
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 expand the scope
3 of the criminal justice diversion program for nonviolent petty
4 misdemeanants whose fitness to proceed in criminal proceedings
5 remains an outstanding issue, to include nonviolent
6 misdemeanants and defendants charged with promoting a dangerous
7 drug in the third degree. In addition, this part establishes a
8 mechanism for defendants in the diversion program to be
9 automatically screened for involuntary hospitalization or
10 assisted community treatment.

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

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

16 "§704- Examination of defendants via telehealth. (1)

17 The director of health shall prescribe by rule the requirements,



1 terms, conditions, and circumstances under which examinations of
2 defendants conducted pursuant to this chapter may be
3 administered via telehealth.

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

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

8 (b) The director of public safety, in the case of any
9 correctional facility in the State; and

10 (c) The chief justice, in the case of any judiciary
11 facility in the State,

12 shall establish procedures regarding the provision and use of
13 telehealth resources at appropriate facilities. The procedures
14 shall comply with the rules prescribed by the director of health
15 pursuant to subsection (1) and ensure the widest availability of
16 telehealth resources feasible at appropriate facilities.

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



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

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

5 (a) In cases where the defendant is charged with [~~a petty~~
6 ~~misdemeanor not involving violence or attempted~~
7 ~~violence,~~] an offense listed under section 704-421(1),
8 if a court-based certified examiner is available, the
9 court shall appoint the court-based certified examiner
10 to examine and provide an expedited report solely upon
11 the issue of the defendant's capacity to understand
12 the proceedings against the defendant and defendant's
13 ability to assist in the defendant's own defense. The
14 court-based certified examiner shall file the
15 examiner's report with the court within two days of
16 the appointment of the examiner, or as soon thereafter
17 is practicable. A hearing shall be held to determine
18 if the defendant is fit to proceed within two days of
19 the filing of the report, or as soon thereafter as is
20 practicable[+]. This paragraph shall not apply to any



1 case under the jurisdiction of the family court unless
2 the presiding judge orders otherwise;

3 (b) In [~~all other~~] nonfelony cases[7] where the offense
4 charged is not listed under section 704-421(1), and
5 where a court-based certified examiner is not
6 available in cases under paragraph (a), the court
7 shall appoint one qualified examiner to examine and
8 report upon the defendant's fitness to proceed. The
9 court may appoint as the examiner either a
10 psychiatrist or a licensed psychologist designated by
11 the director of health from within the department of
12 health; and

13 (c) In felony cases[7] where the offense charged is not
14 listed in section 704-421(1), the court shall appoint
15 three qualified examiners to examine and report upon
16 the defendant's fitness to proceed. The court shall
17 appoint as examiners psychiatrists, licensed
18 psychologists, or qualified physicians; provided that
19 one of the three examiners shall be a psychiatrist or
20 licensed psychologist designated by the director of
21 health from within the department of health.



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

17 SECTION 4. Section 704-406, Hawaii Revised Statutes, is
18 amended by amending subsection (1) to read as follows:

19 "(1) If the court determines that the defendant lacks
20 fitness to proceed, the proceeding against the defendant shall
21 be suspended, except as provided in sections 704-407 and



1 704-421, and the court shall commit the defendant to the custody
2 of the director of health to be placed in an appropriate
3 institution for detention, assessment, care, and treatment;
4 provided that[÷

5 ~~(a) When the defendant is charged with a petty misdemeanor~~
6 ~~not involving violence or attempted violence, the~~
7 ~~defendant]~~ eligible defendants shall be diverted from
8 the criminal justice system pursuant to section 704-
9 421[; and

10 ~~(b) When the defendant is charged with a misdemeanor not~~
11 ~~involving violence or attempted violence, the~~
12 ~~commitment shall be limited to no longer than one~~
13 ~~hundred twenty days from the date the court determines~~
14 ~~the defendant lacks fitness to proceed].~~

15 If the court is satisfied that the defendant may be released on
16 conditions without danger to the defendant or to another or risk
17 of substantial danger to property of others, the court shall
18 order the defendant's release, which shall continue at the
19 discretion of the court, on conditions the court determines
20 necessary[; ~~provided that the release on conditions of a~~
21 ~~defendant charged with a misdemeanor not involving violence or~~



