The Judiciary, State of Hawai‘i

Testimony to the Thirty-Third Legislature, 2025 Regular Session

Senate Committee on Ways and Means
Senator Donovan M. Dela Cruz, Chair
Senator Sharon Y. Moriwaki, Vice Chair

Friday, February 28, 2025, 10:05AM.
State Capitol, Conference Room 211

WRITTEN TESTIMONY ONLY

By

Ronald G. Johnson
Deputy Chief Judge, Criminal Administrative Judge
Circuit Court of the First Circuit

Bill No. and Title: Senate Bill No. 1612, SD1, Relating to Fitness to Proceed.

Purpose: Requires and appropriates funds for the Department of Corrections and Rehabilitation, in collaboration with the Department of Health, to establish and implement a 5-year Fitness to Proceed Pilot Program. Requires an interim report and final report to the Legislature. Effective 7/1/2077. (SD1)

Judiciary's Position:

The Judiciary takes **no position** on the proposed legislation but provides the following comment for consideration. Any proposed legislation and/or pilot project should be informed by the requirements placed on both the Department of Corrections and Rehabilitation and the Department of Health under the permanent injunction issued in the United States District Court for the District of Hawai‘i in *Clark v. State of Hawai‘i*, CV 99-00885.

Thank you for the opportunity to testify.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA

STATE OF HAWAI'I | KA MOKU'ĀINA 'O HAWAI'I
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WRITTEN TESTIMONY ONLY

TESTIMONY ON SENATE BILL 1612, SENATE DRAFT 1
RELATING TO FITNESS TO PROCEED.

by
Tommy Johnson, Director
Department of Corrections and Rehabilitation

Committee on Ways and Means
Senator Donovan M. Dela Cruz, Chair
Senator Sharon Y. Moriwaki, Vice Chair

Friday, February 28, 2025; 10:05 a.m.
State Capitol, Conference Room 211 & via Videoconference

Chair Dela Cruz, Vice Chairs Moriwaki, and Members of the Committee:

The Department of Corrections and Rehabilitation (DCR) **opposes** Senate Bill (SB) 1612, Senate Draft (SD) 1, which proposes DCR establish a five-year fitness to proceed pilot program to reduce overcrowding at the Hawaii State Hospital (HSH) by reserving cells to house inmates incapacitated or awaiting a 704 fitness to proceed determination.

The DCR already struggles with severe overcrowding and significant understaffing issues in our community correctional centers (jails) where pretrial offenders pending a fitness to proceed determination are housed. We do not have the space to reserve cells in a dedicated housing unit with recreational space, natural light and trained staff to address this population's special needs and reduce their further decompensation. In addition, the reallocation of already limited security staff to manage this designated area places further strain on facility operations.

Currently, only the most severely mentally ill who cannot manage the milieu of the correctional setting are housed at HSH. Most of those pending a 704 mental health examination are placed in our jails. Since neighbor island facilities (Hawaii Community Correctional Center (HCCC), Maui Community Correctional Center (MCCC), and Kauai Community Correctional Center (KCCC) do not have the appropriate mental health staff and housing for offenders with serious and persistent mental illness (SPMI) with acute exacerbations, they are often transported to the already overcrowded Oahu Community Correctional Center (OCCC). As an example, OCCC has a design capacity of 628 and currently houses approximately 909 individuals.

If a patient is deemed mentally ill or unstable and not fit to stand trial, they are then transferred to HSH where efforts are made to stabilize their condition. Once stabilized, patients are transferred back to OCCC. It is not uncommon for these patients to again decompensate upon their return to the jail setting. These 704 evaluations are frequently subject to severe delays resulting in extended periods in the jail environment while an offender is awaiting the fitness to proceed process. This is not in the best interests of these individuals as the DCR lacks the appropriate professional mental health staffing and clinical environment to care for them.

There are additional operational challenges at OCCC (and all jails) that should be considered. DCR currently experiences significant challenges in transporting inmates for court hearings and necessary specialty healthcare visits. Due to security staff shortages, it is also not uncommon for mental health staff to encounter delays with meeting with inmates. HSH does not face these same issues, as it is a hospital, not jail, setting.

