defender, and the
15 department of health, shall submit to the legislature a report
16 on the progress and effectiveness of the agreements establishing
17 procedures for post-booking jail diversion programs in the first
18 circuit described in section 11 of this Act. Each report shall
19 include:

- 20 (1) The status of the programs;
- 21 (2) The number of persons referred to the programs during
22 the reporting period;

1 factor that has been previously established in the existing
2 order for treatment.

3 SECTION 14. Section 334-127, Hawaii Revised Statutes, is
4 amended by amending subsection (b) to read as follows:

5 "(b) If after hearing all relevant evidence, including the
6 results of any diagnostic examination ordered by the family
7 court, the family court finds that the criteria for assisted
8 community treatment under section 334-121(1) have been met
9 beyond a reasonable doubt and that the criteria under section
10 334-121(2) to 334-121(4) have been met by clear and convincing
11 evidence, the family court shall order the subject to obtain
12 assisted community treatment for a period of no more than [~~one~~
13 year.] two years. The written treatment plan submitted pursuant
14 to section 334-126(g) shall be attached to the order and made a
15 part of the order.

16 If the family court finds by clear and convincing evidence
17 that the beneficial mental and physical effects of recommended
18 medication outweigh the detrimental mental and physical effects,
19 if any, the order may authorize types or classes of medication
20 to be included in treatment at the discretion of the treating
21 psychiatrist or advanced practice registered nurse with
22 prescriptive authority and who holds an accredited national

1 certification in an advanced practice registered nurse
2 psychiatric specialization.

3 The court order shall also state who should receive notice
4 of intent to discharge early in the event that the treating
5 psychiatrist or advanced practice registered nurse with
6 prescriptive authority and who holds an accredited national
7 certification in an advanced practice registered nurse
8 psychiatric specialization determines, [~~prior to~~] before the end
9 of the court ordered period of treatment, that the subject
10 should be discharged early from assisted community treatment.

11 Notice of the order shall be provided to those persons
12 entitled to notice pursuant to section 334-125."

13 SECTION 15. Section 334-130, Hawaii Revised Statutes, is
14 amended by amending subsection (b) to read as follows:

15 "(b) A subject of assisted community treatment is
16 automatically and fully discharged at the end of the family
17 court ordered period of treatment, a period of [~~not~~] no more
18 than [~~one year,~~] two years, unless a new family court order has
19 been obtained as provided hereinbelow."

20 SECTION 16. Section 334-133, Hawaii Revised Statutes, is
21 amended by amending subsections (a) and (b) to read as follows:

1 "(a) Before the expiration of the period of assisted
2 community treatment ordered by the family court, any interested
3 party may file a petition with the family court for an order of
4 continued assisted community treatment. The petition shall be
5 filed, and unless the court determines the existence of a
6 guardian, a guardian ad litem appointed, and notice provided in
7 the same manner as under sections 334-123 and 334-125[-];
8 provided that the petition shall be accompanied by a declaration
9 of the treating psychiatrist or advanced practice registered
10 nurse specifying which of the criteria set forth in section
11 334-121 are unchanged from the date of the existing order for
12 assisted community treatment.

13 (b) The family court shall appoint a guardian ad litem,
14 unless there is an existing guardian, hold a hearing on the
15 petition, and make its decision in the same manner as provided
16 under sections 334-123 to 334-127[-]; provided that at the
17 hearing and in rendering its decision, the court need not
18 consider or make any finding as to any unchanged factor that has
19 been previously established in the existing order for assisted
20 community treatment. The family court may order the continued
21 assisted community treatment for no more than [~~one year~~] two
22 years after the date of the hearing pursuant to this section if

1 the court finds that the criteria for assisted community
2 treatment continue to exist and are likely to continue beyond
3 one hundred eighty days."

4 PART IV

5 SECTION 17. The purpose of this part is to authorize
6 courts to require a probation violator to undergo a mental
7 health evaluation and treatment program as a condition of
8 continued probation whenever there is reason to believe that the
9 probation violation is associated with a mental disease,
10 disorder, or defect of the defendant.