1 ~~attempted violence shall continue for no longer than one hundred~~
2 ~~twenty days]~~. A copy of all reports filed pursuant to section
3 704-404 shall be attached to the order of commitment or order of
4 release on conditions that is provided to the department of
5 health. When the defendant is committed to the custody of the
6 director of health for detention, assessment, care, and
7 treatment, the county police departments shall provide to the
8 director of health and the defendant copies of all police
9 reports from cases filed against the defendant that have been
10 adjudicated by the acceptance of a plea of guilty or nolo
11 contendere, a finding of guilt, acquittal, acquittal pursuant to
12 section 704-400, or by the entry of a plea of guilty or nolo
13 contendere made pursuant to chapter 853; provided that the
14 disclosure to the director of health and the defendant does not
15 frustrate a legitimate function of the county police
16 departments; provided further that expunged records, records of
17 or pertaining to any adjudication or disposition rendered in the
18 case of a juvenile, or records containing data from the United
19 States National Crime Information Center shall not be provided.
20 The county police departments shall segregate or sanitize from
21 the police reports information that would result in the likely



1 or actual identification of individuals who furnished
2 information in connection with the investigation or who were of
3 investigatory interest. No further disclosure of records shall
4 be made except as provided by law."

5 SECTION 5. Section 704-421, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "[~~§~~§704-421[~~§~~]] [~~Proceedings for defendants charged with~~
8 ~~petty misdemeanors not involving violence or attempted violence;~~
9 ~~criminal]~~ Criminal justice diversion program[-] for certain
10 defendants whose fitness remains an outstanding issue. (1) In

11 cases where the defendant is charged with [a]:

12 (a) A petty misdemeanor or misdemeanor not involving
13 violence or attempted violence[-]; or

14 (b) The offense of promoting a dangerous drug in the third
15 degree under section 712-1243,

16 if, at the hearing held pursuant to section 704-404(2)(a) or at
17 a further hearing held after the appointment of an examiner
18 pursuant to section 704-404(2)(b), the court determines that the
19 defendant is fit to proceed, then the proceedings against the
20 defendant shall resume. In all other cases where fitness
21 remains an outstanding issue, the court shall continue the



1 suspension of the proceedings and either commit the defendant to
2 the custody of the director of health to be placed in a hospital
3 or other suitable facility, including an outpatient facility,
4 for further examination and assessment[-] or, in cases where the
5 defendant was not subject to an order of commitment to the
6 director of health for the purpose of the fitness examination
7 under section 704-404(2), the court may order that the defendant
8 remain released on conditions the court determines necessary for
9 placement in a group home, residence, or other facility
10 prescribed by the director of health for further assessment by a
11 clinical team pursuant to subsection (3).

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



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

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



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

4 (a) If the defendant's clinical team determines that the
5 defendant meets the criteria for involuntary
6 hospitalization set forth in section 334-60.2, the
7 director of health, within days of the clinical
8 team's determination, shall file a petition for
9 involuntary hospitalization pursuant to section
10 334-60.3 with the family court. If the petition is
11 granted, the defendant shall remain hospitalized for a
12 time period as provided by section 334-60.6;

13 (b) If the defendant's clinical team determines that the
14 defendant does not meet the criteria for involuntary
15 hospitalization, or the court denies the petition for
16 involuntary hospitalization, the defendant's clinical
17 team shall determine whether an assisted community
18 treatment plan is appropriate pursuant to part VIII of
19 chapter 334. If the clinical team determines that an
20 assisted community treatment plan is appropriate, the
21 psychiatrist or advanced practice registered nurse



1 from the clinical team shall prepare the certificate
2 for assisted community treatment specified by section
3 334-123, which certificate shall include a written
4 treatment plan for the provision of mental health
5 services to the defendant. The clinical team shall
6 identify a community mental health outpatient program
7 that agrees to provide mental health services to the
8 defendant as the designated mental health program
9 under the assisted community treatment order. The
10 clinical team shall provide the defendant with a copy
11 of the certificate. If:
12 (i) On at least _____ separate occasions in the
13 past _____ months, the clinical team had
14 previously determined that an assisted community
15 treatment plan was appropriate for the defendant,
16 and the defendant declined to accept the
17 treatment plan on each occasion; and
18 (ii) The defendant declines to accept the mental
19 health services described in the certificate
20 prepared pursuant to this paragraph,



1 then the director of health, within days of the
2 defendant's refusal of services described in the
3 certificate, shall file the assisted community
4 treatment petition described in section 334-123 with
5 the family court. The defendant may be held at the
6 appropriate institution pending the court hearing on
7 the petition for assisted community treatment. If the
8 petition is granted, the defendant shall be released
9 for treatment with the designated mental health
10 program once the assisted community treatment order is
11 issued and the initial treatment consistent with the
12 assisted community treatment plan is administered to
13 the defendant; or

14 (c) If the petition for assisted community treatment is
15 not granted or the clinical team determines that an
16 assisted community treatment order is not appropriate,
17 the defendant shall be discharged from the appropriate
18 institution and referred to an appropriate outpatient
19 mental health program for continued support, care, and
20 treatment.



