

JAN 25 2023

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# A BILL FOR AN ACT

RELATING TO REHABILITATION.

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

1 PART I

2 SECTION 1. The purpose of this part is to expand the scope  
3 of the criminal justice diversion program for nonviolent petty  
4 misdemeanants whose fitness to proceed in criminal proceedings  
5 remains an outstanding issue, to include nonviolent  
6 misdemeanants and defendants charged with promoting a dangerous  
7 drug in the third degree. In addition, this part establishes a  
8 mechanism for defendants in the diversion program to be  
9 automatically screened for involuntary hospitalization or  
10 assisted community treatment.

11 This part also appropriates funds to provide additional job  
12 positions and resources for the implementation of this part.

13 SECTION 2. Chapter 704, Hawaii Revised Statutes, is  
14 amended by adding a new section to be appropriately designated  
15 and to read as follows:

16 "§704- Examination of defendants via telehealth. (1)

17 The director of health shall prescribe by rule the requirements,



1 terms, conditions, and circumstances under which examinations of  
2 defendants conducted pursuant to this chapter may be  
3 administered via telehealth.

4 (2) With regard to examinations of defendants conducted  
5 via telehealth and pursuant to this chapter:

6 (a) The director of health, in the case of any facility  
7 under the jurisdiction of the director of health;

8 (b) The director of public safety, in the case of any  
9 correctional facility in the State; and

10 (c) The chief justice, in the case of any judiciary  
11 facility in the State,

12 shall establish procedures regarding the provision and use of  
13 telehealth resources at appropriate facilities. The procedures  
14 shall comply with the rules prescribed by the director of health  
15 pursuant to subsection (1) and ensure the widest availability of  
16 telehealth resources feasible at appropriate facilities.

17 (3) For the purposes of this section, "telehealth" means  
18 health care services provided through telecommunications  
19 technology by a health care professional who is at a location  
20 other than where the defendant is located."



1 SECTION 3. Section 704-404, Hawaii Revised Statutes, is  
2 amended by amending subsection (2) to read as follows:

3 "(2) Upon suspension of further proceedings in the  
4 prosecution:

5 (a) In cases where the defendant is charged with [~~a petty~~  
6 ~~misdemeanor not involving violence or attempted~~  
7 ~~violence,~~] an offense listed under section 704-421(1),  
8 if a court-based certified examiner is available, the  
9 court shall appoint the court-based certified examiner  
10 to examine and provide an expedited report solely upon  
11 the issue of the defendant's capacity to understand  
12 the proceedings against the defendant and defendant's  
13 ability to assist in the defendant's own defense. The  
14 court-based certified examiner shall file the  
15 examiner's report with the court within two days of  
16 the appointment of the examiner, or as soon thereafter  
17 is practicable. A hearing shall be held to determine  
18 if the defendant is fit to proceed within two days of  
19 the filing of the report, or as soon thereafter as is  
20 practicable[+]. This paragraph shall not apply to any



1 case under the jurisdiction of the family court unless  
2 the presiding judge orders otherwise;

3 (b) In [~~all other~~] nonfelony cases[~~7~~] where the offense  
4 charged is not listed under section 704-421(1), and  
5 where a court-based certified examiner is not  
6 available in cases under paragraph (a), the court  
7 shall appoint one qualified examiner to examine and  
8 report upon the defendant's fitness to proceed. The  
9 court may appoint as the examiner either a  
10 psychiatrist or a licensed psychologist designated by  
11 the director of health from within the department of  
12 health; and

13 (c) In felony cases[~~7~~] where the offense charged is not  
14 listed in section 704-421(1), the court shall appoint  
15 three qualified examiners to examine and report upon  
16 the defendant's fitness to proceed. The court shall  
17 appoint as examiners psychiatrists, licensed  
18 psychologists, or qualified physicians; provided that  
19 one of the three examiners shall be a psychiatrist or  
20 licensed psychologist designated by the director of  
21 health from within the department of health.



