



*The Judiciary, State of Hawai‘i*

**Testimony to the Thirty-Third Legislature, 2025 Regular Session**

**House Committee on Health**

Representative Gregg Takayama, Chair  
Representative Sue L. Keohokapu-Lee Loy, Vice Chair

Wednesday, March 19, 2025, 9:05 a.m.  
State Capitol, Conference Room 329

**WRITTEN TESTIMONY ONLY**

By

Ronald G. Johnson  
Deputy Chief Judge, Criminal Administrative Judge  
Circuit Court of the First Circuit

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**Bill No. and Title:** Senate Bill No. 1612 SD1, Relating to Fitness to Proceed.

**Purpose:** Requires and appropriates funds for the Department of Corrections and Rehabilitation, in collaboration with the Department of Health, to establish and implement a 5-year Fitness to Proceed Pilot Program. Requires an interim report and final report to the Legislature. Effective 7/1/2077. (SD1)

**Judiciary's Position:**

The Judiciary takes **no position** on the proposed legislation but provides the following comment for consideration. Any proposed legislation and/or pilot project should be informed by the requirements placed on both the Department of Corrections and Rehabilitation and the Department of Health under the permanent injunction issued in the United States District Court for the District of Hawai‘i in *Clark v. State of Hawai‘i*, CV 99-00885.

Thank you for the opportunity to testify.

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March 17, 2025

Committee on Health  
Rep. Gregg Takayama, Chair  
Rep. Sue L. Keohokapu-Lee Loy, Vice Chair  
415 South Beretania Street, Conf. Rm. 329  
State Capital  
Honolulu, HI 96813

Re: Testimony in Opposition to S.B. 1612  
Hearing: March 19, 2025, 9:05 AM

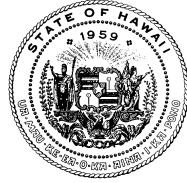
Dear Chair Takayama, Vice Chair Keohokapu-Lee Loy and Committee Members:

This letter is in opposition to S.B. 1612, which would establish and implement a 5-year fitness to proceed pilot program which would house the inmate at a correctional facility as opposed to a medical facility. The Office of the Public Defender (“OPD”) supports the portion of the bill that houses individuals with mental health issues, related to Hawaii Revised Statute Chapter 704, separate and apart from those in general population. The OPD opposes housing individuals who are pending a mental examination or who have been found unfit to proceed in any non-medical and non-psychiatric treatment facility, for any length of time, as it would be detrimental to their already impaired and fragile mental state, and it would ultimately delay the individual’s fitness restoration.

The OPD is in support of separate housing for individuals who have filed a motion or cited a defense pursuant to HRS Ch. 704. Individuals with mental health issues can be victimized or be subject to dangerous situations in general population. Housing individuals with mental health issues separate from the general population protects not only the inmate population, but, with additional safeguards, it can also be the best practice to insulate the facility and the state from liability. The OPD supports separately housing individuals with mental health concerns. Further, the OPD recommends housing a single mental health inmate per cell. If, however, two mental health inmates are housed together, prior to placement, a qualified psychiatric treatment provider should approve and verify that the pair are safe and compatible. This is the best practice to support safe housing placement.

The OPD strongly opposes housing individuals who have untreated or unstable mental health conditions at any correctional facility, regardless of the county population. This is especially true in cases where a court has found an individual unfit to proceed. These individuals are in need of and require medical and/or psychiatric treatment. Separate housing is not a substitute for psychiatric treatment in a therapeutic setting. Individuals suffering from severe psychiatric conditions need psychotropic medications and therapy to regain fitness and competency. Incarcerating mentally impaired, unstable and unfit individuals, without meaningful treatment, constitutes deliberate indifference to their serious medical needs and is inhumane. Simply put, it is cruel and unusual punishment. Estell v. Gamble, 429 U.S. 1066, 97 S. Ct. 798 (1976); Brown v. Plata, 563 U.S. 493, 131 S. Ct. 1910 (2011).

Thank you for taking these comments into consideration.