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

4 SECTION 6. Section 710-1021, Hawaii Revised Statutes, is
5 amended by amending subsection (2) to read as follows:

6 "(2) Escape in the second degree is a class C felony[-]
7 unless the offense was committed by a person while in the
8 custody of the director of health pursuant to section
9 704-421(1), in which case it is a petty misdemeanor."

10 SECTION 7. There is appropriated out of the general
11 revenues of the State of Hawaii the sum of \$ or so
12 much thereof as may be necessary for fiscal year 2023-2024 and
13 the same sum or so much thereof as may be necessary for fiscal
14 year 2024-2025 for the establishment of one full-time equivalent
15 (1.0 FTE) law clerk position for the mental health calendar
16 judge presiding over matters under chapter 704, Hawaii Revised
17 Statutes.

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

20 SECTION 8. There is appropriated out of the general
21 revenues of the State of Hawaii the sum of \$ or so



1 much thereof as may be necessary for fiscal year 2023-2024 and
 2 the same sum or so much thereof as may be necessary for fiscal
 3 year 2024-2025 for the establishment of full-time
 4 equivalent (FTE) positions (\$) and for
 5 additional resources necessary to implement this part.

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

8 SECTION 9. 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 for the establishment of full-time
 13 equivalent (FTE) positions (\$) and for
 14 additional resources necessary to accommodate telehealth
 15 examinations of defendants pursuant to section 2 of this Act.

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

18 SECTION 10. 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



1 year 2024-2025 for the establishment of full-time
 2 equivalent (FTE) positions (\$) and for
 3 additional resources necessary to accommodate telehealth
 4 examinations of defendants pursuant to section 2 of this Act.

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

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

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

17 PART II

18 SECTION 12. The purpose of this part is to lengthen the
 19 allowable period of court-ordered assisted community treatment
 20 for persons who are mentally ill or suffering from substance
 21 abuse, and extensions of the court order.



1 In addition, this part eliminates the need for courts, in
2 deciding petitions to extend periods of assisted community
3 treatment, to consider or make any finding as to any unchanged
4 factor that has been previously established in the existing
5 order for treatment.

6 SECTION 13. Section 334-127, Hawaii Revised Statutes, is
7 amended by amending subsection (b) to read as follows:

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

19 If the family court finds by clear and convincing evidence
20 that the beneficial mental and physical effects of recommended
21 medication outweigh the detrimental mental and physical effects,



1 if any, the order may authorize types or classes of medication
2 to be included in treatment at the discretion of the treating
3 psychiatrist or advanced practice registered nurse with
4 prescriptive authority and who holds an accredited national
5 certification in an advanced practice registered nurse
6 psychiatric specialization.

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

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

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

19 "(b) A subject of assisted community treatment is
20 automatically and fully discharged at the end of the family
21 court ordered period of treatment, a period of [~~not~~] no more



1 than [~~one-year,~~] _____, unless a new family court order has
2 been obtained as provided hereinbelow."

3 SECTION 15. Section 334-133, Hawaii Revised Statutes, is
4 amended by amending subsections (a) and (b) to read as follows:

5 "(a) Before the expiration of the period of assisted
6 community treatment ordered by the family court, any interested
7 party may file a petition with the family court for an order of
8 continued assisted community treatment. The petition shall be
9 filed, and unless the court determines the existence of a
10 guardian, a guardian ad litem appointed, and notice provided in
11 the same manner as under sections 334-123 and 334-125[-];
12 provided that the petition shall be accompanied by a declaration
13 of the treating psychiatrist or advanced practice registered
14 nurse specifying which of the criteria set forth in section
15 334-121 are unchanged from the date of the existing order for
16 assisted community treatment.