1 All examiners shall be appointed from a list of certified  
2 examiners as determined by the department of health. The court,  
3 in appropriate circumstances, may appoint an additional examiner  
4 or examiners. The examination may be conducted while the  
5 defendant is in custody or on release or, in the court's  
6 discretion, when necessary the court may order the defendant to  
7 be committed to a hospital or other suitable facility for the  
8 purpose of the examination for a period not exceeding thirty  
9 days, or a longer period as the court determines to be necessary  
10 for the purpose. The court may direct that one or more  
11 qualified physicians or psychologists retained by the defendant  
12 be permitted to witness the examination. As used in this  
13 section, the term "licensed psychologist" includes psychologists  
14 exempted from licensure by section 465-3(a)(3) and "qualified  
15 physician" means a physician qualified by the court for the  
16 specific evaluation ordered."

17 SECTION 4. Section 704-406, Hawaii Revised Statutes, is  
18 amended by amending subsection (1) to read as follows:

19 "(1) If the court determines that the defendant lacks  
20 fitness to proceed, the proceeding against the defendant shall  
21 be suspended, except as provided in sections 704-407 and



1 704-421, and the court shall commit the defendant to the custody  
2 of the director of health to be placed in an appropriate  
3 institution for detention, assessment, care, and treatment;  
4 provided that[÷

5 ~~(a) When the defendant is charged with a petty misdemeanor~~  
6 ~~not involving violence or attempted violence, the~~  
7 ~~defendant]~~ eligible defendants shall be diverted from  
8 the criminal justice system pursuant to section 704-  
9 421 [~~÷ and~~

10 ~~(b) When the defendant is charged with a misdemeanor not~~  
11 ~~involving violence or attempted violence, the~~  
12 ~~commitment shall be limited to no longer than one~~  
13 ~~hundred twenty days from the date the court determines~~  
14 ~~the defendant lacks fitness to proceed].~~

15 If the court is satisfied that the defendant may be released on  
16 conditions without danger to the defendant or to another or risk  
17 of substantial danger to property of others, the court shall  
18 order the defendant's release, which shall continue at the  
19 discretion of the court, on conditions the court determines  
20 necessary[; ~~provided that the release on conditions of a~~  
21 ~~defendant charged with a misdemeanor not involving violence or~~



1 ~~attempted violence shall continue for no longer than one hundred~~  
2 ~~twenty days]~~. A copy of all reports filed pursuant to section  
3 704-404 shall be attached to the order of commitment or order of  
4 release on conditions that is provided to the department of  
5 health. When the defendant is committed to the custody of the  
6 director of health for detention, assessment, care, and  
7 treatment, the county police departments shall provide to the  
8 director of health and the defendant copies of all police  
9 reports from cases filed against the defendant that have been  
10 adjudicated by the acceptance of a plea of guilty or nolo  
11 contendere, a finding of guilt, acquittal, acquittal pursuant to  
12 section 704-400, or by the entry of a plea of guilty or nolo  
13 contendere made pursuant to chapter 853; provided that the  
14 disclosure to the director of health and the defendant does not  
15 frustrate a legitimate function of the county police  
16 departments; provided further that expunged records, records of  
17 or pertaining to any adjudication or disposition rendered in the  
18 case of a juvenile, or records containing data from the United  
19 States National Crime Information Center shall not be provided.  
20 The county police departments shall segregate or sanitize from  
21 the police reports information that would result in the likely



1 or actual identification of individuals who furnished  
2 information in connection with the investigation or who were of  
3 investigatory interest. No further disclosure of records shall  
4 be made except as provided by law."

5 SECTION 5. Section 704-421, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 "~~[+]§704-421[+] [Proceedings for defendants charged with~~  
8 ~~petty misdemeanors not involving violence or attempted violence;~~  
9 ~~criminal]~~ Criminal justice diversion program[-] for certain  
10 defendants whose fitness remains an outstanding issue. (1) In

11 cases where the defendant is charged with [a]:

12 (a) A petty misdemeanor or misdemeanor not involving  
13 violence or attempted violence[-]; or

14 (b) The offense of promoting a dangerous drug in the third  
15 degree under section 712-1243,

16 if, at the hearing held pursuant to section 704-404(2)(a) or at  
17 a further hearing held after the appointment of an examiner  
18 pursuant to section 704-404(2)(b), the court determines that the  
19 defendant is fit to proceed, then the proceedings against the  
20 defendant shall resume. In all other cases where fitness  
21 remains an outstanding issue, the court shall continue the





1 suspension of the proceedings and either commit the defendant to  
2 the custody of the director of health to be placed in a hospital  
3 or other suitable facility, including an outpatient facility,  
4 for further examination and assessment[-] or, in cases where the  
5 defendant was not subject to an order of commitment to the  
6 director of health for the purpose of the fitness examination  
7 under section 704-404(2), the court may order that the defendant  
8 remain released on conditions the court determines necessary for  
9 placement in a group home, residence, or other facility  
10 prescribed by the director of health for further assessment by a  
11 clinical team pursuant to subsection (3).