As written, this bill does not address the underlying issues driving over-crowding in state hospitals or the systemic deficiencies in mental health services statewide. Rather, it seeks to require DCR facilities to perform functions and activities of the DOH facilities, which only serves to exacerbate overcrowding in DCR facilities and further strains our very limited staff resources. State resources and efforts would be better invested in community-based mental health care, step-down mental health facilities, enhanced

staffing, and long-term support systems that address the root causes of the current mental health crises in the state.

This proposal also creates a pathway into the criminal justice system, rather than away from the system for those suffering from mental illness and contradicts DCR and DOH's current jail diversion efforts with the Judiciary, Prosecuting Attorney, Public Defender, and other community partners to divert those with mental illness away from the criminal justice system and minimize incarceration by placing them into more appropriate therapeutic settings in the community.

Unfortunately, the intent behind the pilot program to reduce overcrowding at HSH effectively transfers an already significant problem to an already overcrowded DCR. Placing additional individuals with mental health needs into a correctional setting—an environment inherently designed for security rather than therapeutic intervention—poses severe risks for further mental health destabilization among an already vulnerable population.

As a last resort, DCR offers that a pilot project of this nature should only be considered in the planning and design of new correctional facilities being built, including the new OCCC, which will provide the DCR, Department of Accounting and General Services (DAGS), and our consultants the time needed to set aside adequate and appropriate space while also providing the DOH and DCR the time needed to plan for the additional staff required to service the special needs of this vulnerable population in DCR facilities.

Thank you for the opportunity to provide testimony in **opposition** on SB 1612, SD 1.

SB-1612-SD-1
Submitted on: 2/27/2025 3:02:36 AM
Testimony for WAM on 2/28/2025 10:05:00 AM

Submitted By	Organization	Testifier Position	Testify
Ellen Awai	Individual	Support	Written Testimony Only

Comments:

I support SB1612,SD1, which should also correspond with the Hawaii State Hospital's fitness to proceed, which suggested to lower the number of doctors needed to determine the decision from 3 doctors to just 1. Getting 3 doctors only delays the proceedings for a speedy trial.

HAWAII SUBSTANCE ABUSE COALITION

SB1612 SD1Fitness to Proceed

COMMITTEE ON WAYS AND MEANS
Senator Donovan M. Dela Cruz, Chair
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Hawaii Substance Abuse Coalition Supports SB1612 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 for substance use disorder and co-occurring mental health disorder treatment and prevention agencies and recovery-oriented services.

HSAC supports that justice-involved people receive multiple approaches to address the underlying issues leading to criminality, starting with a fitness to proceed. There is a large population in jails that has both criminality elements and mental health issues, of which most also have substance use disorders too.

DOH can help DCR determine fitness to proceed for people with severely mentally ill problems but also these assessments can determine the extent of any diagnosable mental health concerns such as depression, suicide, PTSD, anxiety, bi-polar, and more as well as co-occurring substance use disorders.

NAMI reports:

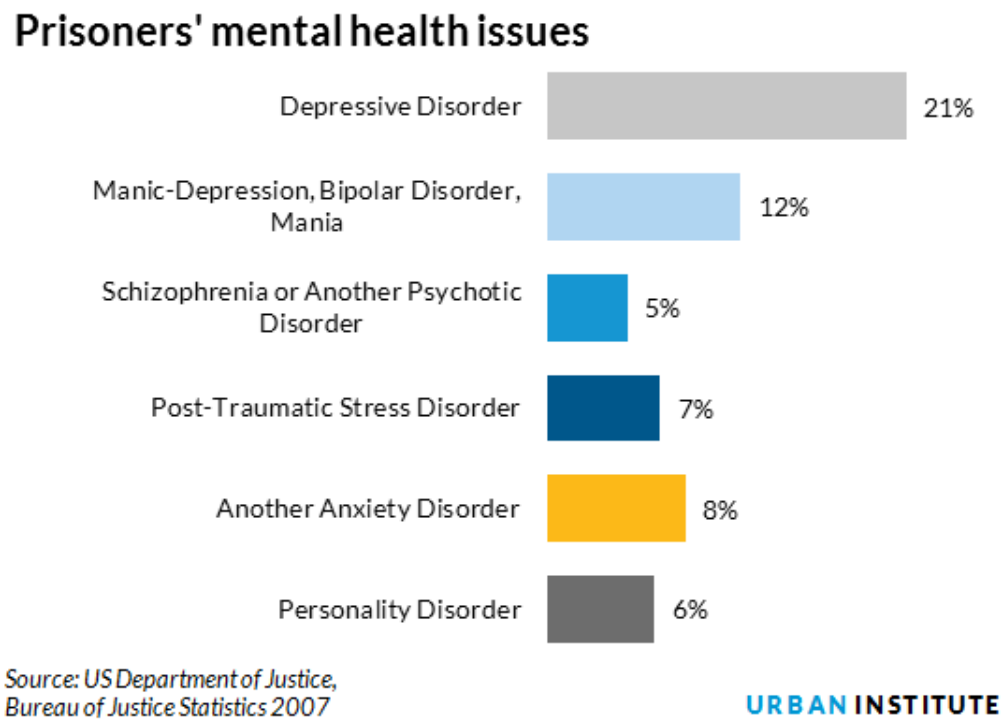
1. According to studies to estimate state probability factors, the number of people with mental illness history (many not assessed) are about 40% of those incarcerated.[1]
2. There is a significant lack of access to adequate mental health care in incarcerated settings. About three in five people (63%) with a history of mental illness do not receive mental health treatment while incarcerated in state and federal prisons. It is also challenging for people to remain on treatment regimens once incarcerated. In fact, more than 50% of individuals who were taking medication for mental health conditions at admission did not continue to receive their medication once in prison.

