



The Judiciary, State of Hawai'i

Testimony to the Thirtieth State Legislature, 2020 Session

House Committee on Human Services and Homelessness

Representative Joy A. San Buenaventura, Chair

Representative Nadine K. Nakamura, Vice-Chair

Wednesday, March 11, 2020, 10:00 a.m.,

State Capitol, Conference Room 329

WRITTEN TESTIMONY ONLY

By

Shirley M. Kawamura

Deputy Chief Judge, Criminal Administrative Judge,

Circuit Court of the First Circuit

and

Melanie M. May

Deputy Chief Judge

District Court of the First Circuit

Bill No. and Title: Senate Bill No. 2631, S.D. 1, Relating to the Mental Health of Defendants.

Purpose: Permits judicial discretion for suspension of criminal proceedings for assessment and treatment should the defendant have serious and persistent mental health illness.

Judiciary's Position:

The Judiciary supports Senate Draft 1 of this measure because it will more clearly allow courts to utilize existing options to appropriately respond to criminal defendants who are suffering to some degree from a mental illness and yet are legally fit to proceed. Diversion of individuals suffering from mental illness to the appropriate program or treatment court will



Senate Bill No. 2631, S.D. 1, Relating to the Mental Health of Defendants
House Committee on Human Services and Homelessness
Wednesday, March 11, 2020
Page 2

improve the prospects for appropriate treatment for those who are living with mental illness and find themselves before criminal courts, and in turn improve public safety.

Thank you for the opportunity to testify on this measure.



SB2631 SD1 (H) Mental Health Assessments for Criminal Defendants

COMMITTEE ON HUMAN SERVICES & HOMELESSNESS:

- Rep. Joy San Buenaventura, Chair; Rep. Nadine Nakamura, Vice Chair
- Wednesday: Mar. 11th, 2020: 10:00 am
- Conference Room 329

Hawaii Substance Abuse Coalition Supports SB2631 SD1 :

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 of over 30 non-profit alcohol and drug treatment and prevention agencies.

HSAC supports that the Judiciary and Department of Health want to partner to use mental health assessments to divert mentally ill defendants away from the judicial system and into more effective treatment models.

Our legal and healthcare systems must evolve to help people with mental illness as well as provide better care.

Mental illness with criminality is a largely untreated or under-treated concern considering that the prevalence of serious mental illnesses among all people entering jails is estimated to be 16.9%, according to the [Consensus Project.org](https://www.consensusproject.org). Approximately 20% of Americans suffer from a mental illness, and 1 in 12 adults has a serious mental illness. The National Alliance of Mental Illness estimates that severe mental illness costs an estimated \$193.2 billion in lost earnings.¹

Contrary to what many people fear, being ordered to get a mental health assessment from a qualified professional is often a positive sign that the court is approaching you from a favorable position.² A mental health assessment can help a Judge have a better idea of the context and possible causes or factors involved in their legal charge. Issues such as depression, anxiety, PTSD, bipolar disorder or substance dependence need to be evaluated by a professional along with recommendations provided to treat any conditions found. Consequently, providing treatment for any existing conditions is going to have a better outcome for society than simply sending a person to jail. From the perspective of reducing repeat offenses, this is much more effective than simply punishing offenders in hopes that they will make changes. It also takes pressure off of the local government to pay for the expenses of incarcerating individuals.

¹ Star Advertiser, February 4th, 2020, Report calls for treatment for nonviolent, mentally ill defendants
<https://www.staradvertiser.com/2020/02/04/hawaii-news/report-calls-for-treatment-for-nonviolent-mentally-ill-defendants/>

² New Directions: What a Mental Health Assessment is and How it May Help You in Court, 2018,
<https://www.ndsbs.com/blog/how-does-court-ordered-mental-health-assessment-work>

Courts can help people with mental illness by combining court supervision with community-based mental treatment, while avoiding expensive court, or jailhouse, costs.³

Most courts request mental services for conditions such as depression, bipolar disorder, schizophrenia, paranoid, antisocial, borderline personality disorder, and substance use disorders. However, mental illness does not occur only in criminal defendants, but also with civil court defendants, debtors and others brought before the court who might also suffer from mental disorders. Judges could order mental health evaluations in civil cases because this is a concern for many, including loved ones of those who have these disorders, and also many of our veterans who fight for better PTSD (and other) mental health services and treatment.

We appreciate the opportunity to provide testimony and are available for questions.

