



*The Judiciary, State of Hawai'i*

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

**Senate Committee on Ways and Means**

Senator Donovan M. Dela Cruz, Chair  
Senator Sharon Y. Moriwaki, Vice-Chair

**Senate Committee on Judiciary**

Senator Karl Rhoads, Chair  
Senator Mike Gabbard, Vice-Chair

Thursday, March 28, 2024 at 9:45 a.m.  
Conference Room 211 & Videoconference

by

Rodney A. Maile  
Administrative Director of the Courts

**WRITTEN TESTIMONY ONLY**

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**Bill No. and Title:** House Bill No. 2451, H.D. 3, 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. (HD3)

**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, 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.

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.<sup>1</sup> This additional language is critical to ensuring that the defendants who are 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.

The Judiciary appreciates that HB2451, HD3 includes a blank space for appropriations to the Judiciary for telehealth services. However, being mindful of the State's current budget situation, the amount to fill in the blank spaces on page 8, lines 6-9 can be **\$0** and **0.0 FTE**. Instead, we will revisit resource needs for telehealth based upon the logistics and volume going forward.

In addition, the Judiciary respectfully requests the effective date be changed to take effect on July 1, 2024, as set forth in the original version of the bill.

Thank you for the opportunity to testify on this measure.

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<sup>1</sup> 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.



## DISABILITY AND COMMUNICATION ACCESS BOARD

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1010 Richards Street, Room 118 • Honolulu, Hawaii 96813  
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March 28, 2024

### TESTIMONY TO THE SENATE COMMITTEES ON WAYS AND MEANS AND ON JUDICIARY

#### House Bill 2451 HD3 – Relating to Mental Health

The Disability and Communication Access Board (DCAB) supports House Bill 2451 HD3 – Relating to Mental Health.

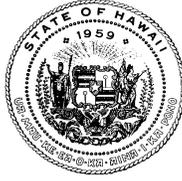
This bill authorizes examination of defendants via telehealth. Amends conditions for certain petty misdemeanants' release or examination of fitness to proceed. Provides a mechanism for the automatic screening of certain nonviolent defendants for involuntary hospitalization or assisted community treatment.

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



STATE OF HAWAII  
DEPARTMENT OF HEALTH  
KA 'OIHANA OLAKINO  
P. O. Box 3378  
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**Testimony in SUPPORT of HB2451 HD3  
RELATING TO MENTAL HEALTH**

SENATOR DONOVAN M. DELA CRUZ  
SENATE COMMITTEE ON WAYS AND MEANS

SENATOR KARL RHOADS  
SENATE COMMITTEE ON JUDICIARY

Thursday, March 28, 2024 at 9:45a.m., Room 211/VIDEO

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

4 **Department Position:** The Department supports the intent of this measure, suggests  
5 amendments, and adds comments.

6 **Department Testimony:** The Department supports the intent of this measure, which  
7 proposes telehealth services, including real-time video conferencing provided at any facility  
8 under the jurisdiction of the Director of Health, Director of Law Enforcement, Director of  
9 Corrections and Rehabilitation or the Chief Justice.

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

12 Suggested amendments with associated comments are noted below. They have been  
13 discussed and the Department received concurrence from the Attorney General’s office.

14 Recommended deleting from Section 3, (3), (b): ~~If the defendant’s clinical team~~  
15 ~~determines that the defendant does not meet the criteria for involuntary hospitalization, or the~~

1 ~~court denies the petition for involuntary hospitalization,~~” The Assisted Community Treatment  
2 statute should be considered by all clinical treatment teams, both inpatient and outpatient, and  
3 for individuals with or without ongoing criminal proceedings. It is less than likely that an  
4 individual who is denied of an involuntary hospitalization would meet the criteria of an ACT  
5 petition.

6 Also delete in Section 3, (3), (b), p. 6 lines 14-18: ~~“The clinical team shall identify a~~  
7 ~~community mental health outpatient program that agrees to provide mental health services to~~  
8 ~~the defendant as the designated mental health program under the assisted community~~  
9 ~~treatment order.”~~ And insert there, “The patient will be linked with the appropriate  
10 community-based mental health case management team based on clinical needs and Medicaid-  
11 eligibility, which will serve as the designated mental health program under the assisted  
12 community treatment order.” The state agencies that oversee community mental health case  
13 management continue to work with these case management teams on clinical issues and  
14 willingness to work with patients who have active ACT Orders.