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

KENNETH S. FINK, M.D., M.G.A., M.P.H.  
DIRECTOR OF HEALTH  
KA LUNA HO'OKELE

STATE OF HAWAII  
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**Testimony in SUPPORT of S.B. 1612 SD2, HD1  
RELATING TO FITNESS TO PROCEED.**

REPRESENTATIVE GREGG TAKAYAMA, CHAIR  
REPRESENTATIVE SUE L. KEOHOKAPU-LEE LOY, VICE CHAIR  
HOUSE COMMITTEE ON HEALTH

Hearing Date: March 19, 2025, 9:05 AM Room Number: 329

1 **Department Position:** The Department of Health (Department or DOH) supports the intent of  
2 this measure; however, has concerns regarding the costs of the pilot program being in Hawai'i  
3 County.

4 **Department Testimony:** The Hawai'i State Hospital (HSH) provides the following testimony on  
5 behalf of the Department and the Adult Mental Health Division (AMHD).

6 The Department supports the intent of this measure, which proposes the creation of a  
7 jail-based competency restoration (JBCR) pilot program at the Department of Corrections and  
8 Rehabilitation (DCR) for individuals who are held at a DCR correctional facility and awaiting a  
9 determination on their fitness to proceed pursuant to chapter 704, Hawai'i Revised Statute.  
10 This pilot program would be a partnership between DCR and DOH, where DCR would retain  
11 primary physical custody of an inmate in the program, while mental health services would be  
12 provided by DOH. Additionally, the Department supports the initiation of the pilot in a county  
13 with a population of more than 200,000 but fewer than 500,000 residents, such as Hawai'i  
14 County.

15 In conjunction with community-based competency restoration, appropriate funding for  
16 state hospitals, and investments into diversion and deflection programs that move individuals

1 with mental illnesses away from the criminal legal system all together, jail-based competency  
2 restoration programs are successful for the following reasons:

- 3       1.       **JBCR programs are a component of the Continuum of restoration**  
4               **services:** JBCR programs provide an alternative to traditional inpatient  
5               psychiatric hospitals and considered a component of the continuum of  
6               restoration services that include community-based treatment, corrections-based  
7               restoration services, and in-patient psychiatric care. By restoring competency in  
8               a jail setting, individuals who do not require intensive hospitalization can receive  
9               necessary treatment without occupying limited hospital beds. Currently, all  
10              individuals who are court-ordered for competency evaluations are sent to the  
11              Hawai'i State Hospital.
- 12       2.       **JBCR programs are more cost-effective:** JBCR programs are typically more cost-  
13               efficient compared to in-patient hospital restoration. The Hawai'i State  
14               Hospital's daily bed rate is estimated at \$1000.00 a day.
- 15       3.       **JBCR programs are typically designed for non-violent offenders:** JBCR programs  
16               often prioritize defendants with non-violent, low-level charges. So far this fiscal  
17               year, the Hawai'i State Hospital has admitted more than 60 individuals to the  
18               HSH, individuals who are cited for petty misdemeanors and court-ordered for  
19               fitness evaluations. The average length of stay for these individuals is typically  
20               between 40 to 60 days.
- 21       4.       **JBCR programs are intended for shorter-term restoration efforts:** JBCR  
22               programs are often designed for shorter-term restoration efforts, typically linked  
23               with shorter-stays in jail settings. Hospital-based restoration and other inpatient  
24               psychiatric facilities, like the Hawai'i State Hospital, are better suited for  
25               individuals needing long-term psychiatric care.
- 26       5.       **JBCR programs align with modern correctional principles.** As correctional  
27               systems shift from a punitive system into a therapeutic one, JBCR programs align

1 with modern correctional principles because it can provide early intervention,  
2 potentially restoring competency faster. Correctional facilities should consider  
3 JBCR programs as one of a number of programming options that focuses on  
4 rehabilitation and reintegration into society, treats inmates as individuals  
5 needing behavioral, psychological, or substance abuse treatment, and adopts a  
6 therapeutic correctional-based culture that provides counseling, education,  
7 vocational training, mental health programs, and substance abuse treatment.

