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February 26, 2024

Committee on Finance
Rep. Kyle T. Yamashita, Chair
Rep. Lisa Kitagawa, Vice Chair
415 South Beretania Street, Conference Room 308
State Capital
Honolulu, HI 96813
via email: JDCtestimony@capitol.hawaii.gov

Re: Testimony in Support of H.B. 2451, H.D.2
Hearing: February 28, 2024, 10:00 AM

Dear Chair Yamashita, Vice Chair Kitagawa and Committee Members:

This letter is in support of the provisions of H.B. 2451, H.D. 2 which would (1) provide for examination of defendants through telehealth; and (2) establish funding for the bill.

H.B. 2451, H.D. 2 facilitates examinations of defendants by telehealth. Timely and thorough court ordered examinations are necessary and vital for both the individual and for the criminal case to move forward in the criminal justice system. Often times, unexpected circumstances beyond the court, examiner or facility's control may hamper the ability of the examiner to conduct the examination in person. Telehealth is then the only means in which the court ordered examination can proceed and ensure that the examiner's report is both timely and thorough. Further, the mandate to establish specific telehealth procedures will ensure the widest availability of telehealth resources in facilities where defendants are detained.

Thank you for taking these comments into consideration.

Sincerely,
/s/ Taryn Tomasa
Deputy Public Defender



The Judiciary, State of Hawai'i

Testimony to the Thirty-Second State Legislature, 2024 Regular Session

House Committee on Finance
Representative Kyle T. Yamashita, Chair
Representative Lisa Kitagawa, Vice-Chair

February 28, 2024 at 10:00 a.m.
Conference Room 308 and Via Videoconference

by
Rodney A. Maile
Administrative Director of the Courts

Bill No. and Title: House Bill No. 2451, H.D. 2, Relating to Mental Health.

Purpose: Authorizes examination of defendants via telehealth. Amends conditions for certain petty misdemeanants' release or examination of fitness to proceed. Provides a mechanism for the automatic screening of certain nonviolent defendants for involuntary hospitalization or assisted community treatment. Appropriates funds. Effective 7/1/3000. (HD2)

Judiciary's Position:

The Judiciary strongly supports the overall intent of this legislation and the specific provisions therein. The Judiciary supports the authorization for the use of telehealth for evaluations ordered pursuant to Chapter 704, and the appropriation of funds for the resources to effectuate those evaluations, as this will greatly aid in the completion of those examinations ordered by the court. The Judiciary supported these provisions last session when they were a part of the larger House Bill (HB) 1442, HD2, SD1, which went to conference committee and was carried over to this session.

The Judiciary appreciates the revisions made to Section 3 by the House Committee on Judiciary and Hawaiian Affairs to ensure that the revisions to Section 704-421 of the Hawai'i Revised Statutes are identical to those proposed in HB2159, HD2, which is also before the Committee today.¹ This additional language is critical to ensuring that the defendants who are

¹ The identical Section 10 of HB2159, HD2 and Section 3 of the present bill provide for the same process set forth in HB1442, HD2, SD1.

diverted from the criminal justice system are properly evaluated and assessed to determine what types of services they may require and be offered, whether inpatient, outpatient, or community based, upon the dismissal of the case.

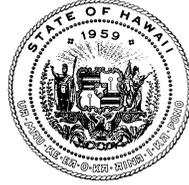
While the Judiciary supports these provisions as part of the overall blueprint to improve the government response to individuals suffering from mental health challenges, particularly for those who may become, or already are, involved in the criminal justice system,² the present bill does not include the appropriations for one of the provisions included in HB1442, HD2, SD1. Respectfully, the Judiciary requests that the measure be amended to include the appropriation of funds to provide the job position necessary to support implementation of this bill and the broader jail diversion program. Specifically, the Judiciary requests the appropriation set forth in Part I, Section 6 of HB1442, HD2, SD1, for the law clerk position tasked with cases under Chapter 704 and the Circuit Court of the First Circuit Jail Diversion Program. For fiscal year 2025 this amount is estimated to be a salary of \$71,016, plus benefits. The Judiciary respectfully requests that this appropriation be included in either HB2159, HD2 (as that appropriation is referenced for this Committee's consideration in Standing Committee Report No. 558-24 from the House Committee on Judiciary and Hawaiian Affairs) or in the present bill.

Finally, the Judiciary respectfully requests that any appropriations added to this bill not supplant the Judiciary's existing funding and current budget requests.

Thank you for the opportunity to testify on this measure.

² This bill will improve the government response to individuals suffering from mental health challenges involved in the criminal justice system (i.e., individuals at intercept 2 and 3 on the sequential intercept model). Taken together with other bills designed to address the mental health needs of individuals at other intercept points, such as HB1831, HD1 and HB2159, HD2, this bill will help to close the proverbial revolving door by building a comprehensive government response that addresses each intercept point.