12 (2) [~~Within seven days from the commitment of the~~  
13 ~~defendant to the custody of the director of health, or as soon~~  
14 ~~thereafter as is practicable, the director of health] In cases  
15 where the defendant's fitness to proceed remains an outstanding  
16 issue at the hearing held pursuant to section 704-404(2) (a) or a  
17 further hearing held after the appointment of an examiner  
18 pursuant to section 704-404(2) (b), as applicable, the director  
19 of health, within fourteen days of that hearing or as soon  
20 thereafter as is practicable, shall report to the court on the  
21 following:~~



1        (a) The defendant's current capacity to understand the  
2                proceedings against the defendant and defendant's  
3                current ability to assist in the defendant's own  
4                defense[-];

5        (b) Whether, after assessment of the defendant pursuant to  
6                subsection (3)(a) or (b), the defendant's clinical  
7                team believes that the defendant meets the criteria  
8                for involuntary hospitalization under section 334-60.2  
9                or assisted community treatment under section 334-121;  
10               and

11        (c) The date that the director of health filed a petition  
12                for involuntary hospitalization or assisted community  
13                treatment on behalf of the defendant pursuant to  
14                subsection (3)(a) or (b), as applicable.

15 If, following the report, the court finds defendant fit to  
16 proceed, the proceedings against defendant shall resume. In all  
17 other cases, the court shall dismiss the charge with or without  
18 prejudice in the interest of justice. [~~The director of health~~  
19 ~~may at any time proceed under the provisions of section 334-60.2~~  
20 ~~or 334-121.]~~



1        (3) During the defendant's commitment to the custody of  
2 the director of health or release on conditions pursuant to  
3 subsection (1):

4        (a) If the defendant's clinical team determines that the  
5 defendant meets the criteria for involuntary  
6 hospitalization set forth in section 334-60.2, the  
7 director of health, within        days of the clinical  
8 team's determination, shall file a petition for  
9 involuntary hospitalization pursuant to section  
10 334-60.3 with the family court. If the petition is  
11 granted, the defendant shall remain hospitalized for a  
12 time period as provided by section 334-60.6;

13        (b) If the defendant's clinical team determines that the  
14 defendant does not meet the criteria for involuntary  
15 hospitalization, or the court denies the petition for  
16 involuntary hospitalization, the defendant's clinical  
17 team shall determine whether an assisted community  
18 treatment plan is appropriate pursuant to part VIII of  
19 chapter 334. If the clinical team determines that an  
20 assisted community treatment plan is appropriate, the  
21 psychiatrist or advanced practice registered nurse



1           from the clinical team shall prepare the certificate  
2           for assisted community treatment specified by section  
3           334-123, which certificate shall include a written  
4           treatment plan for the provision of mental health  
5           services to the defendant. The clinical team shall  
6           identify a community mental health outpatient program  
7           that agrees to provide mental health services to the  
8           defendant as the designated mental health program  
9           under the assisted community treatment order. The  
10          clinical team shall provide the defendant with a copy  
11          of the certificate. If:  
12          (i) On at least                    separate occasions in the  
13             past            months, the clinical team had  
14             previously determined that an assisted community  
15             treatment plan was appropriate for the defendant,  
16             and the defendant declined to accept the  
17             treatment plan on each occasion; and  
18          (ii) The defendant declines to accept the mental  
19             health services described in the certificate  
20             prepared pursuant to this paragraph,



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1           then the director of health, within \_\_\_\_\_ days of the  
2           defendant's refusal of services described in the  
3           certificate, shall file the assisted community  
4           treatment petition described in section 334-123 with  
5           the family court. The defendant may be held at the  
6           appropriate institution pending the court hearing on  
7           the petition for assisted community treatment. If the  
8           petition is granted, the defendant shall be released  
9           for treatment with the designated mental health  
10           program once the assisted community treatment order is  
11           issued and the initial treatment consistent with the  
12           assisted community treatment plan is administered to  
13           the defendant; or  
14           (c) If the petition for assisted community treatment is  
15           not granted or the clinical team determines that an  
16           assisted community treatment order is not appropriate,  
17           the defendant shall be discharged from the appropriate  
18           institution and referred to an appropriate outpatient  
19           mental health program for continued support, care, and  
20           treatment.