- 8 **6. Compliance with the Clark Injunction.** Designed properly, JBCR programs can be  
9 in compliance with the Clark Injunction in Hawai'i because it would provide  
10 inmates with timely access to treatment and care. Bringing a JBCR program into  
11 the jail setting ensures that individuals receive appropriate, timely, and effective  
12 mental health treatment without unnecessary incarceration or delayed access to  
13 care.

14 Among all the committing counties, Hawai'i County is consistently the second-highest  
15 committing county for admissions to the HSH. In FY2024, Honolulu County accounted for 78%  
16 (n=469) of all HSH admissions, followed by Hawai'i County with 13% (n=81). So far this fiscal  
17 year,<sup>1</sup> Hawai'i County has accounted for 18% (n=78) of all admissions. The HSH is currently  
18 working to determine the number of patients from Hawai'i County admitted to HSH awaiting  
19 determination on the inmate's fitness to proceed pursuant to chapter 704.

20 The Department acknowledges that DCR would have to put in considerable effort to  
21 create a therapeutic environment at the Kulani Correctional Facility. The Department defers to  
22 DCR on the resources needed.

23 In conclusion, the Department believes jail-based competency restoration programs can  
24 be an effective intervention to restore the mental competency of individuals found

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<sup>1</sup> Data pull from Electronic Health Records Database on March 13, 2025.

1 incompetent to stand trial while they remain in jail. Stood up properly as a pilot project, the  
2 JBCR program can provide mental health treatment, legal education, and competency training  
3 in a correctional setting, rather than transferring individuals to inpatient psychiatric hospitals.

4 **Offered Amendments:** The Department respectfully requests the inclusion of an appropriation  
5 of \$1,500,000 to provide these services in Hawai'i County. The Department does not have the  
6 staffing capacity in Hawai'i County to support these services and therefore would need to  
7 contract these services.

8 Thank you for the opportunity to testify in support of this measure.

JOSH GREEN, M.D.  
GOVERNOR  
KE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I  
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Deputy Director  
Rehabilitation Services  
and  
Programs

No. \_\_\_\_\_

TESTIMONY ON SENATE BILL 1612, SENATE DRAFT 2, HOUSE DRAFT 1  
RELATING TO FITNESS TO PROCEED.

by  
Tommy Johnson, Director  
Department of Corrections and Rehabilitation

House Committee on Health  
Representative Gregg Takayama, Chair  
Representative Sue L. Keohokapu-Lee Loy, Vice Chair

Wednesday, March 19, 2025; 9:05 a.m.  
State Capitol, Conference Room 329 & via Videoconference

Chair Takayama, Vice Chair Keohokapu-Lee Loy, and Members of the Committee:

The Department of Corrections and Rehabilitation (DCR) **supports the intent** of Senate Bill (SB) 1612, Senate Draft (SD) 2, House Draft (HD) 1, which seeks to require the DCR to establish a five-year fitness to proceed pilot program to help reduce overcrowding at the Hawai'i State Hospital (HSH) and ensure the safety of the hospital's staff and personnel; and appropriates an unspecified amount of funding for this purpose.

As written, the language contained in Section 1(a) (lines 8 – 10) as it relates to the population of the County for this pilot program essentially singles out the County of Hawai'i as the only County whose population of more than two hundred thousand, but less than five hundred thousand, would apply.

Further, given the already severe overcrowded conditions at the Hawai'i Community Correctional Center (HCCC) – jail in Hilo, the only other facility DCR operates on the Island of Hawai'i is the minimum-security prison, Kulani Correctional Facility (KCF), which is approximately 1.5 hours travel up Stainback Highway. KCF is a work camp without fences as all inmates housed at this facility are minimum and community custody

level offenders. In essence, this measure seeks to house pre-trial detainees and possibly sentenced misdemeanants, pending 704 fitness to proceed evaluations on the grounds of a minimum-security prison work camp. To do so, DCR would need substantial funding to build a medium-security facility on the grounds of KCF. The construction of a medium security cell type structure with program and staff spaces, including the required video security surveillance systems, and corrections grade door locking systems linked to central control, and the required double razor wire fencing, would constitute a substantial financial investment by the state in the range of \$30 - \$45 million in today's construction costs. It should also be noted, consultations with both the Hawai'i Government Employee's Association (HGEA), and the United Public Workers Union (UPW), would need to take place because building and requiring employees at KCF to work in a medium security facility effectively changes their respective conditions of employment, as it relates to the Case Managers and Adult Corrections Officers.