[1] NAMI National Association of Mental Illness: https://www.nami.org/Advocacy/Policy-Priorities/Improving-Health/Mental-Health-Treatment-While-Incarcerated#:~:text=About%20two%20in%20five%20people,within%20the%20overall%20adult%20population.

What is usually identified and treated:

- Schizophrenia and psychotic illness, which is on average 5%.

Other than schizophrenia and psychotic illness, what is not well assessed is:



Unfortunately, many prisons and jails are not equipped to address the needs of this population[2].

1. The most promising programs are structured by starting and then continuation of care from prison to the community setting.
2. Also multidisciplinary teams to help mentally ill ex-offenders adapt to life outside of prison without having to go back and forth between multiple different agencies to receive services. (For example, an effective multidisciplinary team might include a mental health case manager, a psychiatrist, a substance abuse counselor, a community corrections officer, and a residential housing manager.)
3. There is also great potential in the expansion of Medicaid eligibility and enrollment for this population.
4. Recommend expanding diversion programs like mental health courts in jurisdictions throughout the country. Existing research by the Justice Policy Center, shows that mental health courts could stem the tide of criminal justice involvement for mentally ill people and get them into treatment facilities instead of jails and prisons.

[2] Urban Institute: The revolving door: mental illness, incarceration, inadequate care, and inadequate evidence Miriam Becker-Cohen, KiDeuk Kim, April 7, 2015 https://www.urban.org/urban-wire/revolving-door-mental-illness-incarceration-inadequate-care-and-inadequate-evidence

5. Finally, the data remains clear about one thing: individuals with mental illness are still largely overrepresented in the criminal justice system, with such high numbers that their care and treatment is not just a humanitarian concern; it is a critical economic issue with broad societal implications.

The Court Services Offender Supervision Agency (CSOSA)[3] in Washington, D.C., recognizes the **importance of integrating mental health needs with community** to create successful outcomes for offenders with a history of mental illness.

1. One of the first steps is to **create a partnership to develop more reentry systems**, which would include more comprehensive assessments, engagement with case management, and connection with community-based providers.
2. **Expanding assessments is a great starting place.** The lack of communication and information sharing is one of the greatest barriers to successful reentry.
3. **While work has progressed, more collaborative efforts between corrections agencies, state health departments, community-based organizations, and community partners** have supported the development of a growing network and reentry community are needed to be developed.

HSAC applauds the effort for Department of Corrections and Rehabilitations and the Department of Health to collaborate to address justice-involved persons who have mental health issues, which are also usually co-occurring substance use disorders.

Including a substance abuse assessment in a mental health wellness examination is critical too because most have co-occurring substance abuse problems, which they use as a means to self-manage their behavioral health conditions.

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

[3] COSA The Court Services and Offender Supervision Agency (CSOSA) endeavors to be a model community supervision agency that is recognized for positively impacting public safety. https://www.csosa.gov/