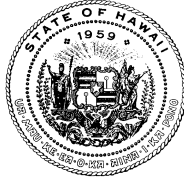


JOSH GREEN, M.D.  
GOVERNOR OF HAWAII  
KE KIA'ĀINA O KA MOKU'ĀINA 'O HAWAII'



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

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
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**Testimony COMMENTING on H.B.2628  
RELATING TO REHABILITATION**

REPRESENTATIVE DELLA AU BELATTI, CHAIR  
HOUSE COMMITTEE ON HEALTH AND HOMELESSNESS

Friday, February 2, 2024, 9:45am, Room 329/VIDEO

1 **Fiscal Implications:** The Department of Health (“Department”) does not receive funding for this  
2 project but will continue to try to provide the community-based treatment and support services  
3 to the defendants referred to DOH. Although we have workforce staffing issues at our  
4 community mental health centers, the low volume of individuals current being diverted is  
5 manageable.

6 **Department Position:** The Department supports post-booking diversion for defendants with  
7 serious mental illness. The Department provides the following comments on this measure.

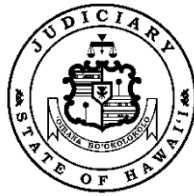
8 **Department Testimony:** Adult Mental Health Division (AMHD) provides the following  
9 testimony on behalf of the Department.

10 The actual model in Florida’s Miami-Dade county is an impressive initiative with a sizeable  
11 judiciary budget and resources which include a 208-bed facility with embedded courts,  
12 treatment and other programs. The Miami-Dade Corrections and Rehabilitation Department  
13 (MDCR) provides staffing to support the project including a MDCR counselor to rule out  
14 eligibility for the Jail Diversion Program (JDP) and a Corrections Health Services (CHS) social  
15 worker who determines clinical eligibility, verifies diagnosis, consent for medications and  
16 possible interest in the JDP. This system has not been replicated anywhere else in this country.

1 If the goal is to replicate this system or to adhere to “fidelity of the Miami model” the  
2 Legislature would need to address support for additional funding and resources to the judiciary.  
3 The Department is committed to working with the Legislature, other state agencies and  
4 community stakeholders to determine how much of an allocation this would require if that is  
5 the direction the Legislature wishes to take. For now, DOH will continue to be a community  
6 partner to the judiciary and to provide services to eligible/referred defendants under the  
7 current jail diversion efforts.

8 **Offered Amendments:** None

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



## *The Judiciary, State of Hawai'i*

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

House Committee on Health & Homelessness  
Representative Della Belatti, Chair  
Representative Jenna Takenouchi, Vice-Chair

Friday, February 2, 2024 at 9:45 a.m.  
Conference Room 329 and Via Videoconference

by

Rodney A. Maile  
Administrative Director of the Courts

### **WRITTEN TESTIMONY ONLY**

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**Bill No. and Title:** House Bill No. 2628, Relating to Rehabilitation.

**Purpose:** Requires the Judiciary, in consultation with other stakeholders, to submit monthly and annual reports to the Legislature on the effectiveness of agreements for post-booking jail diversion programs in the first circuit. Amends the criminal justice diversion program to enable examination of defendants via telehealth. Provides a mechanism for the automatic screening of certain nonviolent defendants for involuntary hospitalization or assisted community treatment. Authorizes courts to require certain probation violators to undergo a mental health evaluation and treatment program as a condition of continued probation.

### **Judiciary's Position:**

The Judiciary strongly supports this measure. Each of these parts, and all of them together, will 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.

All of the provisions of this measure were part of a bill supported by the Judiciary last session, House Bill (HB) 1442, HD2, SD1 that went to conference committee and was carried

over to this session. However, the present bill does not include any of the appropriations that were included in HB1442, HD2, SD1. Respectfully, the Judiciary requests that the measure be amended to include the appropriation of funds to provide the job positions and additional resources necessary to implement this bill. Specifically the Judiciary requests the following appropriations set forth in HB1442, HD2, SD1:

- From Part I, Sections 6 and 10, to the Judiciary, the funds appropriated for the law clerk position tasked with cases under Chapter 704 and Jail Diversion, as well as the staff and resources to accommodate telehealth examinations of defendants;
- From Part I, Section 7 and 8, to the Department of Health, the funds appropriated for the staff and resources to implement the provisions of both Part II and Part III of this legislation;
- From Part I, Section 9, to the Department of Corrections and Rehabilitation for the staff and resources to accommodate telehealth examinations of defendants; and
- From Part VII, to the Judiciary for the restoration of funding for the necessary probation officers to implement the provisions of Part IV of this legislation.

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.

JOSH GREEN, M.D.  
GOVERNOR  
KE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I  
**DEPARTMENT OF CORRECTIONS  
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**TOMMY JOHNSON**  
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**Vacant**  
Deputy Director  
Correctional Institutions

**Sanna Muñoz**  
Deputy Director  
Rehabilitation Services  
and  
Programs

No. \_\_\_\_\_

**TESTIMONY ON HOUSE BILL 2628  
RELATING TO REHABILITATION**

by

Tommy Johnson, Director  
Department of Corrections and Rehabilitation

House Committee on Health & Homelessness  
Representative Della Au Belatti, Chair  
Representative Jenna Takenouchi, Vice Chair

Friday, February 2, 2024; 9:45 a.m.  
State Capitol, Conference Room 329 & via Videoconference

Chair Belatti, Vice Chair Takenouchi, and Members of the Committee:

The Department of Corrections and Rehabilitation (DCR) offers comments on House Bill (HB) 2628, which proposes to (1) require the Judiciary, in consultation with other stakeholders, to submit monthly and annual reports to the Legislature on the effectiveness of agreements for post-booking jail diversion programs in the First Circuit; (2) amends the criminal justice diversion program to enable examination of defendants via telehealth; (3) provides a mechanism for the automatic screening of certain non-violent defendants for involuntary hospitalization or assisted community treatment; and (4) authorizes courts to require certain probation violators to undergo a mental health evaluation and treatment program as a condition of continued probation.

