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

11 Recently, certain Hawaii 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 judiciary,
16 department of health, office of the public defender, and
17 department of the prosecuting attorney of the city and county of



1 Honolulu. Collectively, the agreements apply to defendants
2 charged with non-violent misdemeanors and promoting a dangerous
3 drug in the third degree, as approved by the prosecution, and
4 other charges the parties agree to on a case-by-case basis. The
5 agreements establish procedures for screening and assessing
6 defendants for serious mental illness, determining whether
7 defendants qualify for involuntary hospitalization, entry of
8 defendants into diversion programs for treatment, dismissal of
9 the charge if the defendant complies with the diversion plan,
10 and regular meetings among stakeholders.

11 The purpose of this part is to require the judiciary, in
12 consultation with other stakeholders, to submit reports to the
13 legislature to monitor and evaluate the effectiveness of the
14 agreements establishing procedures for post-booking jail
15 diversion programs.

16 SECTION 2. At least forty days prior to the convening of
17 the regular sessions of 2025, 2026, and 2027 the judiciary, in
18 consultation with the department of health, state public
19 defender, and prosecuting attorney of the city and county of
20 Honolulu, shall submit to the legislature a report on the
21 progress and effectiveness of the agreements establishing



1 procedures for post-booking jail diversion programs in the first
2 circuit described in section 1 of this Act. Each report shall
3 include:

- 4 (1) The status of the programs;
- 5 (2) The number of persons referred to the programs during
6 the reporting period;
- 7 (3) The number of persons accepted into the programs
8 during the reporting period;
- 9 (4) A breakdown of program participants by types of
10 qualifying criminal charges;
- 11 (5) The number of participants whose criminal charges were
12 dismissed upon completion of the programs;
- 13 (6) A quantification and discussion of other relevant
14 program measures, outcomes, and procedures; and
- 15 (7) Any other findings and recommendations, including ways
16 to improve the programs and proposed legislation.

17 The report shall also include the comments and recommendations
18 of the department of health, state public defender, and
19 prosecuting attorney of the city and county of Honolulu.

20 SECTION 3. Beginning September 1, 2024, the judiciary, in
21 consultation with the department of health, state public



1 defender, and prosecuting attorney of the city and county of
2 Honolulu, state public defender, and department of health, shall
3 submit to the legislature a monthly report on the progress to
4 date of the post-booking jail diversion programs in the first
5 circuit described in section 1 of this Act.

6 PART II

7 SECTION 4. The purpose of this part is to enable the
8 examination of defendants through telehealth.

9 SECTION 5. Chapter 704, Hawaii Revised Statutes, is
10 amended by adding a new section to be appropriately designated
11 and to read as follows:

12 "§704- Examination of defendants via telehealth. (1)
13 The director of health may prescribe by rule the requirements,
14 terms, conditions, and circumstances under which examinations of
15 defendants conducted pursuant to this chapter may be
16 administered via telehealth.

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

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



1 (b) The director of corrections and rehabilitation, in the
2 case of any facility under the jurisdiction of the
3 director of corrections and rehabilitation; and

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

11 (3) The director of corrections and rehabilitation shall
12 establish procedures allowing for the transfer of defendants to
13 a community mental health center for the purposes of receiving
14 telehealth services in cases where a facility under the
15 jurisdiction of the director of corrections and rehabilitation
16 lacks appropriate telehealth resources; provided that these
17 procedures shall comply with any rules prescribed by the
18 director of health pursuant to subsection (1).

19 (4) For the purposes of this section, "telehealth" means
20 health care services provided through telecommunications



1 technology by a health care professional who is at a location
2 other than where the defendant is located."

3 PART III

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

9 SECTION 7. Section 704-404, Hawaii Revised Statutes, is
10 amended by amending subsection (2) to read as follows:

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

13 (a) In cases where the defendant is charged with a petty
14 misdemeanor not involving violence or attempted
15 violence, if a court-based certified examiner is
16 available, the court shall appoint the court-based
17 certified examiner to examine and provide an expedited
18 report solely upon the issue of the defendant's
19 capacity to understand the proceedings against the
20 defendant and defendant's ability to assist in the
21 defendant's own defense. The court-based certified



1 examiner shall file the examiner's report with the
2 court within two days of the appointment of the
3 examiner, or as soon thereafter is practicable. A
4 hearing shall be held to determine if the defendant is
5 fit to proceed within two days of the filing of the
6 report, or as soon thereafter as is practicable[?].
7 This paragraph shall not apply to any case under the
8 jurisdiction of the family court unless the presiding
9 judge orders otherwise;