³ Psychology Today: Are Judges Reluctant to Order Mental Health Evaluations? Not only criminal defendants need mental health assessment, 2012) <https://www.psychologytoday.com/us/blog/black-womens-health-and-happiness/201204/are-judges-reluctant-order-mental-health-evaluations>

COMMUNITY ALLIANCE ON PRISONS

P.O. Box 37158, Honolulu, HI 96837-0158

Phone/E-Mail: (808) 927-1214 / kat.caphi@gmail.com



COMMITTEE ON HUMAN SERVICES & HOMELESSNES

Rep. Joy San Buenaventura, Chair

Rep. Nadine Nakamura, Vice Chair

Wednesday, March 11, 2020

10 AM - Room 329

STRONG SUPPORT FOR SB 2631 SD1 - MENTAL HEALTH OF DEFENDANTS

Aloha Chair San Buenaventura Vice Chair Nakamura and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai'i for more than two decades. This testimony is respectfully offered on behalf of the families of **JAMES BORLING SALAS, ASHLEY GREY, DAISY KASITATI, JOEY O'MALLEY, JESSICA FORTSON AND ALL THE PEOPLE WHO HAVE DIED UNDER THE "CARE AND CUSTODY" OF THE STATE**, including the eleven (11) people that we know of, who have died in the last six (6) months. We also remind the committee of the approximately 5,200 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety on any given day, and we are always mindful that more than 1,200 of Hawai'i's imprisoned people are serving their sentences abroad thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

SB 2631 SD1 permits judicial discretion for referral to a diversion program or treatment court should the defendant have serious and persistent mental health illness.

Community Alliance on Prisons is in strong support of this measure. As the bill states, approximately 17% of Hawai'i's incarcerated population suffer from severe and persistent mental illness. These folks have a difficult time following rules, and they are overly sanctioned because of they don't follow rules because of their illness.

We strongly support judicial discretion and urge the committee to pass this important measure that will help our suffering citizens. The department of public safety is not properly trained to handle the needs of people diagnosed with severe and persistent mental illness.

Mahalo for this opportunity to support this compassionate measure.

SB-2631-SD-1

Submitted on: 3/9/2020 4:21:14 PM

Testimony for HSH on 3/11/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Andrea Quinn	Individual	Support	No

Comments:

Dear Honorable Committee Members:

Please support SB2631, but amend the bill to exclude religiously-based programs from referrals.

Thank you for the opportunity to present my testimony.

Andrea Quinn

Kihei, Maui

SB-2631-SD-1

Submitted on: 3/9/2020 4:50:32 PM

Testimony for HSH on 3/11/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Vickie Parker Kam	Individual	Support	No

Comments:

Aloha and thank you for considering testimony on SB2631 SD1. I am writing in support of this bill relating to mental health of defendants. Often times our mentally ill are criminalized in the current social structures. By allowing for a diversion program to be utilized, it will give the courts and alternative to incarceration and possibly allow for a treatment plan to be put in place.

Thank you for your time, Vickie Kam

SB-2631-SD-1

Submitted on: 3/9/2020 3:02:57 PM

Testimony for HSH on 3/11/2020 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Louis Erteschik	Hawaii Disability Rights Center	Comments	Yes

Comments:

The current bill is fine, though it has been “watered down” from its original version. Along those lines, our comments are less directed towards the bill’s contents and more towards a suggestion for the Committee to consider. This committee in particular has been very proactive on the issue of mental health and the criminal justice system. It has forwarded a number of measures to the Senate for its consideration. Given the nature of our bicameral system, it is never certain how exactly those bills will be received. For that reason, we view this bill as an excellent vehicle into which the Committee might insert the contents of a number of measures previously passed by the House. We say that for a few reasons. First, the title of this bill is sufficiently broad. Second, the referral pattern is reasonably favorable as it is not a triple referral and does not have to go to the House Finance Committee. So, for example, the Committee could insert the contents of HB 1620, HB 2068 and HB2680. This would ensure that a range of issues were available for the consideration of the Legislature as the session advances into the Conference Committees.

LATE

SB2631 SD1 (H) Mental Health Assessments for Criminal Defendants
COMMITTEE ON HUMAN SERVICES & HOMELESSNESS:

- Rep. Joy San Buenaventura, Chair; Rep. Nadine Nakamura, Vice Chair
- Wednesday: Mar. 11th, 2020: 10:00 am
- Conference Room 329

The Coalition for a Drug-Free Hawaii (CDFH) Supports SB2631 SD1 :

CDFH supports that the Judiciary and Department of Health want to partner to use mental health assessments to divert mentally ill defendants away from the judicial system and into more effective treatment models.

