

JAN 20 2017

A BILL FOR AN ACT

RELATING TO A PRE-ARREST DIVERSION PILOT PROJECT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to establish a pre-
2 arrest diversion pilot project for individuals with mental
3 health or substance abuse challenges. The pilot project shall
4 apply to individuals who commit certain nonviolent, non-felony
5 offenses on state property and are referred by deputy sheriffs
6 to services of the department of health. The legislature is
7 establishing the pilot project under state auspices in order to
8 avoid intruding into the jurisdiction of a county.

9 SECTION 2. Pre-arrest diversion pilot project for
10 individuals with mental health or substance abuse challenges;
11 establishment. There is established a pre-arrest diversion
12 pilot project for individuals with mental health or substance
13 abuse challenges.

14 The purpose of the pilot project shall be to refer
15 individuals with mental health or substance abuse challenges who
16 commit nonviolent, non-felony offenses on state property to
17 appropriate community mental health services instead of



1 arresting or citing them. The pilot project shall be operated
2 within a county having a population of not less than six hundred
3 thousand.

4 SECTION 3. Definitions. For the purposes of this Act:

5 "Individual with mental health or substance abuse
6 challenges" means a "mentally ill person" or "person suffering
7 from substance abuse" as defined in section 334-1, Hawaii
8 Revised Statutes.

9 "Nonviolent, non-felony offense" means an offense that:

10 (1) Is not a felony; and

11 (2) Does not involve physical harm to a person's self or
12 another person.

13 "Pilot project" means the pre-arrest diversion pilot
14 project for individuals with mental health or substance abuse
15 challenges established by this Act.

16 "Responsible state officer" means the state executive
17 branch officer who is assigned by the governor to coordinate and
18 have overall responsibility for the pilot project.

19 SECTION 4. Responsible state officer; assignment by
20 governor; coordination and overall responsibility for pilot
21 project. (a) No later than September 1, 2017, the governor



1 shall assign a state executive branch officer to serve as the
2 responsible state officer for the pilot project.

3 (b) The responsible state officer shall coordinate and
4 have overall responsibility for the pilot project.

5 The responsible state officer shall work with the
6 department of public safety, department of health, department of
7 human services, and governor's homelessness coordinator to
8 establish the protocols and processes for operation of the pilot
9 project.

10 SECTION 5. Pilot project basic principles. (a) The pilot
11 project shall be operated in accordance with the following basic
12 principles:

13 (1) When observing or responding to a nonviolent, non-
14 felony offense on state property, a deputy sheriff who
15 is appropriately trained under the pilot project shall
16 preliminarily determine, based on the deputy sheriff's
17 reasonable belief, whether the alleged violator may be
18 a potential participant in the pilot project;

19 (2) If the deputy sheriff reasonably believes that the
20 alleged violator is a potential participant in the
21 pilot project, the deputy sheriff shall determine



1 whether the alleged violator has been convicted within
2 the past three years of an offense involving violence
3 against another person;

4 (3) If the deputy sheriff determines that the alleged
5 violator has not been convicted within the past three
6 years of an offense involving violence against another
7 person, the deputy sheriff shall:

8 (A) Shall refer the alleged violator to the
9 department of health for assessment; and

10 (B) Shall not arrest or cite the alleged violator;

11 If the deputy sheriff determines otherwise, the deputy
12 sheriff shall arrest, cite, or take other action with
13 respect to the alleged violator as deemed appropriate
14 by the deputy sheriff;

15 (4) Upon receiving a referral from a deputy sheriff of an
16 alleged violator, the department of health shall
17 assess whether the alleged violator is an individual
18 with mental health or substance abuse challenges;

19 (5) If the assessment is in the affirmative, and the
20 alleged violator voluntarily agrees to participate in
21 the pilot project, the department of health shall:



1 (A) Accept the individual with mental health or
2 substance abuse challenges into the pilot
3 project; and

4 (B) Refer the individual with mental health or
5 substance abuse challenges to appropriate
6 community mental health services;

7 (6) Upon the acceptance by the department of health of an
8 individual with mental health or substance abuse
9 challenges into the pilot project, the department of
10 public safety shall have no further responsibility
11 regarding the individual or the disposition of the
12 alleged violation; and

13 (7) If not accepting an alleged violator into the pilot
14 project, the department of health shall inform the
15 department of public safety. Upon being so informed,
16 the department of public safety shall arrest, cite, or
17 take other action with respect to the alleged
18 violator, as deemed appropriate by the department.

