

STAND. COM. REP. NO. **3757**

Honolulu, Hawaii

JUL 02 2020

RE: H.B. No. 1620
H.D. 2
S.D. 2

Honorable Ronald D. Kouchi
President of the Senate
Thirtieth State Legislature
Regular Session of 2020
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred H.B. No. 1620, H.D. 2, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO THE ADMINISTRATION OF JUSTICE,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Require in cases where the defendant is charged with a petty misdemeanor not involving violence or attempted violence where fitness remains an outstanding issue, that the court continue the suspension of the proceedings and commit the defendant to the custody of the Director of Health to be placed in a hospital or other suitable facility for further examination and assessment;
- (2) Amend the requirements for fitness determination hearings, court-appointed examiners, and examination reports;
- (3) Authorize the courts to enter into agreements to divert into residential, rehabilitative, and other treatment those defendants whose physical or mental disease,



disorder, or defect is believed to have become or will become an issue in a judicial case; and

- (4) Amend the requirements for appointing qualified examiners to perform examinations for penal responsibility and remove the time requirement for the ordering of the penal responsibility evaluation.

Your Committee received testimony in support of this measure from the Judiciary, Department of Health, and Hawai'i Psychological Association. Your Committee received testimony in opposition to this measure from the City and County of Honolulu Department of the Prosecuting Attorney and one individual. Your Committee received comments on this measure from the Office of the Public Defender and Hawaii Disability Rights Center.

Your Committee finds that there have been significant increases in the number of individuals who are living with mental illness that are arrested and remain in custody while awaiting a psychiatric evaluation of competency. If determined to be legally unfit to proceed with their cases, these individuals continue to remain in custody until restoration of their legal fitness to proceed. Your Committee further finds that the Mental Health Core Steering Committee, a collaboration of the Department of Health and Judiciary, published a Joint Report on January 9, 2020, in which the Committee recommended proposed legislation to divert nonviolent petty misdemeanants living with mental illness from the criminal justice system within days of their arrest, rather than months, to further the goal of crime prevention, ensure appropriate diversion to community treatment, and further the goal of rehabilitation, among other amendments to existing statute. This measure reflects the recommendations of the Mental Health Core Steering Committee to achieve a more efficient and just response in the treatment of individuals with mental disorders within the criminal justice system.

Your Committee further finds that the recommendations of the Hawaii Summit on Improving the Governmental Response to Community Mental Illness hosted by the State Justice Institute, National Center for State Courts, Conference of Chief Justices, and the Conference of State Court Administrators on November 6, 2019, as well as studies such as the 2016-2017 Policy Paper by the Conference of State Court Administrators' "Decriminalization of



Mental Illness: Fixing a Broken System", demonstrate that jails nationwide have become the default mental health method of treatment for numerous low-level defendants whose needs could be far more effectively addressed by diversion into behavioral health treatment. These studies demonstrate that because of the high cost of incarceration and the high rate of recidivism because of the lack of treatment, the parties to the case should be allowed to opt out of judicial proceedings by entering into agreements at any stage of the process to reduce time and money and increase community results.

Your Committee has amended this measure by:

- (1) Requiring the Judiciary, in consultation with the prosecuting attorney of each county, to submit a report of its findings and recommendations, including any proposed legislation, on the effectiveness of this measure to the Legislature no later than forty days prior to the convening of the Regular Sessions of 2021, 2022, and 2023;
- (2) Making it effective upon its approval; and
- (3) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1620, H.D. 2, S.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 1620, H.D. 2, S.D. 2.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary,




KARL RHOADS, Chair



The Senate
Thirtieth Legislature
State of Hawai'i

Record of Votes
Committee on Judiciary
JDC

Bill / Resolution No.:*	Committee Referral:	Date:		
HB 1620 HDZ SD1	CPH, JDC	06/30/2020		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input type="checkbox"/> Pass, unamended 2312	<input checked="" type="checkbox"/> Pass, with amendments 2311	<input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313		
Members	Aye	Aye (WR)	Nay	Excused
RHOADS, Karl (C)	/			
KEOHOKALOLE, Jarrett (VC)	/			
GABBARD, Mike	/			
KIM, Donna Mercado	/			
FEVELLA, Kurt	/			
TOTAL	5			
Recommendation:				
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
				
Distribution:				
Original File with Committee Report	Yellow Clerk's Office	Pink Drafting Agency	Goldenrod Committee File Copy	

*Only one measure per Record of Votes