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GOVERNOR
KE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
**DEPARTMENT OF CORRECTIONS
AND REHABILITATION**
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No. _____

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

by
Tommy Johnson, Director
Department of Corrections and Rehabilitation

House Committee on Public Safety
Representative Della Au Belatti, Chair
Representative Kim Coco Iwamoto, Vice Chair

Friday, March 12, 2025; 10:00 a.m.
State Capitol, Conference Room 411 & via Videoconference

Chair Belatti, Vice Chair Iwamoto, and Members of the Committee:

The Department of Corrections and Rehabilitation (DCR) **supports the intent** of Senate Bill (SB) 1612, Senate Draft (SD) 2, with proposed language changes requiring DCR establish a five-year fitness to proceed pilot program to reduce overcrowding at the Hawai'i State Hospital (HSH) by reserving cells to house inmates awaiting a 704 fitness to proceed determination pursuant to Chapter 704, Hawai'i Revised Statutes, in DCR buildings constructed after December 31, 2025.

Currently, DCR struggles with severe overcrowding and significant understaffing issues in our community correctional centers (jails), where pretrial offenders pending a fitness to proceed determination are housed.

DCR does not have the current space to reserve cells in a dedicated housing unit with recreational space, natural light, and the trained staff to address this population's special needs, and to reduce their further decompensation. In addition, DCR continues to struggle with security staff shortages, which places further strain on facility operations.

As written, SB 1612, SD 2, proposes this pilot program be established in buildings constructed by DCR after December 31, 2025. DCR proposes edits of the language in Section 1. (a), Page 1, lines 1 through 8 as follows:

The following shall be required for ~~buildings~~ new correctional facilities constructed after December 31, 2025, as appropriate. The department of corrections and rehabilitation shall establish a ~~five~~-three-year fitness to proceed pilot program to help reduce overcrowding at the Hawaii state hospital and ensure the safety of the hospital's staff and personnel while an inmate is awaiting a determination on the inmate's fitness to proceed pursuant to chapter 704, Hawai'i Revised Statutes.

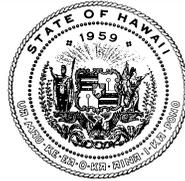
It is DCR's position that the statute should apply to new correctional facilities, rather than new buildings that it may construct after December 31, 2025. It is also DCR's position that a three-year pilot ensures timely implementation while providing sufficient time to evaluate the effectiveness of this pilot program.

DCR agrees with comments on page 2 (paragraph 2) of Standing Committee Report No. 1012 dated February 28, 2025, completed by Senate Committee on Ways and Means. In that, a pilot project of this nature would be more appropriately considered in the planning and design of new correctional facilities, such as the planned new Oahu Community Correctional Center (OCCC). This would provide DCR, Department of Accounting and General Services (DAGS), and their consultants with the time needed to set aside adequate and appropriate space, while also providing the Department of Health (DOH) and DCR with the time needed to plan for the additional staff and services required.

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 (Hawaii Community Correctional Center (HCCC), Maui Community Correctional Center (MCCC), and Kauai Community Correctional Center (KCCC) do not have

appropriate mental health staff and housing for offenders with serious and persistent mental illness (SPMI) with acute exacerbations, they 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 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 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.



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

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**Testimony in SUPPORT of S.B. 1612 SD2
RELATING TO FITNESS TO PROCEED.**

REPRESENTATIVE DELLA AU BELATTI, CHAIR
REPRESENTATIVE KIM COCO IWAMOTO, VICE CHAIR

HOUSE COMMITTEE ON PUBLIC SAFETY

Hearing Date: March 12, 2025, 10:00 AM Room Number: 411

1 **Department Position:** The Department of Health (Department) supports the intent of this
2 measure and offers comments.

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

5 The Department supports the intent of this measure, which proposes the creation of a
6 jail-based competency restoration (JBCR) pilot program at the Department of Corrections and
7 Rehabilitation (DCR) for individuals who are held at a DCR correctional facility and awaiting
8 determination on their fitness to proceed pursuant to chapter 704, Hawaii Revised Statute.
9 This applies to buildings constructed after December 31, 2025.

10 In conjunction with community-based competency restoration, appropriate funding for
11 state hospitals, and investments into diversion and deflection programs that move individuals
12 with mental illnesses away from the criminal legal system all together, jail-based competency
13 restoration programs are successful for the following reasons:

14 1. **JBCR programs are a component of the Continuum of restoration**
15 **services:** JBCR programs provide an alternative to traditional inpatient
16 psychiatric hospitals and considered a component of the continuum of

1 restoration services that include community-based treatment, corrections-based
2 restoration services, and in-patient psychiatric care. By restoring competency in
3 a jail setting, individuals who do not require intensive hospitalization can receive
4 necessary treatment without occupying limited hospital beds. Currently, all
5 individuals who are court-ordered for competency evaluations are sent to the
6 Hawai'i State Hospital.