11 SECTION 18. Section 706-625, Hawaii Revised Statutes, is
12 amended to read as follows:

13 **"§706-625 Revocation, modification of probation**
14 **conditions.** (1) The court, on application of a probation
15 officer, the prosecuting attorney, the defendant, or on its own
16 motion, after a hearing, may revoke probation except as provided
17 in ~~[subsection]~~ subsections (6) and (7), reduce or enlarge the
18 conditions of a sentence of probation, pursuant to the
19 provisions applicable to the initial setting of the conditions
20 and the provisions of section 706-627.

21 (2) The prosecuting attorney, the defendant's probation
22 officer, and the defendant shall be notified by the movant in

1 writing of the time, place, and date of any such hearing, and of
2 the grounds upon which action under this section is proposed.

3 The prosecuting attorney, the defendant's probation officer, and
4 the defendant may appear in the hearing to oppose or support the
5 application, and may submit evidence for the court's
6 consideration. The defendant shall have the right to be
7 represented by counsel. For purposes of this [~~section~~]
8 subsection, the court shall not be bound by the Hawaii rules of
9 evidence, except for the rules pertaining to privileges.

10 (3) The court shall revoke probation if the defendant has
11 inexcusably failed to comply with a substantial requirement
12 imposed as a condition of the order or has been convicted of a
13 felony. The court may revoke the suspension of sentence or
14 probation if the defendant has been convicted of another crime
15 other than a felony.

16 (4) The court may modify the requirements imposed on the
17 defendant or impose further requirements, if it finds that such
18 action will assist the defendant in leading a law-abiding life.

19 (5) When the court revokes probation, it may impose on the
20 defendant any sentence that might have been imposed originally
21 for the crime of which the defendant was convicted.

1 ~~[(6) As used in this section, "conviction" means that a~~
2 ~~judgment has been pronounced upon the verdict.~~

3 ~~(7)]~~ (6) The court may require a defendant to undergo and
4 complete a substance abuse treatment program when the defendant
5 has committed a violation of the terms and conditions of
6 probation involving possession or use, not including to
7 distribute or manufacture as defined in section 712-1240, of any
8 dangerous drug, detrimental drug, harmful drug, intoxicating
9 compound, marijuana, or marijuana concentrate, as defined in
10 section 712-1240, unlawful methamphetamine trafficking as
11 provided in section 712-1240.6, or involving possession or use
12 of drug paraphernalia under section 329-43.5. If the defendant
13 fails to complete the substance abuse treatment program or the
14 court determines that the defendant cannot benefit from any
15 other suitable substance abuse treatment program, the defendant
16 shall be subject to revocation of probation and incarceration.
17 The court may require the defendant to:

18 (a) Be assessed by a certified substance abuse counselor
19 for substance abuse dependency or abuse under the
20 applicable Diagnostic and Statistical Manual and
21 Addiction Severity Index;

1 (b) Present a proposal to receive substance abuse
2 treatment in accordance with the treatment plan
3 prepared by a certified substance abuse counselor
4 through a substance abuse treatment program that
5 includes an identified source of payment for the
6 treatment program;

7 (c) Contribute to the cost of the substance abuse
8 treatment program; and

9 (d) Comply with any other terms and conditions of
10 probation.

11 ~~[As used in this subsection, "substance abuse treatment~~
12 ~~program" means drug or substance abuse treatment services~~
13 ~~provided outside a correctional facility by a public, private,~~
14 ~~or nonprofit entity that specializes in treating persons who are~~
15 ~~diagnosed with substance abuse or dependency and preferably~~
16 ~~employs licensed professionals or certified substance abuse~~
17 ~~counselors.~~

18 ~~Nothing in this subsection shall be construed to give rise~~
19 ~~to a cause of action against the State, a state employee, or a~~
20 ~~treatment provider.]~~

21 (7) As a condition of continued probation, the court may
22 require a defendant to undergo a mental health evaluation and

1 treatment program when the defendant has committed a violation
2 of the terms and conditions of probation and there is reason to
3 believe that the violation is associated with a mental disease,
4 disorder, or defect of the defendant. The court may require the
5 defendant to:

6 (a) Be assessed for a mental disease, disorder, or defect
7 by a psychiatrist or psychologist, who shall prepare
8 an appropriate treatment plan;

9 (b) Present a proposal to receive treatment in accordance
10 with the plan prepared pursuant to paragraph (a)
11 through a mental health treatment program that
12 includes an identified source of payment for the
13 treatment program, as applicable;

14 (c) Contribute to the cost of the treatment program, as
15 applicable; and

16 (d) Comply with any other terms and conditions of
17 probation.