1       (4) This section shall not apply to any case under the  
2 jurisdiction of the family court unless the presiding judge  
3 orders otherwise."

4       SECTION 6. Section 710-1021, Hawaii Revised Statutes, is  
5 amended by amending subsection (2) to read as follows:

6       "(2) Escape in the second degree is a class C felony[-]  
7 unless the offense was committed by a person while in the  
8 custody of the director of health pursuant to section  
9 704-421(1), in which case it is a petty misdemeanor."

10       SECTION 7. There is appropriated out of the general  
11 revenues of the State of Hawaii the sum of \$                    or so  
12 much thereof as may be necessary for fiscal year 2023-2024 and  
13 the same sum or so much thereof as may be necessary for fiscal  
14 year 2024-2025 for the establishment of one full-time equivalent  
15 (1.0 FTE) law clerk position for the mental health calendar  
16 judge presiding over matters under chapter 704, Hawaii Revised  
17 Statutes.

18       The sums appropriated shall be expended by the judiciary  
19 for the purposes of this part.

20       SECTION 8. There is appropriated out of the general  
21 revenues of the State of Hawaii the sum of \$                    or so



1 much thereof as may be necessary for fiscal year 2023-2024 and  
2 the same sum or so much thereof as may be necessary for fiscal  
3 year 2024-2025 for the establishment of full-time  
4 equivalent ( FTE) positions (\$) and for  
5 additional resources necessary to implement this part.

6 The sums appropriated shall be expended by the department  
7 of health for the purposes of this part.

8 SECTION 9. There is appropriated out of the general  
9 revenues of the State of Hawaii the sum of \$ or so  
10 much thereof as may be necessary for fiscal year 2023-2024 and  
11 the same sum or so much thereof as may be necessary for fiscal  
12 year 2024-2025 for the establishment of full-time  
13 equivalent ( FTE) positions (\$) and for  
14 additional resources necessary to accommodate telehealth  
15 examinations of defendants pursuant to section 2 of this Act.

16 The sums appropriated shall be expended by the department  
17 of health for the purposes of this part.

18 SECTION 10. There is appropriated out of the general  
19 revenues of the State of Hawaii the sum of \$ or so  
20 much thereof as may be necessary for fiscal year 2023-2024 and  
21 the same sum or so much thereof as may be necessary for fiscal



1 year 2024-2025 for the establishment of full-time  
2 equivalent ( FTE) positions (\$) and for  
3 additional resources necessary to accommodate telehealth  
4 examinations of defendants pursuant to section 2 of this Act.

5 The sums appropriated shall be expended by the department  
6 of public safety for the purposes of this part.

7 SECTION 11. There is appropriated out of the general  
8 revenues of the State of Hawaii the sum of \$ or so  
9 much thereof as may be necessary for fiscal year 2023-2024 and  
10 the same sum or so much thereof as may be necessary for fiscal  
11 year 2024-2025 for the establishment of full-time  
12 equivalent ( FTE) positions (\$) and for  
13 additional resources necessary to accommodate telehealth  
14 examinations of defendants pursuant to section 2 of this Act.

15 The sums appropriated shall be expended by the judiciary  
16 for the purposes of this part.

17 PART II

18 SECTION 12. The purpose of this part is to lengthen the  
19 allowable period of court-ordered assisted community treatment  
20 for persons who are mentally ill or suffering from substance  
21 abuse, and extensions of the court order.





1           In addition, this part eliminates the need for courts, in  
2 deciding petitions to extend periods of assisted community  
3 treatment, to consider or make any finding as to any unchanged  
4 factor that has been previously established in the existing  
5 order for treatment.

