



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

SENATOR KARL RHOADS, CHAIR
SENATE COMMITTEE ON JUDICIARY

Hearing Date and Time: Monday, February 24, 2020 at 12:00 p.m. Room: 016

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.



The Judiciary, State of Hawai'i

Testimony to the Thirtieth State Legislature, 2020 Session

Senate Committee on Judiciary
Senator Karl Rhoads, Chair
Senator Jarrett Keohokalole, Vice-Chair

Monday, February 24, 2020, 12:00 p.m.,
State Capitol, Conference Room 016

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



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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 Mental Health Assessments for Criminal Defendants

COMMITTEE ON JUDICIARY:

- Sen. Karl Rhoads, Chair; Sen. Jarrett Keohokalole, Vice Chair
- Monday, Feb. 24th, 2020: 12:00 pm
- Conference Room 016

Hawaii Substance Abuse Coalition Supports SB2631 SD1 :

GOOD MORNING 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.

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

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](http://ConsensusProject.org). One in 5 Americans suffer from 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>

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COMMITTEE ON JUDICIARY
SENATOR KARL RHOADS, CHAIR
SENATOR JARRETT KEOHOKALOPE, VICE CHAIR

Monday, February 24, 2020, 12:00 PM
Conference Room 016

Testimony in STRONG SUPPORT OF SB 2631 SD1

SB 2631 SD1 would allow judges to refer persons with severe mental illness to treatment programs if the individual is not in need of an evaluation of fitness to proceed. This bill is a meaningful attempt to reduce the criminalization of mental illness by providing an alternative to prosecution of criminal charges. The number of court ordered evaluations for fitness to proceed and/or penal responsibility is averaging just under 1400 a year in Hawai'i over the past few years. The volume of these court ordered evaluations has more than doubled nationally in Hawai'i and on the mainland over the last 10-15 years. This has put an enormous strain of public mental health resources with an adverse affect on mentally ill people, who often spend endless months in jail. This, subsequently, creates a suboptimal environment for the treatment of mental illness.

The Hawai'i Psychological Association strongly urges you to pass SB 2631 SD1.

Thank you for your consideration.

Julie Takishima-Lacasa, PhD., President
Chair, Legislative Action Committee
Hawai'i Psychological Association