7 2. **JBCR programs are more cost effective:** JBCR programs are typically more cost
8 efficient compared to in-patient hospital restoration. The Hawai'i State
9 Hospital's daily bed rate is estimated at \$1000.00 a day.

10 3. **JBCR programs are typically designed for non-violent offenders:** JBCR programs
11 often prioritize defendants with non-violent, low-level charges. So far this fiscal
12 year, the Hawai'i State Hospital has admitted more than 60 individuals to the
13 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
15 between 40 to 60 days.

16 4. **JBCR programs are intended for shorter-term restoration efforts:** JBCR
17 programs are often designed for shorter-term restoration efforts, typically linked
18 with shorter-stays in jail settings. Hospital-based restoration and other inpatient
19 psychiatric facilities, like the Hawai'i State Hospital, are better suited for
20 individuals needing long-term psychiatric care.

21 5. **JBCR programs align with modern correctional principles.** As correctional
22 systems shift from a punitive system into a therapeutic one, JBCR programs align
23 with modern correctional principles because it can provide early intervention,
24 potentially restoring competency faster. Correctional facilities should consider
25 JBCR programs as one of a number of programming options that focuses on
26 rehabilitation and reintegration into society, treats inmates as individuals
27 needing behavioral, psychological, or substance abuse treatment, and adopts a

1 therapeutic correctional-based culture that provides counseling, education,
2 vocational training, mental health programs, and substance abuse treatment.

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

9 In conclusion, the Department believes jail-based competency restoration programs can
10 be an effective intervention to restore the mental competency of individuals found
11 incompetent to stand trial while they remain in jail. Stood up properly as a pilot project, the
12 JBCR program can provide mental health treatment, legal education, and competency training
13 in a correctional setting, rather than transferring individuals to inpatient psychiatric hospitals or
14 community-based treatment.

15 **Offered Amendments:** The Department respectfully requests the following amendments be
16 considered:

17 **Page 1, Section 1(c), Lines 14-16** amend the statement from “An inmate housed in a
18 reserved cell or living space shall be in the joint custody of the department of corrections and
19 rehabilitation and department of health...” to “An inmate housed in a reserved cell or living
20 space shall be in the primary custody of the Department of Corrections and Rehabilitation and
21 receive mental health services through a partnership with Department of Health until a
22 determination...”

23 **Page 2, Line 3** amend the sentence to state, “For purposes of this subsection, the
24 Department of Corrections and Rehabilitation shall have primary physical custody of an inmate

1 in the pilot program, and the Department of Health shall be a partnering agency to provide
2 mental health services of the inmate.”

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

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Testimony in Opposition to S.B. 1612

Chair Belatti, Vice Chair Iwamoto, and Committee Members:

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.

Incarceration and mental health treatment are differentiated in law. Incarcerating mentally impaired, unstable and unfit individuals, without meaningful treatment, constitutes deliberate indifference to their serious medical needs and is inhumane. This has been ruled as 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).

Imprisonment is not the appropriate place for an individual to be assessed for mental health services. 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 are often 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, and insulates 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. This is especially true in cases where a court has found an individual unfit to proceed. These individuals need 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.

Thank you for taking these comments into consideration.



SB1612 SD1 Fitness to Proceed (House)

[COMMITTEE ON PUBLIC SAFETY](#)

Rep. Della Au Belatti, Chair

Rep. Kim Coco Iwamoto, Vice Chair

Wednesday, Mar 12, 2025: 10:00: Room 411 Videoconference

Hawaii Substance Abuse Coalition Supports SB1612 SD1:

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.

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.

NAMI reports:

1. According to studies to estimate state probability factors, the number of people with mental illness history (many not assessed) are about [40% of those incarcerated](#).¹
2. There is a significant lack of access to adequate mental health care in incarcerated settings. 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.