6           SECTION 13. Section 334-127, Hawaii Revised Statutes, is  
7 amended by amending subsection (b) to read as follows:

8           "(b) If after hearing all relevant evidence, including the  
9 results of any diagnostic examination ordered by the family  
10 court, the family court finds that the criteria for assisted  
11 community treatment under section 334-121(1) have been met  
12 beyond a reasonable doubt and that the criteria under section  
13 334-121(2) to 334-121(4) have been met by clear and convincing  
14 evidence, the family court shall order the subject to obtain  
15 assisted community treatment for a period of no more than [~~one~~  
16 ~~year.~~] \_\_\_\_\_. The written treatment plan submitted  
17 pursuant to section 334-126(g) shall be attached to the order  
18 and made a part of the order.

19           If the family court finds by clear and convincing evidence  
20 that the beneficial mental and physical effects of recommended  
21 medication outweigh the detrimental mental and physical effects,



1 if any, the order may authorize types or classes of medication  
2 to be included in treatment at the discretion of the treating  
3 psychiatrist or advanced practice registered nurse with  
4 prescriptive authority and who holds an accredited national  
5 certification in an advanced practice registered nurse  
6 psychiatric specialization.

7 The court order shall also state who should receive notice  
8 of intent to discharge early in the event that the treating  
9 psychiatrist or advanced practice registered nurse with  
10 prescriptive authority and who holds an accredited national  
11 certification in an advanced practice registered nurse  
12 psychiatric specialization determines, [~~prior to~~] before the end  
13 of the court ordered period of treatment, that the subject  
14 should be discharged early from assisted community treatment.

15 Notice of the order shall be provided to those persons  
16 entitled to notice pursuant to section 334-125."

17 SECTION 14. Section 334-130, Hawaii Revised Statutes, is  
18 amended by amending subsection (b) to read as follows:

19 "(b) A subject of assisted community treatment is  
20 automatically and fully discharged at the end of the family  
21 court ordered period of treatment, a period of [~~not~~] no more



1 than [~~one year,~~] \_\_\_\_\_, unless a new family court order has  
2 been obtained as provided hereinbelow."

3 SECTION 15. Section 334-133, Hawaii Revised Statutes, is  
4 amended by amending subsections (a) and (b) to read as follows:

5 "(a) Before the expiration of the period of assisted  
6 community treatment ordered by the family court, any interested  
7 party may file a petition with the family court for an order of  
8 continued assisted community treatment. The petition shall be  
9 filed, and unless the court determines the existence of a  
10 guardian, a guardian ad litem appointed, and notice provided in  
11 the same manner as under sections 334-123 and 334-125[~~-~~];  
12 provided that the petition shall be accompanied by a declaration  
13 of the treating psychiatrist or advanced practice registered  
14 nurse specifying which of the criteria set forth in section  
15 334-121 are unchanged from the date of the existing order for  
16 assisted community treatment.

17 (b) The family court shall appoint a guardian ad litem,  
18 unless there is an existing guardian, hold a hearing on the  
19 petition, and make its decision in the same manner as provided  
20 under sections 334-123 to 334-127[~~-~~]; provided that at the  
21 hearing and in rendering its decision, the court need not



1 consider or make any finding as to any unchanged factor that has  
2 been previously established in the existing order for assisted  
3 community treatment. The family court may order the continued  
4 assisted community treatment for no more than [~~one~~  
5 year] \_\_\_\_\_ after the date of the hearing pursuant to this  
6 section if the court finds that the criteria for assisted  
7 community treatment continue to exist and are likely to continue  
8 beyond one hundred eighty days."

9 PART III

10 SECTION 16. The purpose of this part is to authorize  
11 courts to:

12 (1) Enter into an agreement with a nonviolent petty  
13 misdemeanor or misdemeanor at any stage of the  
14 criminal proceeding to divert the case into an  
15 evaluation, treatment, or any other course or  
16 procedure to address a physical or mental disease,  
17 disorder, or defect that will or has become an issue  
18 in the case; and

19 (2) Dismiss the charge in the interest of justice upon the  
20 defendant's successful completion of all terms and  
21 conditions of the diversion.



1           In cases involving all other offenses, this part authorizes  
2 courts to divert the case for evaluation or treatment with the  
3 defendant's consent only, without the need for an agreement by  
4 all of the case parties as required by existing law.