15 Also delete Section 3, (3), (b), p. 7: ~~“When a petition for assisted community treatment~~  
16 ~~has been filed for a defendant, the defendant committed to the custody of the director of~~  
17 ~~health shall remain in custody until the family court issues a decision on the petition.”~~ Once the  
18 petition is filed, the defendant does NOT need to remain committed. This would be a  
19 tremendous waste of resources and contribute to continued overuse of Hawai’i State Hospital,  
20 which will eventually reach a crisis point. There would be no clinical justification for having  
21 someone like this locked up for additional weeks or months to await the ACT hearings to take  
22 place. The vast majority of ACT petitions filed so far have been with outpatients in the  
23 community. Forcing these individuals to remain in an inpatient setting may also be a violation  
24 of *Olmstead v. L.C.*

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



## **HB2451 HD3 Telehealth and Crisis Defendant**

### COMMITTEE ON WAYS AND MEANS

Senator Donovan M. Dela Cruz, Chair  
Senator Sharon Y. Moriwaki, Vice Chair

### COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair  
Senator Mike Gabbard, Vice Chair

Thursday, Mar 28, 2024: 9:45 : Room 211 Videoconference

## **Hawaii Substance Abuse Coalition supports HB2451 HD3:**

*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 other than petty misdemeanor 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.



# Hawai'i Psychological Association

*For a Healthy Hawai'i*

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## COMMITTEE ON WAYS & MEANS

Senator Donovan Delacruz, Chair  
Senator Sharon Moriwaki, Vice Chair

## COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair  
Senator Mike Gabbard, Vice Chair

**March 28, 2024 9:45 A.M. – Rm 211 and via VIDEO CONFERENCE**

The Hawaii Psychological Association (HPA) supports HB2451 HD3, 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,

A handwritten signature in cursive script that reads "Alex Lichton, Ph.D." The signature is written in dark ink on a light-colored background.

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

**HB-2451-HD-3**

Submitted on: 3/25/2024 6:51:45 PM

Testimony for WAM on 3/28/2024 9:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Scott Kidd	Individual	Support	Written Testimony Only

Comments:

I support this measure

HB2451 H.D. 3: Relating to Mental Health

Date: Wednesday, March 27, 2024

Time: 1:15pm

IN SUPPORT

Aloha mai kākou,

My name is Kona Peahi-Ching and I am a current candidate for graduation with my Master of Social Work degree at the University of Hawai'i at Manoa. Currently, I am a full-time supervisor working for a corporate retailer and interning at Residential Youth Services & Empowerment (RYSE). I am testifying in favor of HB2451 H.D. 3, relating to mental health.

The goal of my internship is to reduce youth homelessness across the state. Our Behavioral Health team assists our clients in establishing various types of treatment, such as general assistance (GA) and SNAP Food Benefits, medical insurance, and PCP care, among other things. RYSE recently took on the task of forming a specialized team that works directly with young adults in the criminal system. The goal of this program is to provide a healthy living environment for recently incarcerated young people while also assisting them in their reintegration into society. After several semesters of working with client caseloads, transportation is a barrier to our youth's access to resources. Although RYSE provides transportation services, it can be difficult and disruptive to schedules to ensure that all youth are delivered to their appointments. As a result, HB2451 H.D. 3 would be advantageous if offered and made available. This measure aims to provide offenders with telehealth evaluations, guaranteeing that they can obtain medical care despite of transportation issues.

Much of the care our shelter's young people require extends outside the four walls of RYSE. Thus, making telehealth assessments more accessible would be tremendously advantageous. For instance, our Behavioral Health Coordinators frequently accompany our youth to their appointments. By doing so, our BH Coordinators miss out on opportunities to interact with other children in need, finish their responsibilities, and more. Telehealth examinations for defendants, as specified in HB2451 H.D. 3, should include those who have recently been in the legal system. Expanding this form of healthcare service would have a significantly positive impact and if offered long-term, can change the way communities view healthcare services and receive the care they deserve.

In closing, I would like to reiterate my support of HB2451 H.D. 3 to be passed into law for the 2024 Legislative Session of Hawai'i. This bill proposes great outcomes and if approved, will be a success in supporting the mission of ending period poverty in the State of Hawai'i.

Kona Peahi-Ching



BSW, MSW Candidate | Spring 2024

University of Hawai'i at Manoa

Cell: (808) 570-6362 | Email: spc808@hawaii.edu

**LATE**

**HB-2451-HD-3**

Submitted on: 3/28/2024 1:48:47 AM

Testimony for WAM on 3/28/2024 9:45:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Teresa Parsons	Individual	Support	Written Testimony Only

Comments:

Committee members,

I stand in strong SUPPORT of this legislation.

Mahalo