

The Judiciary, State of Hawai‘i

Testimony to the Thirty-Third Legislature, 2025 Regular Session

Senate Committee on Public Safety and Military Affairs

Senator Brandon J.C. Elefante, Chair

Senator Glenn Wakai, Vice Chair

and

Senate Committee on Health and Human Services

Senator Joy A. San Buenaventura, Chair

Senator Henry J.C. Aquino, Vice Chair

Friday, February 7, 2025 at 3:10 p.m.

State Capitol, Conference Room 225

WRITTEN TESTIMONY ONLY

By

Ronald G. Johnson

Deputy Chief Judge, Criminal Administrative Judge

Circuit Court of the First Circuit

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

Purpose: Requires and appropriates moneys 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.

Judiciary's Position:

The Judiciary takes **no position** on the proposed legislation but provides the following comment for consideration. Any proposed legislation should be informed by the requirements placed on both the Department of Corrections and Rehabilitation and the Department of Health



Senate Bill No. 1612, Relating to Fitness to Proceed.
Senate Committee on Public Safety and Military Affairs
Senate Committee on Health and Human Services
February 7, 2025
Page 2

under the permanent injunction issued in the United States District Court for the State of Hawai'i in *Clark v. State of Hawai'i*, CV 99-00885.

Thank you for the opportunity to testify.



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

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

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

SENATOR BRANDON J. C. ELEFANTE, CHAIR
SENATE COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS

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

Hearing Date: February 7, 2025, 3:10 PM Room Number: 225

1 **Department Position:** The Department of Health (Department) supports this measure and
2 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 this measure, which proposes the creation of a jail-based
6 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 In conjunction with community-based competency restoration, appropriate funding for
10 state hospitals, and investments into diversion and deflection programs that move individuals
11 with mental illnesses away from the criminal legal system all together, jail-based competency
12 restoration programs are successful for the following reasons:

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

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

- 6 2. **JBCR programs are more cost effective:** JBCR programs are typically more cost efficient
7 compared to in-patient hospital restoration. The Hawai'i State Hospital's daily bed rate
8 is estimated at \$1000.00 a day.
- 9 3. **JBCR programs are typically designed for non-violent offenders:** JBCR programs often
10 prioritize defendants with non-violent, low-level charges. So far this fiscal year, the
11 Hawai'i State Hospital has admitted more than 60 individuals to the HSH, individuals
12 who are cited for petty-misdemeanors and court-ordered for fitness evaluations. The
13 average length of stay for these individuals is typically between 40 to 60 days.
- 14 4. **JBCR programs are intended for shorter-term restoration efforts:** JBCR programs are
15 often designed for shorter-term restoration efforts, typically linked with shorter-stays in
16 jail settings. Hospital-based restoration and other inpatient psychiatric facilities, like the
17 Hawai'i State Hospital, are better suited for individuals needing long-term psychiatric
18 care.
- 19 5. **JBCR programs align with modern correctional principles.** As correctional systems shift
20 from a punitive system into a therapeutic one, JBCR programs align with modern
21 correctional principles because it can provide early intervention, potentially restoring
22 competency faster. Correctional facilities should consider JBCR programs as one of a
23 number of programming options that focuses on rehabilitation and reintegration into
24 society, treats inmates as individuals needing behavioral, psychological, or substance
25 abuse treatment, and adopts a therapeutic correctional-based culture that provides
26 counseling, education, vocational training, mental health programs, and substance
27 abuse treatment.

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

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

Offered Amendments:

The Department offers the following amendments for consideration:

1. **Page 1, line 5.** Remove the word, "*incapacitated.*" The sentence should state:

"... personnel while an inmate is awaiting determination on the inmate's fitness to proceed..."

2. **Page 1, line 16.** Remove sub-bullet (1) from the document.

3. **Page 4, line 4.** Remove the following from the document, "*... whichever occurs later.*"

4. **Offer of assistance.** The Department understands the importance of inter-agency collaboration and offers its assistance to the Department of Corrections and Rehabilitation as a partner to plan and develop the pilot program.