5           SECTION 17. Section 704-407.5, Hawaii Revised Statutes, is  
6 amended by amending subsection (1) to read as follows:

7           "(1) Whenever the defendant has filed a notice of  
8 intention to rely on the defense of physical or mental disease,  
9 disorder, or defect excluding penal responsibility, or there is  
10 reason to believe that the physical or mental disease, disorder,  
11 or defect of the defendant will or has become an issue in the  
12 case, the court may order an examination as to the defendant's  
13 physical or mental disease, disorder, or defect at the time of  
14 the conduct alleged.

15           Whenever there is reason to believe that the physical or  
16 mental disease, disorder, or defect of the defendant will or has  
17 become an issue in the case~~[7]~~:

18           (a) If the defendant is charged with an offense not  
19           described in paragraph (b), the court [~~may enter into~~  
20           an agreement with the parties], at any stage of the  
21           proceeding ~~[~~to~~]~~ and with the consent of the defendant,



1 may divert the case into an evaluation of the  
2 defendant[-]; treatment of the defendant, including  
3 residential or rehabilitation treatment; or any other  
4 course or procedure, including diversion into  
5 specialized courts. [~~Such agreements~~] The diversion  
6 may include in-court clinical evaluations[-]; and

7 (b) If the defendant is charged with a petty misdemeanor  
8 or misdemeanor not involving violence or attempted  
9 violence, the court, at any stage of the proceeding  
10 and with the consent of the defendant, may divert the  
11 case into any evaluation, treatment, course, or  
12 procedure authorized under paragraph (a). If the  
13 prosecution objects, the defense shall have an  
14 opportunity to be heard before diversion is ordered.  
15 Upon the defendant's successful completion of all  
16 terms and conditions ordered by the court, the court  
17 shall dismiss the charge in the interest of justice."

18 PART IV

19 SECTION 18. The purpose of this part is to authorize  
20 courts to require a probation violator to undergo a mental  
21 health evaluation and treatment program as a condition of



1 continued probation whenever there is reason to believe that the  
2 probation violation is associated with a mental disease,  
3 disorder, or defect of the defendant.

4 SECTION 19. Section 706-625, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 **"§706-625 Revocation, modification of probation**

7 **conditions.** (1) The court, on application of a probation  
8 officer, the prosecuting attorney, the defendant, or on its own  
9 motion, after a hearing, may revoke probation except as provided  
10 in [~~subsection~~] subsections (6) and (7), reduce or enlarge the  
11 conditions of a sentence of probation, pursuant to the  
12 provisions applicable to the initial setting of the conditions  
13 and the provisions of section 706-627.

14 (2) The prosecuting attorney, the defendant's probation  
15 officer, and the defendant shall be notified by the movant in  
16 writing of the time, place, and date of any such hearing, and of  
17 the grounds upon which action under this section is proposed.  
18 The prosecuting attorney, the defendant's probation officer, and  
19 the defendant may appear in the hearing to oppose or support the  
20 application, and may submit evidence for the court's  
21 consideration. The defendant shall have the right to be



1 represented by counsel. For purposes of this [section]  
2 subsection, the court shall not be bound by the Hawaii rules of  
3 evidence, except for the rules pertaining to privileges.

4 (3) The court shall revoke probation if the defendant has  
5 inexcusably failed to comply with a substantial requirement  
6 imposed as a condition of the order or has been convicted of a  
7 felony. The court may revoke the suspension of sentence or  
8 probation if the defendant has been convicted of another crime  
9 other than a felony.

10 (4) The court may modify the requirements imposed on the  
11 defendant or impose further requirements, if it finds that such  
12 action will assist the defendant in leading a law-abiding life.

13 (5) When the court revokes probation, it may impose on the  
14 defendant any sentence that might have been imposed originally  
15 for the crime of which the defendant was convicted.

16 ~~[(6) As used in this section, "conviction" means that a  
17 judgment has been pronounced upon the verdict.~~

18 ~~(7)]~~ (6) The court may require a defendant to undergo and  
19 complete a substance abuse treatment program when the defendant  
20 has committed a violation of the terms and conditions of  
21 probation involving possession or use, not including to





1 distribute or manufacture as defined in section 712-1240, of any  
2 dangerous drug, detrimental drug, harmful drug, intoxicating  
3 compound, marijuana, or marijuana concentrate, as defined in  
4 section 712-1240, unlawful methamphetamine trafficking as  
5 provided in section 712-1240.6, or involving possession or use  
6 of drug paraphernalia under section 329-43.5. If the defendant  
7 fails to complete the substance abuse treatment program or the  
8 court determines that the defendant cannot benefit from any  
9 other suitable substance abuse treatment program, the defendant  
10 shall be subject to revocation of probation and incarceration.