18 If the defendant fails to complete the treatment program or
19 the court determines that the defendant cannot benefit from any
20 other suitable treatment program, the defendant may be subject
21 to revocation of probation and incarceration.

22 (8) For the purposes of this section:

1 substance use disorder crisis, including a dedicated first
2 responder drop-off area for potential clients.

3 SECTION 20. Chapter 334, Hawaii Revised Statutes, is
4 amended by adding a new section to part I to be appropriately
5 designated and to read as follows:

6 "§334- Behavioral health crisis centers. (a) Pursuant
7 to the authority and functions established under sections
8 334-2.5(a)(3)(B) and 334-3(a)(5), the director shall establish
9 or contract with behavioral health crisis centers in each county
10 of the State to provide care, diagnosis, or treatment for
11 persons experiencing a mental illness or substance use disorder
12 crisis.

13 (b) Each behavioral health crisis center established or
14 contracted with pursuant to this section shall:

15 (1) Be designed to:

16 (A) Address mental health and substance use crisis
17 issues; and

18 (B) Screen, assess, admit for stabilization, and
19 redirect a client to ongoing care in the most
20 appropriate and least restrictive community
21 setting available, consistent with the client's
22 needs;

- 1 (2) Provide services twenty-four hours a day, seven days a
2 week;
- 3 (3) Accept all walk-ins and referrals and provide services
4 regardless of the client's ability to pay, subject to
5 subsection (c);
- 6 (4) Offer a dedicated first responder drop-off area;
- 7 (5) Not require medical clearance before admission of the
8 client but rather provide assessment and support for
9 the client's medical stability while at the crisis
10 center;
- 11 (6) Have the capacity to assess physical health needs and
12 deliver care for most minor physical health
13 challenges;
- 14 (7) Be staffed at all times with a multidisciplinary team
15 capable of meeting the needs of clients experiencing
16 all levels of mental health or substance use crisis,
17 including:
- 18 (A) Psychiatrists or psychiatric nurse practitioners;
19 (B) Nurses;
- 20 (C) Licensed or credentialed clinicians capable of
21 completing assessments of the client; and

1 (D) Peers with lived experience similar to the
2 experience of the client; and

3 (8) Screen clients for suicide or violence risk and
4 complete more comprehensive risk assessments and
5 planning when clinically indicated.

6 (c) No person shall be denied services or receive delayed
7 services at a behavioral health crisis center operating under
8 this section because of inability to pay; provided that, subject
9 to section 334-6, crisis centers shall make every reasonable
10 effort to collect appropriate reimbursement for the cost of
11 providing services to persons able to pay for services,
12 including insurance or third-party payments.

13 (d) The director shall adopt rules pursuant to section
14 334-9 to implement this section, including rules specifying
15 standards for behavioral health crisis center eligibility
16 criteria, clinical procedures, staffing requirements, and
17 operational, administrative, and financing requirements."

18 SECTION 21. There is appropriated out of the general
19 revenues of the State of Hawaii the sum of \$ or so
20 much thereof as may be necessary for fiscal year 2023-2024 and
21 the same sum or so much thereof as may be necessary for fiscal
22 year 2024-2025 for the director of health to establish or

1 contract with behavioral health crisis centers pursuant to this
2 part.

3 The sums appropriated shall be expended by the department
4 of health for the purposes of this part.

5 PART VI

6 SECTION 22. The purpose of this part is to restore funding
7 for probation officer services for the mental health court.