17 (b) The family court shall appoint a guardian ad litem,
18 unless there is an existing guardian, hold a hearing on the
19 petition, and make its decision in the same manner as provided
20 under sections 334-123 to 334-127[-]; provided that at the
21 hearing and in rendering its decision, the court need not



1 consider or make any finding as to any unchanged factor that has
2 been previously established in the existing order for assisted
3 community treatment. The family court may order the continued
4 assisted community treatment for no more than [~~one~~
5 year] _____ after the date of the hearing pursuant to this
6 section if the court finds that the criteria for assisted
7 community treatment continue to exist and are likely to continue
8 beyond one hundred eighty days."

9 PART III

10 SECTION 16. The purpose of this part is to authorize
11 courts to:

- 12 (1) Enter into an agreement with a nonviolent petty
13 misdemeanor or misdemeanor at any stage of the
14 criminal proceeding to divert the case into an
15 evaluation, treatment, or any other course or
16 procedure to address a physical or mental disease,
17 disorder, or defect that will or has become an issue
18 in the case; and
- 19 (2) Dismiss the charge in the interest of justice upon the
20 defendant's successful completion of all terms and
21 conditions of the diversion.



1 In cases involving all other offenses, this part authorizes
2 courts to divert the case for evaluation or treatment with the
3 defendant's consent only, without the need for an agreement by
4 all of the case parties as required by existing law.

5 SECTION 17. Section 704-407.5, Hawaii Revised Statutes, is
6 amended by amending subsection (1) to read as follows:

7 "(1) Whenever the defendant has filed a notice of
8 intention to rely on the defense of physical or mental disease,
9 disorder, or defect excluding penal responsibility, or there is
10 reason to believe that the physical or mental disease, disorder,
11 or defect of the defendant will or has become an issue in the
12 case, the court may order an examination as to the defendant's
13 physical or mental disease, disorder, or defect at the time of
14 the conduct alleged.

15 Whenever there is reason to believe that the physical or
16 mental disease, disorder, or defect of the defendant will or has
17 become an issue in the case~~[7]~~:

18 (a) If the defendant is charged with an offense not
19 described in paragraph (b), the court [may enter into
20 an agreement with the parties], at any stage of the
21 proceeding ~~[to]~~ and with the consent of the defendant,



1 continued probation whenever there is reason to believe that the
2 probation violation is associated with a mental disease,
3 disorder, or defect of the defendant.

4 SECTION 19. Section 706-625, Hawaii Revised Statutes, is
5 amended to read as follows:

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

14 (2) The prosecuting attorney, the defendant's probation
15 officer, and the defendant shall be notified by the movant in
16 writing of the time, place, and date of any such hearing, and of
17 the grounds upon which action under this section is proposed.
18 The prosecuting attorney, the defendant's probation officer, and
19 the defendant may appear in the hearing to oppose or support the
20 application, and may submit evidence for the court's
21 consideration. The defendant shall have the right to be



1 represented by counsel. For purposes of this [section]
2 subsection, the court shall not be bound by the Hawaii rules of
3 evidence, except for the rules pertaining to privileges.

4 (3) The court shall revoke probation if the defendant has
5 inexcusably failed to comply with a substantial requirement
6 imposed as a condition of the order or has been convicted of a
7 felony. The court may revoke the suspension of sentence or
8 probation if the defendant has been convicted of another crime
9 other than a felony.

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

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

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

18 ~~(7)]~~ (6) The court may require a defendant to undergo and
19 complete a substance abuse treatment program when the defendant
20 has committed a violation of the terms and conditions of
21 probation involving possession or use, not including to



1 distribute or manufacture as defined in section 712-1240, of any
2 dangerous drug, detrimental drug, harmful drug, intoxicating
3 compound, marijuana, or marijuana concentrate, as defined in
4 section 712-1240, unlawful methamphetamine trafficking as
5 provided in section 712-1240.6, or involving possession or use
6 of drug paraphernalia under section 329-43.5. If the defendant
7 fails to complete the substance abuse treatment program or the
8 court determines that the defendant cannot benefit from any
9 other suitable substance abuse treatment program, the defendant
10 shall be subject to revocation of probation and incarceration.
11 The court may require the defendant to:

- 12 (a) Be assessed by a certified substance abuse counselor
13 for substance abuse dependency or abuse under the
14 applicable Diagnostic and Statistical Manual and
15 Addiction Severity Index;
- 16 (b) Present a proposal to receive substance abuse
17 treatment in accordance with the treatment plan
18 prepared by a certified substance abuse counselor
19 through a substance abuse treatment program that
20 includes an identified source of payment for the
21 treatment program;



- 1 (c) Contribute to the cost of the substance abuse
- 2 treatment program; and
- 3 (d) Comply with any other terms and conditions of
- 4 probation.