11 The court may require the defendant to:

12 (a) Be assessed by a certified substance abuse counselor  
13 for substance abuse dependency or abuse under the  
14 applicable Diagnostic and Statistical Manual and  
15 Addiction Severity Index;

16 (b) Present a proposal to receive substance abuse  
17 treatment in accordance with the treatment plan  
18 prepared by a certified substance abuse counselor  
19 through a substance abuse treatment program that  
20 includes an identified source of payment for the  
21 treatment program;



1 (c) Contribute to the cost of the substance abuse  
2 treatment program; and

3 (d) Comply with any other terms and conditions of  
4 probation.

5 ~~[As used in this subsection, "substance abuse treatment~~  
6 ~~program" means drug or substance abuse treatment services~~  
7 ~~provided outside a correctional facility by a public, private,~~  
8 ~~or nonprofit entity that specializes in treating persons who are~~  
9 ~~diagnosed with substance abuse or dependency and preferably~~  
10 ~~employs licensed professionals or certified substance abuse~~  
11 ~~counselors.~~

12 ~~Nothing in this subsection shall be construed to give rise~~  
13 ~~to a cause of action against the State, a state employee, or a~~  
14 ~~treatment provider.]~~

15 (7) As a condition of continued probation, the court may  
16 require a defendant to undergo a mental health evaluation and  
17 treatment program when the defendant has committed a violation  
18 of the terms and conditions of probation and there is reason to  
19 believe that the violation is associated with a mental disease,  
20 disorder, or defect of the defendant. The court may require the  
21 defendant to:



1        (a) Be assessed for a mental disease, disorder, or defect  
2        by a psychiatrist or psychologist, who shall prepare  
3        an appropriate treatment plan;

4        (b) Present a proposal to receive treatment in accordance  
5        with the plan prepared pursuant to paragraph (a)  
6        through a mental health treatment program that  
7        includes an identified source of payment for the  
8        treatment program, as applicable;

9        (c) Contribute to the cost of the treatment program, as  
10       applicable; and

11       (d) Comply with any other terms and conditions of  
12       probation.

13       If the defendant fails to complete the treatment program or  
14       the court determines that the defendant cannot benefit from any  
15       other suitable treatment program, the defendant shall be subject  
16       to revocation of probation and incarceration.

17       (8) For the purposes of this section:

18       "Conviction" means that a judgment has been pronounced upon  
19       the verdict.

20       "Mental health treatment program" means treatment services  
21       addressing a mental disease, disorder, or defect of the



1 defendant, including residential or rehabilitation treatment or  
2 any other course or procedure, including diversion into  
3 specialized courts.

4 "Substance abuse treatment program" means drug or substance  
5 abuse treatment services provided outside a correctional  
6 facility by a public, private, or nonprofit entity that  
7 specializes in treating persons who are diagnosed with substance  
8 abuse or dependency and preferably employs licensed  
9 professionals or certified substance abuse counselors.

10 (9) Nothing in subsection (6) or (7) shall be construed to  
11 give rise to a cause of action against the State, a state  
12 employee, or a treatment provider."

13 PART V

14 SECTION 20. The purpose of this part is to require the  
15 department of health to contract with behavioral health crisis  
16 centers to provide intervention and stabilization services in  
17 each county for persons experiencing a mental illness or  
18 substance use disorder crisis, including a dedicated first  
19 responder drop-off area for potential clients.



1 SECTION 21. Chapter 334, Hawaii Revised Statutes, is  
2 amended by adding a new section to part I to be appropriately  
3 designated and to read as follows:

4 "§334- Behavioral health crisis centers. (a) Pursuant  
5 to the authority and functions established under sections  
6 334-2.5(a)(3)(B) and 334-3(a)(5), the director shall establish  
7 or contract with behavioral health crisis centers in each county  
8 of the State to provide care, diagnosis, or treatment for  
9 persons experiencing a mental illness or substance use disorder  
10 crisis.