8 SECTION 23. There is appropriated out of the general
9 revenues of the State of Hawaii the sum of \$ or so
10 much thereof as may be necessary for fiscal year 2023-2024 and
11 the same sum or so much thereof as may be necessary for fiscal
12 year 2024-2025 to restore funding for probation officer services
13 for the mental health court.

14 The sums appropriated shall be expended by the judiciary
15 for the purposes of this part.

16 PART VII

17 SECTION 24. This Act is amended as follows:

18 (1) By substituting the phrase "director of corrections
19 and rehabilitation", or similar term, wherever the
20 phrase "director of public safety", or similar term,
21 appears; and

1 (2) By substituting the phrase "department of corrections
2 and rehabilitation", or similar term, wherever the
3 phrase "department of public safety", or similar term,
4 appears.

5 SECTION 25. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 26. This Act shall take effect on July 1, 3023;
8 provided that section 24 of this Act shall take effect on
9 January 1, 3024.

10

H.B. NO. 1442
H.D. 2
Proposed
S.D. 1

Report Title:

Mental Health Treatment Diversion; Probation Violators;
Behavioral Health Crisis Centers; Appropriations

Description:

Amends and provides for monitoring of criminal justice diversion programs. Amends 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 DOH to contract with behavioral health crisis centers. Appropriates funds. Effective 7/1/3023. (SD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

STATE OF HAWAI‘I
OFFICE OF THE PUBLIC DEFENDER

**Testimony of the Office of the Public Defender,
State of Hawai‘i to the Senate Committee on Judiciary
and Committee on Health and Human Services**

March 17, 2023

H.B. No. 1442 HD2 (Proposed SD1): RELATING TO REHABILITATION

Chair Rhoads, Chair San Buenaventura, Vice Chair Gabbard, Vice Chair Aquino,
and Members of the Committees:

The Office of the Public Defender (OPD) supports the intent of H.B. No. 1442 HD2; however, the OPD respectfully request this Committee to adopt Proposed SD1.

Proposed SD1 will continue to provide a mechanism for nonviolent petty misdemeanants, whose fitness to proceed in criminal proceedings remains an outstanding issue, to be automatically screened for involuntary hospitalization or assisted community treatment. However, Proposed SD1 will no longer expand the current criminal justice diversion program to include nonviolent misdemeanants and defendants charged with promoting a dangerous drug in the third degree.

Rather than seeking expansion of the current diversion program under HD2, the OPD, the Department of the Prosecuting Attorney for the City and County of Honolulu, the OPD, the Department of Health (DOH), and the Judiciary seek to establish a new post-booking jail diversion program for district and circuit court in the first judicial circuit that are based on the Miami-Dade County, Florida model (Miami Model).

Miami-Dade County has implemented a successful post-booking jail diversion program to divert defendants with serious mental illnesses away from the criminal justice system and into community-based treatment and support services. Since its inception in 2000, the program has expanded to serve defendants that have been arrested for less serious felonies and other charges, as determined appropriate. The Miami Model has shown to be both successful and cost-effective in diverting people with serious mental illness out of the criminal justice system and into community-based treatment and support services. Miami-Dade County has seen a significant

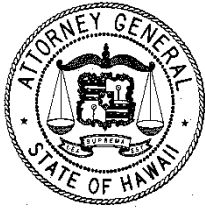
reduction of homelessness and recidivism to the criminal justice system. Once engaged in treatment and community services, the individuals have achieved successful recovery and community integration.

In February 2023, representatives from the OPD, the Honolulu Prosecutor's Office, DOH, and the Judiciary traveled to Florida and met with the Miami Model stakeholders to determine a path forward for those with serious mental illnesses and co-occurring substance abuse disorders in the criminal justice system. The goal of the trip was to develop a program similar to the Miami Model for the first judicial circuit.

Based on the Miami Model, the OPD and the other Hawai'i stakeholders entered into agreements establishing procedures for post-booking jail diversion programs for district and circuit court in the first judicial circuit. Collectively, the agreements apply to defendants charged with non-violent misdemeanors and promoting a dangerous drug in the third degree, as approved by the prosecution, and other charges the parties agree to on a case-by-case basis. The agreements establish procedures for screening and assessing defendants for serious mental illness, determining whether defendants qualify for involuntary hospitalization, entry of defendants into diversion programs for treatment, dismissal of the charge if the defendant complies with the diversion plan, and regular meetings among stakeholders.