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

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February 4, 2025

Committee on Public Safety & Military Affairs
Sen. Brandon J.C. Elefante, Chair
Committee on Health and Human Services
Sen. Joy. A. San Buenaventura, Chair
415 South Beretania Street, Conf. Rm. 325
State Capital
Honolulu, HI 96813

Re: Testimony in Opposition to S.B. 1612
Hearing: February 7, 2025, 3:10 PM

Dear Chairs Elefante and San Buenaventura 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.

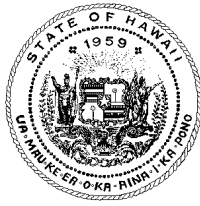
The OPD is in support of separate housing for individuals who have filed a motion or cited a defense pursuant to HRS Ch. 704. Individuals with mental health issues can be victimized or be subject to dangerous situations in general population. Housing individuals with mental health issues separate from 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. 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.

Sincerely,
/s/ Taryn Tomasa
Deputy Public Defender

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
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Sanna Muñoz
Deputy Director
Rehabilitation Services
and
Programs

No. _____

TESTIMONY ON SENATE BILL 1612
RELATING TO FITNESS TO PROCEED.

by
Tommy Johnson, Director
Department of Corrections and Rehabilitation

Committee on Public Safety and Military Affairs
Senator Brandon J.C. Elefante, Chair
Senator Glenn Wakai, Vice Chair

AND

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

Friday, February 7, 2025; 3:10 p.m.
State Capitol, Conference Room 225 & via Videoconference

Chairs Elefante and San Buenaventura, Vice Chairs Wakai and Aquino, and
Members of both Committees:

The Department of Corrections and Rehabilitation (DCR) **opposes** Senate Bill (SB) 1612, which proposes DCR establish a five-year fitness to proceed pilot program to reduce overcrowding at the Hawaii state hospital (HSH) by reserving cells to house inmates incapacitated or awaiting a 704 fitness to proceed determination.

The DCR already 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. We do not have the space to reserve cells in a dedicated housing unit with recreational space, natural light and trained staff to address this population's special needs and reduce their further decompensation. In addition, the reallocation of already limited

security staff to manage this designated area places further strain on facility operations.

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 the 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 Oahu Community Correctional Center (OCCC). As an example, OCCC has a design capacity of 628 and currently houses approximately 928 individuals, which is 48% over its design capacity.

If a 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. These 704 evaluations are frequently subject to severe delays resulting in extended periods in the jail environment while an offender is awaiting the fitness to proceed process. This is not in the best interests of these individuals as the DCR lacks the appropriate professional mental health staffing and clinical environment to care for them.

There are additional operational challenges at OCCC (and all jails) that should be considered. DCR currently experiences significant challenges in transporting inmates for court hearings and necessary specialty healthcare visits. Due to security issues, it is also not uncommon for mental health staff to encounter delays with meeting with inmates. HSH does not face these same issues, as it is a hospital, not jail, setting. As proposed, security staff would prioritize Department of Health (DOH) receiving access to those inmates, potentially diverting medical care and very limited security staff from the remainder of the population.

As written, this bill does not address the underlying issues driving overcrowding in state hospitals or the systemic deficiencies in mental health services

statewide. Rather, it seeks to require DCR facilities to perform functions and activities of the DOH facilities, which only serves to exacerbate overcrowding in DCR facilities and further strains our very limited staff resources. State resources and efforts would be better invested in community-based mental health care, step-down mental health facilities, enhanced staffing, and long-term support systems that address the root causes of the current mental health crises the state.

This proposal also contradicts DCR's current jail diversion efforts with the Judiciary, Prosecuting Attorney, Public Defender, DOH, and other community partners to divert those with mental illness away from the criminal justice system and minimize incarceration by placing them into more appropriate therapeutic settings in the community.

Unfortunately, the intent behind the pilot program to reduce overcrowding at HSH effectively transfers an already significant problem to an already overcrowded DCR. Placing additional individuals with mental health needs into a correctional setting—an environment inherently designed for security rather than therapeutic intervention—poses severe risks for further mental health destabilization among an already vulnerable population.

Thank you for the opportunity to provide testimony in **opposition** on SB 1612.