In addition, the Department of Health's (DOH) severe shortage of professional mental health staffing on the Island of Hawai'i should also be taken into consideration. DOH would need substantial sustained financial resources to contract out for the 24/7 mental health treatment services required to care for those pending 704 fitness to proceed evaluations held at the KCF.

DCR supports the intent of this pilot project, specifically as it relates to the planning and design of the new OCCC and appreciates the support of this Committee, to secure the \$ 30 million funding in this legislative session, which is included in the Governor's package, for DCR to move forward. Currently, only the most severely mentally ill, who cannot manage the milieu of the correctional setting, are housed at HSH. Most of those pending a 704 mental health examination are placed in our jails. Since neighbor island facilities (HCCC, Maui Community Correctional Center (MCCC), and KCCC) do not have appropriate mental health staff, and housing for offenders with serious and persistent mental illness (SPMI) with acute exacerbations, the offenders are often transported to the already overcrowded OCCC. If the patient is deemed mentally ill or unstable and not fit to stand trial, they are then transferred to HSH, where efforts are made to stabilize their



SB 1612, SD 2, HD 1 Relating to Fitness to Proceed  
Senate Committee on Health  
March 19, 2025  
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condition. Once stabilized, patients are transferred back to OCCC. Therefore, the new OCCC facility would be the most appropriate facility to pilot this project, and including this in the planning and design ensures the best chance of better outcomes in addressing the special needs of our mental health population.

Thank you for the opportunity to provide testimony in **support of the intent** of SB 1612, SD 2, HD 1.

**SB-1612-HD-1**

Submitted on: 3/14/2025 6:44:00 PM

Testimony for HLT on 3/19/2025 9:05:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Louis Erteschik	Hawaii Disability Rights Center	Comments	Remotely Via Zoom

Comments:

In prior versions of this Bill there was a lot of concern that it might violate the Clark injunction, which requires that an individual found not fit to proceed shall be transferred to the custody of the Director of Health within 72 hours. This means in reality that the person is sent to the State Hospital. However, the literal language of the Clark case refers to the “custody of the Director of Health”.

The HD1 version of SB 1612 appears to have addressed our concerns about the Clark case by removing any reference to an individual being in the “custody” or “joint custody” of the Department of Health. To that extent this version is preferable.

HOUSE COMMITTEE ON HEALTH  
Representative Gregg Takayama, Chair  
Representative Sue L. Lee Loy, Vice Chair

Wednesday, March 19, 2025 9:05 A.M. - VIA VIDEOCONFERENCE - ROOM 329

TESTIMONY IN STRONG OPPOSITION TO SB1612, SD2, RELATED TO FITNESS TO PROCEED

The Hawaii Psychological Association (HPA) strongly opposes SB1612, SD2 which violates the United States District Court's Clark decision, if it is applied to defendants adjudicated as Unfit to Proceed. On May 29, 2003, federal judge David Ezra ruled that upon a court determination that a defendant is Unfit to Proceed, the State must transfer the defendant to a psychiatric hospital, usually Hawaii State Hospital, within 72 hours. Failure to do so has resulted in fines of \$1 million which the State paid in the 2000s for Clark violations.

At minimum, we recommend that the State Attorney General be consulted regarding the legality of SB1612, SD2. Given that the proposed program would occur in a new jail facility, it is hard to understand how "joint custody" with the Department of Health circumvents the Clark decision. There are also practical issues, as building of a new facility and hiring new staff could take several years, and the pilot program ends after five years. Public Safety is not currently staffed for a fitness to proceed program.

Fitness restoration in a jail setting certainly violates the spirit of the Clark decision, which maintained that doing so violates constitutional rights. As it is, 40% of Public Safety inmates have a severe mental illness. Passage of SB1612, SD2 would significantly increase the number of inmates with severe mental illness.