The OPD and the other stakeholders are committed to this post-booking diversion program. We seek to improve the assessment, referral, diversion, and care coordination among individuals with serious mental illness and possible co-occurring substance abuse disorders that are reentering the community from the criminal justice system. Our hope is that this post-booking diversion program will reduce the cycle of arrests and incarceration for people who need behavioral health treatment and community support that will promote recovery and community integration.

Thank you for the opportunity to testify on this measure.



**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. 2, RELATING TO REHABILITATION.

BEFORE THE:

SENATE COMMITTEES ON JUDICIARY AND ON HEALTH AND HUMAN SERVICES

DATE: Friday, March 17, 2023

TIME: 9:30 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Ian T. Tsuda, Deputy Attorney General

Chairs Rhoads and San Buenaventura and Members of the Committees:

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, known as "Act 26."

The Department has expressed several concerns regarding this version of the bill, House Draft 2 (H.D. 2), which we presented in our testimony to the House Committee on Finance on February 23, 2023. As the bill remains unchanged, the Department maintains its concerns and incorporates them by way of reference regarding H.D. 2. However, the Department understands that there is a proposed Senate Draft 1 (S.D. 1) drafted by the Judiciary that would address many of our criminal justice concerns with the bill. We support those amendments. If the Judiciary's proposed S.D. 1 is adopted, however, we still have concerns about the following provisions from the H.D. 2 that remain in the Judiciary's proposed S.D. 1. (All the page and line numbers cited below are in reference to the H.D. 2.)

First, the Department has concerns with the provisions of the H.D. 2 that allow a defendant to be held at an institution pending a decision on a petition for ACT. (Page 13, line 8, through page 14, line 2.) This outcome stems from the requirement that a

defendant's clinical team assess whether the ACT criteria is met when criminal proceedings have been suspended due to outstanding issues of fitness. If the ACT criteria are met, a qualified member of the team will provide an ACT certificate and the Department of Health (DOH) must file an ACT petition if the defendant continues to refuse to accept recommended mental health services. This can occur under circumstances where the defendant is either committed to the custody of the DOH or is on conditional release. Regardless of their location or placement, this section permits the defendant to be "held at the appropriate institution" pending a decision on the ACT petition.

If a defendant is not otherwise committed under this section, there must exist clear and convincing evidence that the individual is mentally ill and dangerous prior to commitment. See *In re Doe*, 102 Hawai'i 528, 548-549, 78 P.3d 341, 361-362 (Haw. Ct. App. 2003). Normally this is done through the civil commitment process under chapter 334, Hawaii Revised Statutes (HRS). As a comparison, section 334-59(e), HRS, permits the holding of a patient in an institution pending a hearing on a petition for involuntary hospitalization that alleges mental illness and dangerousness. This comes 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.

To address this, we recommend amending the amendments to section 704-421(3)(b) and (c), HRS, in section 5, on page 13, lines 8-21, through page 14, line 2, as follows:

~~[The defendant may be held at the appropriate institution pending the court hearing on the petition for assisted community treatment. If the petition is granted, the defendant shall be released for treatment with the designated mental health program once the assisted community treatment order is issued and the initial treatment consistent with the assisted community treatment plan is administered to the defendant; or~~

~~(c) If the petition for assisted community treatment is not granted or the clinical team determines that an assisted community treatment order is not appropriate, the defendant shall be discharged from the appropriate~~

~~institution and referred to an appropriate outpatient mental health program for continued support, care, and treatment.]~~

(c) A defendant committed to the custody of the director of health shall remain in custody, when a petition for assisted community treatment is filed, until the family court issues a decision on the petition.

Second, the Department is concerned that reducing 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, will adversely affect public safety. The Department recommends that the amendments to section 710-1021(2), HRS, in section 6, on page 14, lines 9-11, be removed.