10 (b) In all other nonfelony cases, and where a court-based
11 certified examiner is not available in cases under
12 paragraph (a), the court shall appoint one qualified
13 examiner to examine and report upon the defendant's
14 fitness to proceed. The court may appoint as the
15 examiner either a psychiatrist or a licensed
16 psychologist designated by the director of health from
17 within the department of health; and

18 (c) In felony cases, the court shall appoint three
19 qualified examiners to examine and report upon the
20 defendant's fitness to proceed. The court shall
21 appoint as examiners psychiatrists, licensed



1 psychologists, or qualified physicians; provided that
2 one of the three examiners shall be a psychiatrist or
3 licensed psychologist designated by the director of
4 health from within the department of health.
5 All examiners shall be appointed from a list of certified
6 examiners as determined by the department of health. The court,
7 in appropriate circumstances, may appoint an additional examiner
8 or examiners. The examination may be conducted while the
9 defendant is in custody or on release or, in the court's
10 discretion, when necessary the court may order the defendant to
11 be committed to a hospital or other suitable facility for the
12 purpose of the examination for a period not exceeding thirty
13 days, or a longer period as the court determines to be necessary
14 for the purpose. The court may direct that one or more
15 qualified physicians or psychologists retained by the defendant
16 be permitted to witness the examination. As used in this
17 section, the term "licensed psychologist" includes psychologists
18 exempted from licensure by section 465-3(a)(3) and "qualified
19 physician" means a physician qualified by the court for the
20 specific evaluation ordered."



1 SECTION 8. 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



1 placement in a group home, residence, or other facility
2 prescribed by the director of health for further assessment by a
3 clinical team pursuant to subsection (3).

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

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

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



1 or assisted community treatment under section 334-121;

2 and

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

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

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

16 (a) If the defendant's clinical team determines that the
17 defendant meets the criteria for involuntary
18 hospitalization set forth in section 334-60.2, the
19 director of health, within seven days of the clinical
20 team's determination, shall file with the family court
21 a petition for involuntary hospitalization pursuant to



1 section 334-60.3. If the petition is granted, the
2 defendant shall remain hospitalized for a period of
3 time as provided by section 334-60.6; or
4 (b) If the defendant's clinical team determines that the
5 defendant does not meet the criteria for involuntary
6 hospitalization, or the court denies the petition for
7 involuntary hospitalization, the defendant's clinical
8 team shall determine whether an assisted community
9 treatment plan is appropriate pursuant to part VIII of
10 chapter 334. If the clinical team determines that an
11 assisted community treatment plan is appropriate, the
12 psychiatrist or advanced practice registered nurse
13 from the clinical team shall prepare the certificate
14 for assisted community treatment specified by section
15 334-123, including a written treatment plan for the
16 provision of mental health services to the defendant.
17 The clinical team shall identify a community mental
18 health outpatient program that agrees to provide
19 mental health services to the defendant as the
20 designated mental health program under the assisted
21 community treatment order. The clinical team shall



1 provide the defendant with a copy of the certificate.
2 Within ten days of provision of the certificate to the
3 defendant by the clinical team, the director of health
4 shall file with the family court the assisted
5 community treatment petition described in section 334-
6 123. When a petition for assisted community treatment
7 has been filed for a defendant, the defendant
8 committed to the custody of the director of health
9 shall remain in custody until the family court issues
10 a decision on the petition.

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

14 SECTION 9. Section 710-1021, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§710-1021 Escape in the second degree.** (1) A person
17 commits the offense of escape in the second degree if the person
18 intentionally escapes from a correctional or detention facility
19 or from custody.

20 (2) Escape in the second degree is a class C felony.



1 (3) Notwithstanding subsection (2), if the offense was
2 committed by a person under the custody of the director of
3 health pursuant to section 704-421(1) for a petty misdemeanor
4 not involving violence or attempted violence, it shall be a
5 petty misdemeanor; provided that if the person is arrested for a
6 new felony offense in the course of the escape or during the
7 pendency of the escape, this subsection shall not apply."

8 PART IV

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

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

17 "**§706-625 Revocation, modification of probation**
18 **conditions.** (1) The court, on application of a probation
19 officer, the prosecuting attorney, the defendant, or on its own
20 motion, after a hearing, may revoke probation except as provided
21 in [~~subsection~~] subsections (6) and (7), reduce or enlarge the



1 conditions of a sentence of probation, pursuant to the
2 provisions applicable to the initial setting of the conditions
3 and the provisions of section 706-627.