The overcrowding of the State Hospital has been offered as a justification for SB1612, SD2. However, the jails are also severely overcrowded. The overcrowding of the State Hospital does not lend itself to a legislative fix given that the causes of the overcrowding include cutbacks in outpatient services, particularly outreach; lack of intermediate-term civil commitment psychiatric capacity in the community, Adult Mental Health Division cutbacks in psychosocial rehabilitation staffing which has led to declines in treatment outcomes with increased recidivism and lack of jail diversion.

Another major problem with the proposed legislation is that the Department of Public Safety has opposed the measure and would thus be made to operate a program against their will and against their mission which prioritizes security and confinement over psychological recovery. Costly lawsuits and fines can be avoided by defeating SB1612, SD2 which promotes the further criminalization of mental illness.

Sincerely,

# Hawai'i Psychological Association

*For a Healthy Hawai'i*

P.O. Box 833

[www.hawaiipsychology.org](http://www.hawaiipsychology.org)

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*Alex Lichten, Ph.D.*

Alex Lichten, Ph.D., Chair, HPA Legislative Action Committee



## **SB1612 SD2 HD1 Fitness to Proceed (House)**

[COMMITTEE ON HEALTH](#)

Rep. Gregg Takayama, Chair

Rep. Sue L. Keohokapu-Lee Loy, Vice Chair

Wednesday, Mar 19, 2025: 9:05: Room 329 Videoconference

### **Hawaii Substance Abuse Coalition Supports SB1612 SD2 HD1:**

*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 and prevention agencies and recovery-oriented services.*

HSAC supports that justice-involved people receive multiple approaches to address the underlying issues leading to criminality, starting with a fitness to proceed. There is a large population in jails that has both criminality elements and mental health issues, of which most also have substance use disorders too.

**Despite the restrictions in the amendments to a state less than 500,000, this idea is stellar and could later be expanded to more effectively deal with the justice-involved population that has co-occurring disorders (mental health and substance abuse) that is less than severely mentally ill.**

**So many of the justice-involved that recidivate are those who have diagnosis for less than severely mentally ill (SMI) but have debilitating mental health issues that they are self-medicating with substance use disorders and remain untreated.**

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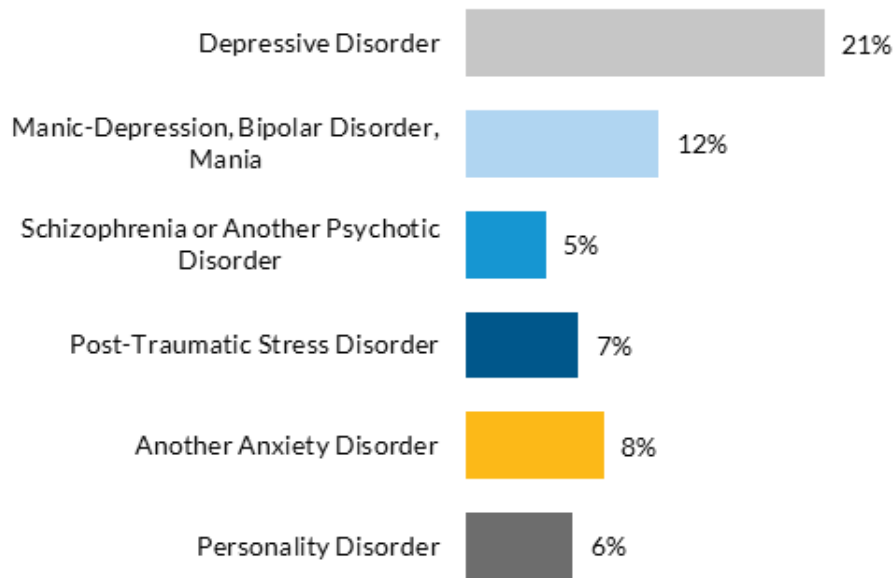
**DOH can help DCR determine fitness to proceed for people with severely mentally ill problems but also these assessments can determine the extent of any diagnosable mental health concerns such as depression, suicide, PTSD, anxiety, bi-polar, and more as well as co-occurring substance use disorders.**