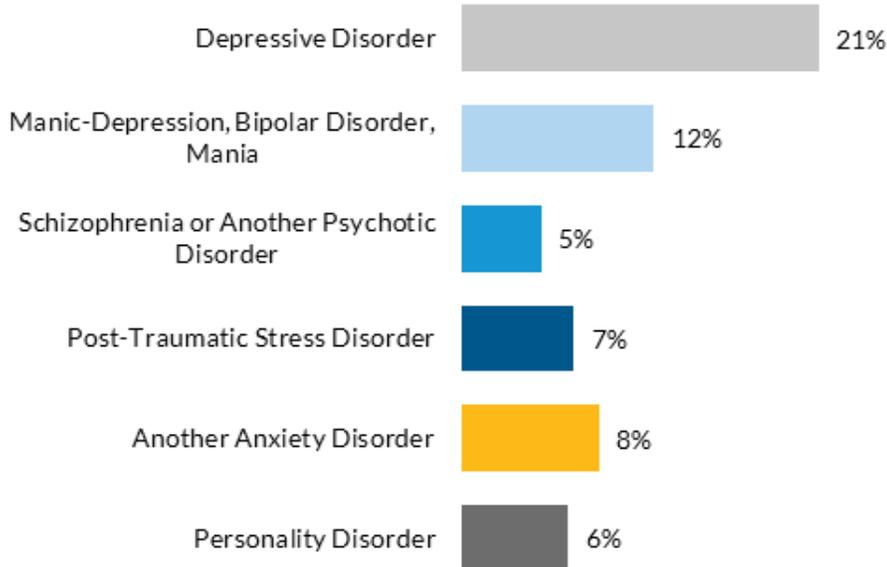
¹ NAMI National Association of Mental Illness: <https://www.nami.org/Advocacy/Policy-Priorities/Improving-Health/Mental-Health-Treatment-While-Incarcerated#:~:text=About%20two%20in%20five%20people,within%20the%20overall%20adult%20population.>

What is usually identified and treated:

- Schizophrenia and psychotic illness, which is on average 5%.

Other than schizophrenia and psychotic illness, what is not well assessed is:

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 population².

1. The most promising programs are structured by starting and then [continuation of care from prison to the community setting](#).
2. Also multidisciplinary teams to help mentally ill ex-offenders adapt to life outside of prison without having to go back and forth between multiple different agencies to receive services. (For example, an [effective multidisciplinary team might include a mental health case manager, a psychiatrist, a substance abuse counselor, a community corrections officer, and a residential housing manager](#).)
3. There is also great potential in the [expansion of Medicaid](#) eligibility and enrollment for this population.
4. Recommend expanding diversion programs like [mental health courts](#) in jurisdictions throughout the country. Existing research by the Justice Policy Center, shows that mental health courts could stem the tide of criminal justice involvement for mentally ill people and get them into treatment facilities instead of jails and prisons.

² 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>

5. Finally, the data remains clear about one thing: individuals with mental illness are still largely overrepresented in the criminal justice system, with such high numbers that their care and treatment is not just a humanitarian concern; it is a [critical economic issue](#) with broad societal implications.

[The Court Services Offender Supervision Agency](#) (CSOSA)³ in Washington, D.C., recognizes the **importance of integrating mental health needs with community** to create successful outcomes for offenders with a history of mental illness.

1. One of the first steps is to **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** have supported the development of a growing network and reentry community 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.

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 as a means to self-manage their behavioral health conditions.

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

³ 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: Public Safety
Hearing Date/Time: Wednesday, March 23, 2025 at 10:00am
Place: Conference Room 411 & via Videoconference
Re: **Testimony of the ACLU of Hawai'i: Opposition to SB1612 SD2 Relating to Fitness to Proceed**

Dear Chair Belatti, Vice Chair Iwamoto and Committee Members:

The American Civil Liberties Union of Hawai'i ("ACLU of Hawai'i") opposes **SB224 SD1 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.

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,¹” 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.

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

Sincerely,

Carrie Ann Shiota

Carrie Ann Shiota
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.

¹ [https://www.capitol.hawaii.gov/sessions/session2025/CommReports/SB1612_SD1_SSCR281 .htm](https://www.capitol.hawaii.gov/sessions/session2025/CommReports/SB1612_SD1_SSCR281.htm)

SB-1612-SD-2

Submitted on: 3/6/2025 7:52:11 PM

Testimony for PBS on 3/12/2025 10:00:00 AM

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

Comments:

We concur with the prior testimony of the Judiciary that any measure which passes must comply with the Clark injunction. This version of the bill does not appear to violate Clark though the original version was troublesome in that regard. Additionally, the “joint custody” language is a little concerning. The Clark injunction 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”. For that reason, while the bill seems to apply only until a fitness determination is made, if the inmate was technically in the “ custody” of the Director of Health” at that time while in the prison, we would be concerned that an effort might be made to allow the person to remain in the prison as opposed to being transferred to the State Hospital. We want to make sure that the intent and spirit of the Clark case is followed, as well as the letter of the Injunction.

HOUSE COMMITTEE ON PUBLIC SAFETY

Representative Della Au Belatti, Chair

Representative Kim Coco Iwomoto, Vice Chair

Wednesday, March 12, 2025 10:00 A.M. - VIA VIDEOCONFERENCE - ROOM 411

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 (attached). 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.

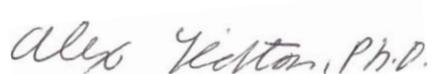
At minimum, we recommend that the State Attorney General be consulted regarding the legality of SB1612, SD2. Given that the proposed program would occur in a new jail facility, it is hard to understand how "joint custody" with the Department of Health circumvents the Clark decision. There are also practical 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 opposes 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

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