SB1612 Fitness to Proceed
COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS
Senator Brandon J.C. Elefante, Chair
Senator Glenn Wakai, Vice Chair

COMMITTEE ON HEALTH AND HUMAN SERVICES
Senator Joy A. San Buenaventura, Chair
Senator Henry J.C. Aquino, Vice Chair
Friday, Feb 7, 2025: 3:10: Room 225 Videoconference

Hawaii Substance Abuse Coalition Supports SB1612:

*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

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.>

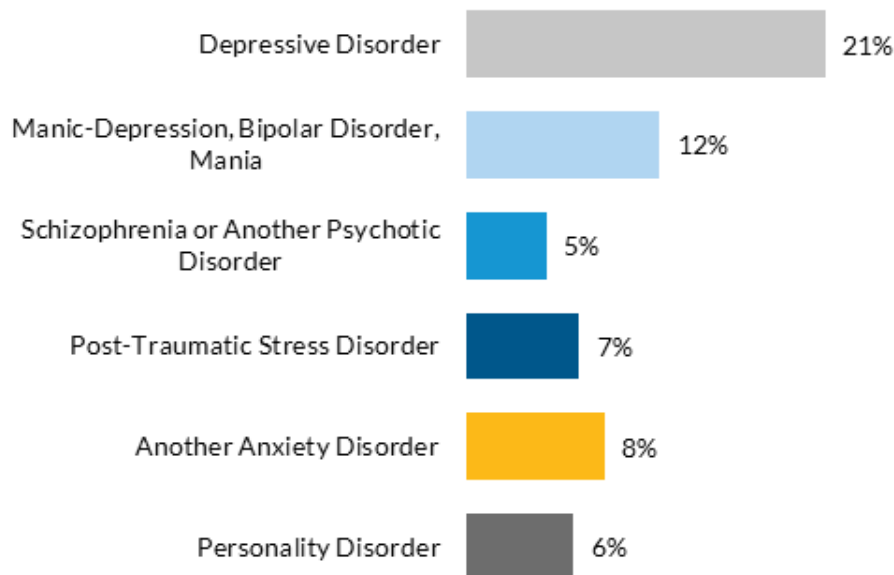
receive mental health treatment while incarcerated in state and federal prisons. It is also challenging for people to remain on treatment regimens once incarcerated. In fact, more than [50%](#) of individuals who were taking medication for mental health conditions at admission did not continue to receive their medication once in prison.

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.

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>

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.
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, 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 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..

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/>



SB1612 Fitness to Proceed

HOUSE COMMITTEE ON PUBLIC SAFETY AND MILITARY AFFAIRS

Sen. Brandon J.C. Elefante, Chair

Sen. Glenn Wakai, Vice Chair

HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES

Sen. Joy A. San Buenaventura, Chair

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Friday, Feb7, 2025: 3:10pm: Room 225 Videoconference

Hina Mauka Supports SB1612:

ALOHA CHAIR, VICE CHAIR, AND DISTINGUISHED COMMITTEE MEMBERS. My name is Brian Baker. I am the Chief Operating Officer for Hina Mauka, a mental health and substance use disorder treatment and prevention agency for thousands of adults and adolescents on Oahu and Kauai, including recovery-oriented services and housing transitional living programs.

Hina Mauka provides this testimony as a community treatment and prevention provider, as well as a member of the Hawaii Substance Abuse Coalition (HSAC).

Hina Mauka supports SB1612.

Hina Mauka supports the practice 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.

Appropriate treatment begins with the partnership of Department of Health and DCR assessing and identifying diagnosable mental health concerns, including substance use disorders, which greatly impact the actions and behaviors of justice-involved individuals.

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

SB-1612

Submitted on: 2/7/2025 2:01:51 PM

Testimony for PSM on 2/7/2025 3:10:00 PM

LATE**LATE**

Submitted By	Organization	Testifier Position	Testify
Louis Erteschik	Testifying for Hawaii Disability Rights Center	Oppose	In Person

Comments:

We almost never submit late testimony and so I apologize. We did not submit on this bill because there is no reference to anything that would violate the Clark case. Clark requires that anyone found not fit to proceed has to be sent to the State Hospital. This bill refers to those who may be awaiting a fitness determination. However, the Department of Health testimony seems to indicate that is their intent. That would completely violate Clark and we stand in strong opposition.