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### NAMI reports:

1. The number of people with mental illness history (many not assessed) are about [40% of those incarcerated](#).<sup>1</sup> According to studies to estimate state probability factors.
2. About three in five people ([63%](#)) with a history of mental illness do not receive mental health treatment while incarcerated in state and federal prisons. It is also challenging for people to remain on treatment regimens once incarcerated. In fact, more than [50%](#) of individuals who were taking medication for mental health conditions at admission did not continue to receive their medication once in prison.

### Prisoners' mental health issues



Source: US Department of Justice, Bureau of Justice Statistics 2007

URBAN INSTITUTE

Unfortunately, many prisons and jails are not equipped to address the needs of this population<sup>2</sup>.

1. Start a [continuation of care from prison to the community setting](#).
2. Multidisciplinary services that [include a mental health case manager, a psychiatrist, a substance abuse counselor, a community corrections officer, and a residential housing manager](#).)

<sup>1</sup> NAMI National Association of Mental Illness: <https://www.nami.org/Advocacy/Policy-Priorities/Improving-Health/Mental-Health-Treatment-While-Incarcerated#:~:text=About%20two%20in%20five%20people,within%20the%20overall%20adult%20population>.

<sup>2</sup> Urban Institute: The revolving door: mental illness, incarceration, inadequate care, and inadequate evidence Miriam Becker-Cohen, KiDeuk Kim, April 7, 2015 <https://www.urban.org/urban-wire/revolving-door-mental-illness-incarceration-inadequate-care-and-inadequate-evidence>

3. [Expand Medicaid](#). eligibility and enrollment.
4. Add [mental health courts](#) diversion programs
5. It's a [critical economic issue](#) with broad societal implications that individuals with mental illness and substance abuse are still largely overrepresented in the criminal justice system.

[The Court Services Offender Supervision Agency](#) (CSOSA)<sup>3</sup> in Washington, D.C., recognizes the **importance of integrating mental health needs with community**.

1. **Create a partnership to develop more reentry systems**, which would include more comprehensive assessments, engagement with case management, and connection with community-based providers.
2. **Expanding assessments is a great starting place**. The lack of communication and information sharing is one of the greatest barriers to successful reentry.
3. **While work has progressed, more collaborative efforts between corrections agencies, state health departments, community-based organizations, and community partners** are needed to be developed.

HSAC applauds the effort for Department of Corrections and Rehabilitations and the Department of Health to collaborate to address justice-involved persons who have mental health issues, which are also usually co-occurring substance use disorders.

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**Including a substance abuse assessment in a mental health wellness examination is critical too because most have co-occurring substance abuse problems, which they use drugs as a means to self-manage their behavioral health conditions.**

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

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<sup>3</sup> COSA The Court Services and Offender Supervision Agency (CSOSA) endeavors to be a model community supervision agency that is recognized for positively impacting public safety. <https://www.csosa.gov/>



Committee: Health  
Hearing Date/Time: Wednesday, March 19, 2025 at 9:05am  
Place: Conference Room 329 & via Videoconference  
Re: **Testimony of the ACLU of Hawai'i: Opposition to SB1612 SD2 HD1 Relating to Fitness to Proceed**

Dear Chair Takayama, Vice Chair Keohokapu-LeeLoy and Committee Members:

The American Civil Liberties Union of Hawai'i ("ACLU of Hawai'i") opposes **S.B. 224 S.D.1 H.D. 1 Relating to Fitness to Proceed**. This bill requires and appropriates for the Department of Corrections and Rehabilitation (DCR), in collaboration with the Department of Health, to establish and implement a 5-year Fitness to Proceed Pilot Program. It also requires an interim report and a final report to the Legislature.