Finally, the Department is concerned that the amendments to section 334-133, HRS, which permit the family court to continue an existing ACT order without considering or making any finding of a previously established factor would leave these orders susceptible to legal challenge. These amendments contradict the ACT hearing requirements under section 334-127, HRS, by allowing the court to issue a new order without any supportive findings. This could trigger due process concerns as the new ACT order would be heavily reliant upon findings that were made 1 year prior, or 2 years, if the other amendments in this bill remain. Any benefits these amendments would have on expediting the ACT repetition process would not outweigh the risk of a challenge on due process grounds or for conflict with section 334-127, HRS. Thus, the Department recommends that the amendments to section 334-133, HRS, in section 15 on page 19, lines 15-19, and page 20, lines 2-6, be removed.

The Department respectfully requests that the Committees consider these recommendations.

Thank you for the opportunity to testify.



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

TO: The Honorable Karl Rhoads, Chair
The Honorable Mike Gabbard, Vice Chair
Senate Committee on Judiciary

The Honorable Joy A. San Buenaventura, Chair
The Honorable Henry J.C. Aquino, Vice Chair
Senate Committee on Health and Human Services

FROM: Mark Patterson, Chair
Hawaii Correctional System Oversight Commission

SUBJECT: House Bill 1442, House Draft 2, Relating to Rehabilitation
Hearing: Friday, March 17, 2023; 9:30 a.m.
State Capitol, Room 016

Chair Rhoads, Chair San Buenaventura, Vice Chair Mike Gabbard, Vice Chair Aquino, and Members of the Committee:

The Hawaii Correctional System Oversight Commission (HCSOC) **supports** House Bill 1442, House Draft 2, 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.

At previous hearings on this measure, the Department of Health (DOH) requested additional positions for court-based clinicians, coordination, monitoring, and funding for contracted sites for additional evaluations/assessments. We support DOH in their request.

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.

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 KARL RHOADS, CHAIR
SENATE COMMITTEE ON JUDICIARY**

**THE HONORABLE JOY SAN BUENAVENTURA, CHAIR
SENATE COMMITTEE ON HEALTH AND HUMAN SERVICES**

**Thirty-Second State Legislature
Regular Session of 2023
State of Hawai'i**

March 17, 2023

RE: H.B. 1442, H.D. 2; RELATING TO REHABILITATION.

Chair Rhoads, Chair San Buenaventura, Vice-Chair Gabbard, Vice-Chair Aquino, members of the Senate Committee on Judiciary, and members of the Senate Committee on Health and Human Services, 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. 2, 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. Due to issues that had arisen in the implementation of Act 26, a number of Hawai'i stakeholders – from the Judiciary, Department of Health, Department of the Public Defender and Honolulu's Department of the Prosecuting Attorney – recently traveled to Miami, Florida, to participate in a workshop about a successful post-booking jail diversion program that has been used there for many years ("The Miami Model"). Following intensive discussions between these stakeholders, a memorandum of agreement was prepared and signed, to jointly create and implement a pilot program to assist eligible individuals with mental health issues, who are charged with non-violent misdemeanors or promoting a dangerous drug in the third degree.

Because the agreed-upon pilot program is specifically intended to address the same population that would have been added to the existing "Act 26" (2019) program (see Sections 4 and 5 of H.B. 1442, H.D. 2), the Department respectfully **requests 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 Act 26 is currently lacking.

Based on information compiled by the Department, it does not appear that Act 26 has been very effective in stabilizing or treating the mental health conditions of its participants. Ideally, 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. Of the 103 defendants who qualified for Act 26 (between September 15, 2020 and November 7, 2022):

- 16 - regained fitness within the 7-day assessment period (some of whom appear to have recovered from substance-induced issues);
- 3 - 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);
- 61 - 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, with varying results (5 individuals regained fitness one time, 1 individual regained fitness two—of four—times, the other 17 did not regain fitness any of the times they participated in Act 26).