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



KATHERINE AUMER, PhD
COUNCIL CHAIRPERSON
LUNA HO'OMALU O KA PAPA

STATE OF HAWAI'I
DEPARTMENT OF HEALTH
KA 'OIHANA OLAKINO
STATE COUNCIL ON MENTAL HEALTH
P.O. Box 3378, Room 256
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**WRITTEN
TESTIMONY
ONLY**

**STATE COUNCIL ON MENTAL HEALTH
Testimony to the House Committee on Finance
SUPPORTING HB 2451 HD2
RELATING TO MENTAL HEALTH**

February 28, 2024 at 10:00 a.m. in Rm 308 and via video

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1st VICE CHAIRPERSON

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IMMEDIATE PAST

CHAIRPERSON:

Richard I. Ries PsyD, MSEd

EX-OFFICIO:

Marian Tsuji, Deputy Director
Behavioral Health Administration

WEBSITE:

scmh.hawaii.gov

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doh.scmhchairperson@
doh.hawaii.gov

Chair Yamashita, Vice-Chair Kitagawa, and Members of the Committee:

Hawaii law, HRS §334-10, established the State Council on Mental Health (SCMH) as a 21-member body to advise on the allocation of resources, statewide needs, and programs affecting more than one county as well as to advocate for adults with serious mental illness, children with serious emotional disturbances, individuals with mental illness or emotional problems, including those with co-occurring substance abuse disorders. Members are residents from diverse backgrounds representing mental health service providers and recipients, students and youth, parents, and family members. Members include representatives of state agencies on mental health, criminal justice, housing, Medicaid, social services, vocational rehabilitation, and education. Members include representatives from the Hawaii advisory commission on drug abuse and controlled substances and county service area boards on mental health and substance abuse.

The State Council on Mental Health supports H.B. 2451 HD2. This measure provides for telehealth when an examiner examines a defendant. This expedites the process and if the defendant needs medical care, then they obtain the care they need sooner. This bill provides for the court to have the defendant examined by the Department of Health (DOH) if there is an issue regarding fitness to proceed. Once it is determined that there is an issue regarding the defendant's fitness to proceed the court can transfer the patient to DOH or request the DOH recommendation for placement of this defendant to the appropriate type of care, instead of being incarcerated. The type of care varies and is based on the defendant's clinical team. These defendants belong in the healthcare system and

State Council on Mental Health Testimony
HB12451 HD2
Relating Mental Health
Hearing February 28 2024/10:00 a.m.
Page 2

not in the criminal justice system. We support funding to meet the needs of this bill.

Thank you for the opportunity to testify. Should you have any questions, please contact us at DOH.SCMHChairperson@doh.hawaii.gov.



DISABILITY AND COMMUNICATION ACCESS BOARD

1010 Richards Street, Room 118 • Honolulu, Hawaii 96813
Ph. (808) 586-8121 (V) • TTY (808) 586-8162 • Fax (808) 586-8129

February 28, 2024

TESTIMONY TO THE HOUSE COMMITTEE ON FINANCE

House Bill 2451 HD2 – Relating to Mental Health

The Disability and Communication Access Board (DCAB) supports House Bill 2451 HD2 – Relating to Mental Health.

This bill authorizes examination of defendants via telehealth. Amends conditions for certain petty misdemeanants' release or examination of fitness to proceed. Provides a mechanism for the automatic screening of certain nonviolent defendants for involuntary hospitalization or assisted community treatment.

People with mental health issues often are caught up in the criminal justice system, which is unfair to the individuals and stresses the resources of the criminal justice system. A crisis intervention program that attempts to intervene, divert, and treat these individuals is beneficial in multiple ways.

Thank you for considering our position.

Respectfully submitted,

KIRBY L. SHAW
Executive Director

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



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

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**Testimony in SUPPORT of H.B. 2451 HD2
Relating to Mental Health**

REPRESENTATIVE KYLE T. YAMASHITA, CHAIR
HOUSE COMMITTEE ON FINANCE

Wednesday, February 28, 2024, 10:00 a.m. Conf. Room 308/video

1 **Fiscal Implications:** The Department of Health (Department) requests funding for this measure
2 be considered as a vehicle to expand services, including staff support, provided it does not
3 supplant the requests outlined in the Governor's executive budget request.

4 **Department Position:** The Department supports the intent of this measure.

5 **Department Testimony:** The Adult Mental Health Division (AMHD) provides the following
6 testimony on behalf of the Department.

7 The Department supports the intent of this measure, which proposes telehealth
8 services, including real-time video conferencing provided at any facility under the jurisdiction of
9 the Director of Health, Director of Law Enforcement, or the Chief Justice, and establishes
10 behavioral health crisis centers.

11 This bill adds much needed flexibility in allowing the use of telehealth services. This will
12 maximize time efficiency and minimize travel costs.

13 While the Department has concerns on certain sections of this measure, it is committed
14 to working with the Judiciary and the Attorney General's Office on statutory language that will
15 ensure a legally sound, appropriate, and feasible approach to the amendments to Section 704-
16 421, HRS.