On its face, this bill appears to establish a pilot program that contravenes the **Clark** decision issued by U.S. District Judge David Ezra in 2000 that delays in transferring inmates committed to the custody of the Department of Health violated their civil rights. *Rodney Clark et. al., v. State of Hawaii, et. al.*, U. S. District Court CV No. 9900885. In that decision, Judge Ezra granted a permanent injunction in November 2001, ordering the state to transfer inmates to the State Hospital within 72 hours. Additionally, this proposed Pilot Project violates DCR's own Correctional policies.

<https://dcr.hawaii.gov/wp-content/uploads/2024/06/COR.08.08-Transfer-of-Defendants-to-the-Director-of-the-Department-of-Health.pdf>

Beyond the *Clark* decision, this bill identifies overcrowding at the Hawai'i State Hospital as the problem. In its testimony on this measure, the Department of Health notes: "So far this fiscal year, the Hawai'i State Hospital has admitted more than 60 individuals to the HSH, individuals who are cited for petty-misdemeanors and court-ordered for 14 fitness evaluations. The average length of stay for these individuals is typically between 40 to 60 days."

This bill seeks to roll the dice with an untested Fitness to Proceed Pilot Program instead of investing in diversion infrastructure throughout Hawai'i. We need step down facilities from the Hawai'i State Hospital, and community based comprehensive mental health services and supportive housing to divert people from the revolving door to our jails.

In 2024, Dr. Luke, then Acting Administrator of the Hawai'i State Hospital presented at a Legislative Informational Briefing.

<https://m.youtube.com/watch?v=FN6NQaovApA>



Of note, he provided a pie chart which included the following data:

- Only 23% of patients at the Hawai'i State Hospital were admitted for clinical reasons.
- 38% of the population at the Hawai'i State Hospital were committed due to a lack of transitional housing.
- 39% of the population were committed to the Hawai'i State Hospital for forensic/court issues (evaluation backlog).

Alarming, the **data demonstrates that 77% of patients at the State Hospital do not medically need to be there but are backlogged often due to the lack of community capacity and delays in fitness determinations.**

Admittedly, Hawai'i State Hospital's daily bed rate, estimated at \$1,000 per day, is higher than the \$310 per day rate for incarceration in our jails and prisons.

While the prior Committees including findings that "jail-based competency restoration programs are typically more cost efficient to inpatient hospital restoration,<sup>1</sup>" the jury is still out on the cost-effectiveness of these jail-based competency restoration programs.

***Simply put, jails are the worst possible place for a person with severe mental illness to be.*** Tommy Johnson, Director of the Department of Corrections and Rehabilitation acknowledges this as well, "For people suffering from mental illness, jail is the most expensive, least effective option."

Jail-based competency restoration programs are pitched as offering an alternative to traditional inpatient mental health facilities for defendants found incompetent to stand trial. The rationale is that providing services in a jail setting will help to restore a person's ability to participate in legal proceedings. However, the legislative findings fail to acknowledge that jail-based competency restoration is a relatively new approach, and that more research is needed to fully understand its long-term effectiveness and impact.

### **Potential Challenges**

- The punitive nature of the jail setting may be detrimental to the restoration process.
- Vulnerable persons are subject to abuse and even death in jails.  
<https://www.hawaiinewsnow.com/2025/02/06/investigation-opened-into-death-inmate-oahu-jail/>
- Adequate training for jail staff on mental health and competency restoration is crucial for successful program implementation.
- Maintaining confidentiality and separating treatment providers from forensic evaluators is essential for maintaining a therapeutic environment.
- There have been complaints that achieving restoration in a jail setting takes longer than in a correctional rather than in a hospital setting.

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<sup>1</sup> [https://www.capitol.hawaii.gov/sessions/session2025/CommReports/SB1612\\_SD1\\_SSCR281\\_.htm](https://www.capitol.hawaii.gov/sessions/session2025/CommReports/SB1612_SD1_SSCR281_.htm)

Given these concerns and the potential appropriation for an untested Pilot Program, we respectfully request deferral of **SB1612 SD2**.

Sincerely,

***Carrie Ann Shirota***

Carrie Ann Shirota

Policy Director

ACLU of Hawai'i

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*The mission of the ACLU of Hawai'i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai'i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai'i is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawai'i has been serving Hawai'i for over 50 years.*

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