DCR supports the intent of Part 1 of HB 2628. It is well known that our jails are overcrowded. Currently and commonly, three (3) of our four (4) facilities are beyond operational bed capacity (Hawaii Community Correctional Center; Kauai Community Correctional Center; Oahu Community Correctional Center). Jail diversion programs will not only minimize the overcrowding in our jail facilities but allow low level non-violent offenders to remain in the community where they can get better access to care to

address their mental health and substance abuse issues. They can also maintain consistent care and support from medical providers, case managers and their families. At \$253/day, jails are the most expensive, least effective option to address the needs of offenders who are more suited to a therapeutic setting. Incarceration also usually exacerbates an offender's mental health issues.

DCR offers the following comments on Part 2 of HB 2628. We support utilizing telehealth services to expedite the court ordered mental health examination process, provided the DCR is allocated appropriate funds to participate in this initiative. Offenders pending 704 mental health examinations often remain in our jails, unable to post minimal bail for longer periods than offenders who commit the same crime but are sentenced to a short jail term instead. Telehealth would expedite the process for providers to meet with offenders and complete their examinations to avoid multiple court continuances, and result in the likelihood of releasing the offender into a treatment facility. Access to telehealth services would also allow our facility to keep our Adult Corrections Officers (ACOs) on site versus out on transport, especially when we are so often short-staffed. For this reason, DCR prefers to utilize facility telehealth services in lieu of transporting an offender to a telehealth facility, as proposed.

DCR supports Part 3, Sections 6 through 8 of HB 2628, as we believe that the Department of Health (DOH) is the appropriate agency and best equipped to address the needs of offenders with severe mental health issues who commit low level non-violent criminal offenses. A therapeutic community setting or hospital setting (if necessary) with access to treatment increases an individual's chances of becoming a healthy, stable, law-abiding citizen.

DCR comments that in Part 3, Section 9, it should also include that the subsection does not apply if the offender is, "arrested for a **new violent misdemeanor offense and/or** a new felony offense in the course of the escape or during the pendency of the escape, this subsection shall not apply."

DCR supports the intent of Part 4 of HB 2628 for the Court to order a probationer whose probation violations are related to his or her potential mental illness to undergo a

mental health examination and treatment prior to a revocation of the offender's probation. However, DCR respectfully recommends the judiciary be required to exhaust all effort to gain the probationers compliance prior to incarceration, including providing the appropriate level of mental health services in the community.

Thank you for the opportunity to provide comments on HB 2628.

**HB-2628**

Submitted on: 1/31/2024 6:31:17 PM

Testimony for HLT on 2/2/2024 9:45:00 AM

| <b>Submitted By</b> | <b>Organization</b>             | <b>Testifier Position</b> | <b>Testify</b>    |
|---------------------|---------------------------------|---------------------------|-------------------|
| Louis Erteschik     | Hawaii Disability Rights Center | Comments                  | Remotely Via Zoom |

Comments:

This is a comprehensive Bill. The reporting requirement for the post booking jail diversion program is good. The ability to release a defendant under certain conditions rather than committing them to the custody of the Health Department is also good. So too is dismissing petty non violent charges if fitness cannot be restored.

Screening for civil comitment or assisted community treatment does seem to be reasonable. We do have some concerns about the timeline in which a person committed to the Health Director would have to wait in custody, since the ACT process can take a while.

Requiring mental health treatment as a condition of probation is good. However, the bill says if they cannot then benefit from the treatment their probation can be revoked. That may be unfair if the treatment turns out to be inappropriate for some reason and they otherwise were compliant.

We would like more clarity on the telehealth examination and its rationale. Is it for speed and convenience? We just want to make sure that the exam is not less accurate because of the lack of in person contact.





## **HB2628 Jail Diversion to divert mentally ill to community-based treatment**

### COMMITTEE ON HEALTH & HOMELESSNESS

Rep. Della Au Belatti, Chair

Rep. Jenna Takenouchi, Vice Chair

Friday, Feb 2, 2024: 9:45: Room 329 Videoconference

### **Hawaii Substance Abuse Coalition supports HB2628:**

*ALOHA CHAIR, VICE CHAIR, 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.*

HSAC agrees that Hawaii could benefit, as have other states, with a **jail diversion program for post-booking defendants with serious mental illness** into community-based treatment and support.

**The Miami-Dade model** is promoted by the Dept. of Health, Judiciary Public Defenders and Prosecuting Attorney.

1. Non-violent misdemeanors and promoting a dangerous drug in the third degree.
2. Prosecution approves
3. Screening and Assessments are provided. Determine if involuntary hospitalization and if not then.
4. Facilitate entry into diversion program for treatment.
5. Charges are dismissed.
6. Judiciary to track reports.

In today's modern world, **allowing telehealth for examinations of defendants makes sense**, if approved by the Director of Health, The Director of Corrections and Rehabilitation and the Chief Justice.

These options are not applicable to family court unless the presiding judge orders otherwise and fitness to proceed examinations can be outstanding issues that need to be addressed as is practicable and as changed in the bill.

**HSAC commends the legislature that language includes substance use disorder and substance abuse treatment services, which are common for people with mental illness. This could also include drug-induced psychosis for chronic methamphetamine patients.**

We appreciate the opportunity to provide testimony.