Our legal and healthcare systems must evolve to help people with mental illness as well as provide better care.

Courts can help people with mental illness by combining court supervision with community-based mental treatment, while avoiding expensive court, or jailhouse, costs.¹

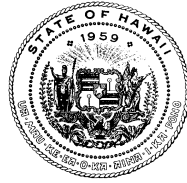
Most courts request mental services for conditions such as depression, bipolar disorder, schizophrenia, paranoid, antisocial, borderline personality disorder, and substance use disorders. However, mental illness does not occur only in criminal defendants, but also with civil court defendants, debtors and others brought before the court who might also suffer from mental disorders. Judges could order mental health evaluations in civil cases because this is a concern for many, including loved ones of those who have these disorders, and also many of our veterans who fight for better PTSD (and other) mental health services and treatment.

Thank you for your consideration.



Greg Tjapkes
Executive Director
Coalition for a Drug-Free Hawaii

¹ Psychology Today: Are Judges Reluctant to Order Mental Health Evaluations? Not only criminal defendants need mental health assessment, 2012) <https://www.psychologytoday.com/us/blog/black-womens-health-and-happiness/201204/are-judges-reluctant-order-mental-health-evaluations>



**STATE OF HAWAII
DEPARTMENT OF HEALTH**

P. O. Box 3378
Honolulu, HI 96801-3378
doh.testimony@doh.hawaii.gov

LATE

**Testimony COMMENTING on S.B. 2631 S.D. 1
RELATING TO THE MENTAL HEALTH OF DEFENDANTS**

REPRESENTATIVE JOY A. SAN BUENAVENTURA, CHAIR
HOUSE COMMITTEE ON HUMAN SERVICES AND HOMELESSNESS

Hearing Date and Time: Wednesday, March 11, 2020 at 10:00 a.m.

Room: 329

1 **Department Position:** The Department of Health (“Department”) supports the intent of this
2 measure and offers comments.

3 **Department Testimony:** The subject matter of this measure intersects with the scope of the
4 Department’s Behavioral Health Administration (BHA) whose statutory mandate is to assure a
5 comprehensive statewide behavioral health care system by leveraging and coordinating public,
6 private and community resources. Through the BHA, the Department is committed to carrying
7 out this mandate by reducing silos, ensuring behavioral health care is readily accessible, and
8 person-centered. The BHA’s Adult Mental Health Division (AMHD) provides the following
9 testimony on behalf of the Department.

10 The Department supports the development of opportunities for individuals who are
11 living with behavioral health issues to be assessed and, if appropriate, referred to appropriate
12 mental health services in a timely manner including providing opportunities for judicial
13 discretion for suspension of criminal proceedings if the judge has reason to believe that the
14 defendant has an untreated severe and persistent mental illness (SPMI).

15 The Department has worked closely with the Judiciary (JUD) to develop more
16 appropriate and effective pathways for this population. In District Court, we collaborate with
17 the JUD and other agencies statewide to divert individuals away from jail by linking them to

1 appropriate services and treatment. Our Forensic Coordinators, who are psychologists, provide
2 coordination and consultation regarding court related elements of treatment and follow-up
3 with individuals participating in the Jail Diversion program.

4 In Circuit Court, we partner with the JUD to address individuals living with mental illness
5 through the Mental Health Court. The Mental Health Court is a specialty court on Oahu staffed
6 by JUD and clinicians who serve as liaisons to the criminal justice system and focuses on
7 diverting individuals to the most appropriate level of care. These individuals receive court
8 supervision for the duration of their participation in Mental Health Court. Court-based
9 clinicians provide initial clinical evaluations and re-evaluations utilizing evidence-based policies
10 and procedures to coordinate referrals for services and treatment with the Department for pre-
11 trial and post-conviction defendants.

12 The Department supports assessing the potential broadening of the District Court Jail
13 Diversion program and/or Circuit Court Mental Health Court program by revising admission
14 policies and appropriating more resources for these programs.

15 Respectfully, the Department defers to the Judiciary on items in the bill that impact
16 judicial proceedings.

17 **Offered Amendments:** None.

18 Thank you for the opportunity to testify.

19 **Fiscal Implications:** Undetermined.