17 Thank you for the opportunity to testify on this measure.



HB2451 HD2 Telehealth Defendant and Crisis Center

COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

Rep. David A. Tarnas, Chair

Rep. Gregg Takayama, Vice Chair

Tuesday, Feb 13, 2024: 2:00 : Room 325 Videoconference

Hawaii Substance Abuse Coalition supports HB2451 HD2:

ALOHA CHAIRS, VICE CHAIRS, 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.

In this day and age, allowing the Dept. of Health, Law Enforcement and Chief Justice to use telehealth to conduct examinations is part of keeping up with the times, especially for petty misdemeanors not involving violence or attempted violence.

HSAC supports that telehealth be used for criminal justice diversions programs, except in cases where a fitness examination is warranted.

CRISIS INTERVENTION

HSAC agrees that many people who suffer from drugs, alcohol or mental illness can be examined through **telehealth**

1. Thank you for expanding Criminal Justice Diversion to other petty misdemeanors.
2. An appropriation would be given to DCR for telehealth.
3. **HSAC appreciates the amendment to include substance use disorders with mental health conditions.**

We appreciate the opportunity to provide testimony.

HB-2451-HD-2

Submitted on: 2/26/2024 4:14:44 PM

Testimony for FIN on 2/28/2024 10:00:00 AM

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

Comments:

We think telehealth has great potential in the clinical/medical setting. That said, we are not clear how exactly the telehealth fitness examinations would be conducted and would like to hear more of an explanation on the process and protocols. We totally understand that there are long delays in the evaluation process and agree that steps need to be taken so that they can be expedited. While this may be an appropriate step we just want to make sure that the accuracy of the assessment is not diminished by the lack of an in person contact so we would urge the Committee to explore this question and receive sufficient assurances.

We like the idea of the Court having the flexibility to release Defendants who are pending a fitness evaluation into a setting other than the custody of the Director of Health and we think that screening for programs such as Assisted Community Treatment might help obtain appropriate care, though if the screening occurs while someone is in the custody of the Director of Health we do have some concern about the potential of an open ended timeline.



For a Healthy Hawai'i

P.O. Box 833
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www.hawaiipsychology.org

Phone: (808) 521-8995

COMMITTEE ON FINANCE
Representative Kyle T. Yamashita, Chair
Representative Lisa Kitagawa, Vice Chair

February 28, 2024 10 A.M. – Rm 308 and via VIDEO CONFERENCE

The Hawaii Psychological Association (HPA) supports HB2451 HD2, which authorizes the evaluation of defendants via telehealth and provides a mechanism for the automatic screening of certain nonviolent defendants for involuntary hospitalization or assisted community treatment.

HPA appreciates the flexibility offered in this bill; however, HPA respectfully submits that for this proposal to truly work, more examiners are needed - and there are simply not enough willing to perform three panel examinations of defendants for fitness to proceed, sanity and dangerousness for such low pay.

The Department of Health has acknowledged to HPA that state psychologists are significantly underpaid; and that this is even more the case with the state employed forensic examiners.

We therefore recommend this bill be amended to address this deficiency; which could also insulate the state from liability.

The remuneration offered to practitioners by the state is \$1,000 for exam, which takes at least seven hours to complete. This rate is lower than what psychologists make doing evaluations for child custody, workers compensation, and civil tort litigation cases. Remuneration of \$1,000 for a 7-hour exam is also markedly lower than what is offered on the mainland for these exams. Nationally, forensic psychologists make more money than psychotherapists; but the reverse is true with regard to 3 panel rates in Hawaii. At a recent meeting of Hawaii State judges, the judiciary voted to increase evaluator pay to \$2,000 per exam.

The last fee increase for these exams was over 20 years ago. To bring rates into what is competitive and commensurate with experience; we also recommend that rates be raised to \$2,000 per exam; which we believe is more in line with market rates that will attract new examiners. We estimate this cost to be \$3 million, based on an expectation that 1,500 court ordered examinations are conducted yearly, and pay is increased for two private examiners per exam.

Such costs will be offset by fewer delays, thereby lowering the length of stay for examinees in jails and the State Hospital. Money is also saved by preventing expensive lawsuits. At least 12 states are in litigation for unconstitutional delays in getting people evaluated and restored.

By way of comparison, Washington State is paying \$25 million from the lawsuit Trueblood vs. Washington State - wherein a federal court found that Washington's CST fitness to proceed process took too long, violating people's constitutional right to due process. In 2012, a federal court ordered the State of Colorado to provide timely competency evaluations and treatment to detainees; and when the state fell out of compliance, the state was sued repeatedly, resulting in a consent decree requiring them to abide by strict timetables or face stiff penalties in 2019. Colorado is now facing fines of \$1.3 million per month capped at \$10 million per year. PLUS they had to spend \$20 million to address the backlog.

We have discussed this matter with administrators from the Judiciary and believe they would support an increase in appropriation, so long as it doesn't conflict with their other priorities.

Thank you for your consideration.

Sincerely,

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