Notably, the one thing that is consistent among Act 26 participants, is that *nearly all* of the 103 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 subsequent 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 complainants, and felt that the matter had been resolved, without needing any follow-up). However, if these individuals continue to have mental health issues 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. 2, 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. 4, through p. 14, ln. 2). After a reasonable amount of time with the new procedures—solely involving defendants charged with non-violent petty misdemeanors, under the existing eligibility requirements for Act 26—the program could then be re-evaluated, 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, only 9 of the 103 participants were held at Oahu Community Correctional Center, due to other pending charges. As 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.

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. However, we **strongly recommend that the 7-day mental health assessment be extended to 30 days**—in lieu of the 14 days proposed on page 10, line 1 of the bill—to provide more time 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 we believe 30 days may present a more suitable compromise between speed and effectiveness. In that time, our hope is that the additional mechanisms proposed by H.B. 1442, H.D. 2 (*see* page 9, line 4, through page 14, line 2) will be successful in providing more effective avenues to treatment. Nevertheless, 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 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.**

With regards to the other provisions of H.B. 1442, H.D.2, 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. **If the concern is that Act 26 participants may abscond from outpatient facilities (once outpatient facilities are permitted, following the enactment of H.B. 1442, H.D. 2), the Department would strongly suggest that all stakeholders again meet to prepare a fair and practical course of action to address those incidents on a case-by-case basis, rather than making such a drastic change in statute with a blanket exception for all Act 26 participants.**
- 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. 2 would only require defendant’s consent, not prosecution’s (*see* p. 22, Ins. 2-4).

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

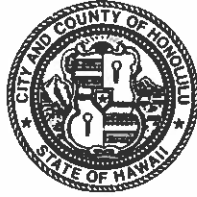
As a final suggestion for this bill, the Department **strongly suggests that Hawaii’s assisted community treatment program** (“A.C.T.” *see* HRS §334-121 through §334-134) **be expanded to allow petitions to be filed at any District Court.** One of the key components of the “Miami model” mentioned above, is a robust and accessible program that provides community-based mental health treatment to those who need it, somewhat akin to A.C.T. While we understand A.C.T. has been limited to Family Court since at least 1984, the Department believes that Hawaii’s need and desire for this program—and need for accessibility to this program—have increased tremendously since 1984. As entry points to mental health treatment in Hawaii continue to grow and expand, we believe it only makes

sense to provide increased accessibility for any interested parties who wish to file petitions, so long as the same safeguards and due process protections are maintained.

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. 2, but also supports in part.** Thank you for the opportunity to testify on this matter.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
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RICK BLANGIARDI
MAYOR

ARTHUR J. LOGAN
CHIEF

KEITH K. HORIKAWA
RADE K. VANIC
DEPUTY CHIEFS

OUR REFERENCE **MH-SK**

March 17, 2023

The Honorable Karl Rhoads, Chair
and Members
Committee on Judiciary
The Honorable Joy A. San Buenaventura, Chair
and Members
Committee on Health and Human Services
State Senate
415 South Beretania Street, Room 016
Honolulu, Hawaii 96813

Dear Chairs Rhoads and San Buenaventura and Members:

Subject: House Bill No. 1442, H.D. 2, Relating to Rehabilitation

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

The HPD supports House Bill No. 1442, H.D. 2, 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 Karl Rhoads, Chair
and Members
The Honorable Joy A. San Buenaventura, Chair
and Members
Page 2
March 17, 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, H.D. 2, Relating to Rehabilitation.

Thank you for the opportunity to testify.

Sincerely,



Manuel Hernandez, Major
Training Division

APPROVED:



Arthur J. Logan
Chief of Police



HB1442 HD2 Diversion and ACT

COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair

Senator Mike Gabbard, Vice Chair

COMMITTEE ON HEALTH AND HUMAN SERVICES

Senator Joy A. San Buenaventura, Chair

Senator Henry J.C. Aquino, Vice Chair

Friday Mar 17, 2023, 9:30 Room 016

Hawaii Substance Abuse Coalition Strongly Supports HB1442 HD2:

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 questions

TESTIMONY OF ELLEN GODBEY CARSON ON HB 1442, HD2

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, HD2 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. This bill 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, HD2 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, Hawai
March 15, 2023