4 (2) The prosecuting attorney, the defendant's probation
5 officer, and the defendant shall be notified by the movant in
6 writing of the time, place, and date of any such hearing, and of
7 the grounds upon which action under this section is proposed.
8 The prosecuting attorney, the defendant's probation officer, and
9 the defendant may appear in the hearing to oppose or support the
10 application, and may submit evidence for the court's
11 consideration. The defendant shall have the right to be
12 represented by counsel. For purposes of this section the court
13 shall not be bound by the Hawaii rules of evidence, except for
14 the rules pertaining to privileges.

15 (3) The court shall revoke probation if the defendant has
16 inexcusably failed to comply with a substantial requirement
17 imposed as a condition of the order or has been convicted of a
18 felony. The court may revoke the suspension of sentence or
19 probation if the defendant has been convicted of another crime
20 other than a felony.



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

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

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

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



1 shall be subject to revocation of probation and incarceration.

2 The court may require the defendant to:

3 (a) Be assessed by a certified substance abuse counselor
4 for substance abuse dependency or abuse under the
5 applicable Diagnostic and Statistical Manual and
6 Addiction Severity Index;

7 (b) Present a proposal to receive substance abuse
8 treatment in accordance with the treatment plan
9 prepared by a certified substance abuse counselor
10 through a substance abuse treatment program that
11 includes an identified source of payment for the
12 treatment program;

13 (c) Contribute to the cost of the substance abuse
14 treatment program; and

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

17 ~~[As used in this subsection, "substance abuse treatment~~
18 ~~program" means drug or substance abuse treatment services~~
19 ~~provided outside a correctional facility by a public, private,~~
20 ~~or nonprofit entity that specializes in treating persons who are~~
21 ~~diagnosed with substance abuse or dependency and preferably~~



1 ~~employs licensed professionals or certified substance abuse~~
2 ~~counselors.~~

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

6 (7) As a condition of continued probation, the court may
7 require a defendant to undergo a mental health evaluation and
8 treatment program when the defendant has committed a violation
9 of the terms and conditions of probation and there is reason to
10 believe that the violation is associated with a mental disease,
11 disorder, or defect of the defendant. The court may require the
12 defendant to:

13 (a) Be assessed for a mental disease, disorder, or defect
14 by a psychiatrist or psychologist, who shall prepare
15 an appropriate treatment plan;

16 (b) Present a proposal to receive treatment in accordance
17 with the plan prepared pursuant to paragraph (a)
18 through a mental health treatment program that
19 includes an identified source of payment for the
20 treatment program, as applicable;



1 (c) Contribute to the cost of the treatment program, as
2 applicable; and

3 (d) Comply with any other terms and conditions of
4 probation.

5 If the defendant fails to complete the treatment program or
6 the court determines that the defendant cannot benefit from any
7 other suitable treatment program, the defendant may be subject
8 to revocation of probation and incarceration.

9 (8) For the purposes of this section:

10 "Conviction" means that a judgment has been pronounced upon
11 the verdict.

12 "Mental health treatment program" means treatment services
13 addressing a mental disease, disorder, or defect of the
14 defendant, including residential or rehabilitation treatment or
15 any other course or procedure, including diversion into
16 specialized courts.

17 "Substance abuse treatment program" means drug or substance
18 abuse treatment services provided outside a correctional
19 facility by a public, private, or nonprofit entity that
20 specializes in treating persons who are diagnosed with having



1 substance abuse or dependency and preferably employs licensed
2 professionals or certified substance abuse counselors.

3 (9) Nothing in subsection (6) or (7) shall be construed to
4 give rise to a cause of action against the State, a state
5 employee, or a treatment provider."

6 PART V

7 SECTION 12. If any provision of this Act, or the
8 application thereof to any person or circumstance, is held
9 invalid, the invalidity does not affect other provisions or
10 applications of the Act that can be given effect without the
11 invalid provision or application, and to this end the provisions
12 of this Act are severable.

13 SECTION 13. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 14. This Act shall take effect on July 1, 2024.

16

INTRODUCED BY: Alex A. Belletti

JAN 23 2024



H.B. NO. 2628

Report Title:

Post-Booking Jail Diversion Programs; Criminal Justice Diversion Program; Telehealth; Involuntary Hospitalization; Assisted Community Treatment; Probation Violators; Mental Health Treatment

Description:

Requires the Judiciary, in consultation with other stakeholders, to submit monthly and annual reports to the Legislature on the effectiveness of agreements for post-booking jail diversion programs in the first circuit. Amends the criminal justice diversion program to enable examination of defendants via telehealth. Provides a mechanism for the automatic screening of certain nonviolent defendants for involuntary hospitalization or assisted community treatment. Authorizes courts to require certain probation violators to undergo a mental health evaluation and treatment program as a condition of continued probation.

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