5 ~~[As used in this subsection, "substance abuse treatment~~
6 ~~program" means drug or substance abuse treatment services~~
7 ~~provided outside a correctional facility by a public, private,~~
8 ~~or nonprofit entity that specializes in treating persons who are~~
9 ~~diagnosed with substance abuse or dependency and preferably~~
10 ~~employs licensed professionals or certified substance abuse~~
11 ~~counselors.~~

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

15 (7) As a condition of continued probation, the court may
16 require a defendant to undergo a mental health evaluation and
17 treatment program when the defendant has committed a violation
18 of the terms and conditions of probation and there is reason to
19 believe that the violation is associated with a mental disease,
20 disorder, or defect of the defendant. The court may require the
21 defendant to:



- 1 (a) Be assessed for a mental disease, disorder, or defect
2 by a psychiatrist or psychologist, who shall prepare
3 an appropriate treatment plan;
- 4 (b) Present a proposal to receive treatment in accordance
5 with the plan prepared pursuant to paragraph (a)
6 through a mental health treatment program that
7 includes an identified source of payment for the
8 treatment program, as applicable;
- 9 (c) Contribute to the cost of the treatment program, as
10 applicable; and
- 11 (d) Comply with any other terms and conditions of
12 probation.

13 If the defendant fails to complete the treatment program or
14 the court determines that the defendant cannot benefit from any
15 other suitable treatment program, the defendant shall be subject
16 to revocation of probation and incarceration.

17 (8) For the purposes of this section:
18 "Conviction" means that a judgment has been pronounced upon
19 the verdict.

20 "Mental health treatment program" means treatment services
21 addressing a mental disease, disorder, or defect of the



1 defendant, including residential or rehabilitation treatment or
2 any other course or procedure, including diversion into
3 specialized courts.

4 "Substance abuse treatment program" means drug or substance
5 abuse treatment services provided outside a correctional
6 facility by a public, private, or nonprofit entity that
7 specializes in treating persons who are diagnosed with substance
8 abuse or dependency and preferably employs licensed
9 professionals or certified substance abuse counselors.

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

13 PART V

14 SECTION 20. The purpose of this part is to require the
15 department of health to contract with behavioral health crisis
16 centers to provide intervention and stabilization services in
17 each county for persons experiencing a mental illness or
18 substance use disorder crisis, including a dedicated first
19 responder drop-off area for potential clients.



1 SECTION 21. Chapter 334, Hawaii Revised Statutes, is
2 amended by adding a new section to part I to be appropriately
3 designated and to read as follows:

4 "§334- Behavioral health crisis centers. (a) Pursuant
5 to the authority and functions established under sections
6 334-2.5(a)(3)(B) and 334-3(a)(5), the director shall establish
7 or contract with behavioral health crisis centers in each county
8 of the State to provide care, diagnosis, or treatment for
9 persons experiencing a mental illness or substance use disorder
10 crisis.

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

- 13 (1) Be designed to:
- 14 (A) Address mental health and substance use crisis
15 issues; and
 - 16 (B) Screen, assess, admit for stabilization, and
17 redirect a client to ongoing care in the most
18 appropriate and least restrictive community
19 setting available, consistent with the client's
20 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 22. 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



1 year 2024-2025 for the director of health to establish or
2 contract with behavioral health crisis centers pursuant to this
3 part.

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

6 PART VI

7 SECTION 23. The purpose of this part is to restore funding
8 for probation officer services for the mental health court.

9 SECTION 24. There is appropriated out of the general
10 revenues of the State of Hawaii the sum of \$ or so
11 much thereof as may be necessary for fiscal year 2023-2024 and
12 the same sum or so much thereof as may be necessary for fiscal
13 year 2024-2025 to restore funding for probation officer services
14 for the mental health court.

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

17 PART VII

18 SECTION 25. Act , Session Laws of Hawaii 2023, is
19 amended as follows:

20 (1) By substituting the phrase "director of corrections
21 and rehabilitation", or similar term, wherever the



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

7 SECTION 26. Statutory material to be repealed is bracketed
8 and stricken. New statutory material is underscored.

9 SECTION 27. This Act shall take effect on July 1, 2023;
10 provided that section 25 of this Act shall take effect on
11 January 1, 2024.

12

INTRODUCED BY: *Anna R. Bobelli*
JAN 25 2023



H.B. NO. 1442

Report Title:

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

Description:

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.

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