11 (b) Each behavioral health crisis center established or  
12 contracted with pursuant to this section shall:

- 13 (1) Be designed to:
- 14 (A) Address mental health and substance use crisis  
15 issues; and
  - 16 (B) Screen, assess, admit for stabilization, and  
17 redirect a client to ongoing care in the most  
18 appropriate and least restrictive community  
19 setting available, consistent with the client's  
20 needs;



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- 1        (2) Provide services twenty-four hours a day, seven days a  
2            week;
- 3        (3) Accept all walk-ins and referrals and provide services  
4            regardless of the client's ability to pay, subject to  
5            subsection (c);
- 6        (4) Offer a dedicated first responder drop-off area;
- 7        (5) Not require medical clearance before admission of the  
8            client but rather provide assessment and support for  
9            the client's medical stability while at the crisis  
10           center;
- 11       (6) Have the capacity to assess physical health needs and  
12           deliver care for most minor physical health  
13           challenges;
- 14       (7) Be staffed at all times with a multidisciplinary team  
15           capable of meeting the needs of clients experiencing  
16           all levels of mental health or substance use crisis,  
17           including:
- 18           (A) Psychiatrists or psychiatric nurse practitioners;  
19           (B) Nurses;
- 20           (C) Licensed or credentialed clinicians capable of  
21           completing assessments of the client; and



1           (D) Peers with lived experience similar to the  
2                           experience of the client; and

3           (8) Screen clients for suicide or violence risk and  
4                           complete more comprehensive risk assessments and  
5                           planning when clinically indicated.

6           (c) No person shall be denied services or receive delayed  
7 services at a behavioral health crisis center operating under  
8 this section because of inability to pay; provided that, subject  
9 to section 334-6, crisis centers shall make every reasonable  
10 effort to collect appropriate reimbursement for the cost of  
11 providing services to persons able to pay for services,  
12 including insurance or third-party payments.

13           (d) The director shall adopt rules pursuant to section  
14 334-9 to implement this section, including rules specifying  
15 standards for behavioral health crisis center eligibility  
16 criteria, clinical procedures, staffing requirements, and  
17 operational, administrative, and financing requirements."

18           SECTION 22. There is appropriated out of the general  
19 revenues of the State of Hawaii the sum of \$                    or so  
20 much thereof as may be necessary for fiscal year 2023-2024 and  
21 the same sum or so much thereof as may be necessary for fiscal



1 year 2024-2025 for the director of health to establish or  
2 contract with behavioral health crisis centers pursuant to this  
3 part.

4 The sums appropriated shall be expended by the department  
5 of health for the purposes of this part.

6 PART VI

7 SECTION 23. The purpose of this part is to restore funding  
8 for probation officer services for the mental health court.

9 SECTION 24. There is appropriated out of the general  
10 revenues of the State of Hawaii the sum of \$ or so  
11 much thereof as may be necessary for fiscal year 2023-2024 and  
12 the same sum or so much thereof as may be necessary for fiscal  
13 year 2024-2025 to restore funding for probation officer services  
14 for the mental health court.

15 The sums appropriated shall be expended by the judiciary  
16 for the purposes of this part.

17 PART VII

18 SECTION 25. Act , Session Laws of Hawaii 2023, is  
19 amended as follows:

20 (1) By substituting the phrase "director of corrections  
21 and rehabilitation", or similar term, wherever the





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1 phrase "director of public safety", or similar term,  
2 appears; and  
3 (2) By substituting the phrase "department of corrections  
4 and rehabilitation", or similar term, wherever the  
5 phrase "department of public safety", or similar term,  
6 appears.

7 SECTION 26. Statutory material to be repealed is bracketed  
8 and stricken. New statutory material is underscored.

9 SECTION 27. This Act shall take effect on July 1, 2023;  
10 provided that section 25 of this Act shall take effect on  
11 January 1, 2024.

12

INTRODUCED BY: \_\_\_\_\_



# S.B. NO. 1540

**Report Title:**

Mental Health Treatment Diversion; Probation Violators;  
Behavioral Health Crisis Centers; Appropriations

**Description:**

Expands the criminal justice diversion program. Amends the allowable period of court-ordered assisted community treatment and considerations for extensions. Allows courts to require certain probation violators to undergo mental health evaluation and treatment as a condition of continued probation. Requires DOH to contract with behavioral health crisis centers. Appropriates funds.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