19 (b) The department of health may limit the number of
20 individuals with mental health or substance abuse challenges who



1 are accepted into the pilot project, based on the availability
2 of funds for the project.

3 SECTION 6. Community mental health services of department
4 of health. The department of health shall provide the community
5 mental health services of the pilot project under the authority
6 of chapter 334, Hawaii Revised Statutes, and any other
7 applicable law. The department of health may contract with any
8 qualified person to provide the community mental health
9 services.

10 SECTION 7. Services of the department of human services.
11 The responsible state officer or department of health may enter
12 into an agreement with the department of human services for the
13 provision of transitional housing, housing first, or other
14 services to individuals accepted into the pilot project.

15 SECTION 8. Nonviolent, non-felony offense; identification.

16 (a) The responsible state officer, in consultation with the
17 department of public safety, shall identify the nonviolent, non-
18 felony offenses under the penal code, other state law, or
19 administrative rule, the commission of which on state property
20 may qualify the alleged violator for participation in the pilot
21 project. In identifying the nonviolent, non-felony offenses,



1 the responsible state officer shall consider, but not be limited
2 to, offenses against drinking liquor in public or on a public
3 place; being in a state park after hours of closure; camping on
4 a sidewalk, beach, or other restricted public place;
5 trespassing; obstruction; prostitution; and possession of an
6 illegal drug.

7 (b) To identify the offenses, the responsible state
8 officer may seek the advice of the judiciary and the police
9 department and department of the prosecuting attorney of the
10 county in which the pilot project shall be implemented.

11 SECTION 9. Timeline for pilot project. (a) During fiscal
12 year 2017-2018, the responsible state officer and relevant state
13 departments shall prepare for the commencement of the pilot
14 project on July 1, 2018.

15 (b) The pilot project shall be operated from July 1, 2018,
16 until June 30, 2019.

17 SECTION 10. Interim report, final report. (a) The
18 responsible state officer shall submit an interim report on the
19 status of the pilot project to the legislature no later than
20 January 1, 2018.



1 (b) The responsible state officer shall submit a final
2 report on the pilot project to the legislature no later than
3 twenty days prior to the convening of the regular session of
4 2019. The final report shall include an evaluation of the pilot
5 project, findings on problems and issues pertaining to the pilot
6 project, and a recommendation on whether or not a pre-arrest
7 diversion program for individuals with mental health or
8 substance abuse challenges should be made permanent.

9 SECTION 11. (a) There is appropriated out of the general
10 revenues of the State of Hawaii the sum of \$ or so much
11 thereof as may be necessary for fiscal year 2017-2018 and the
12 same sum or so much thereof as may be necessary for fiscal year
13 2018-2019 for the pre-arrest diversion pilot project.

14 The sums appropriated shall be expended by the office of
15 the governor for the purposes of this Act.

16 (b) Notwithstanding any other law to the contrary, the
17 governor may transfer all or a portion of the appropriation for
18 each fiscal year to the responsible state officer, the
19 department of public safety, or department of health for
20 expenditure to implement the pilot project.



1 The responsible state officer, department of public safety,
2 or department of health may expend any transferred appropriation
3 for the performance of its duties under the pilot project.

4 SECTION 12. This Act shall take effect on July 1, 2017.

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INTRODUCED BY: _____

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S.B. NO. 716

Report Title:

Mental Health; Substance Abuse; Pilot Project; Appropriation

Description:

Establishes a pre-arrest diversion pilot project for individuals with mental health or substance abuse challenges who allegedly commit nonviolent, non-felony offenses on state property. Appropriates funds.

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