

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

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DEPUTY CHIEFS

OUR REFERENCE SN-DK

February 13, 2013

The Honorable Della Au Belatti, Chair
and Members
Committee on Health
House of Representatives
Hawaii State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Au Belatti and Members:

Subject: House Bill No. 991, Relating to Mental Health Treatment

I am Sean C. Naito, Major of District 1, Honolulu Police Department (HPD), City and County of Honolulu.

The HPD opposes House Bill No. 991, Relating to Mental Health Treatment. This bill establishes an assisted community treatment program in lieu of the involuntary outpatient treatment program.

While HPD supports the intent of the bill, we do not support the amendment in House Bill No. 991, SECTION 9, section 334-129, Hawaii Revised Statutes (HRS), Failure to comply with community treatment. Paragraph (b) of this section is amended to state that a police officer, or other law enforcement officer may transport the subject of the order to a designated mental health program for purposes of implementation of the assisted community treatment order.

We strongly feel that law enforcement should not become a transport service provider when a person does not comply with community treatment. We currently have the authority to take into custody and transport to any designated facility any person who is imminently dangerous to self or others under HRS 334-59, Emergency Examination and Hospitalization.

The Honolulu Police Department urges you to oppose House Bill No. 991 as currently written.

Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to read "Sean C. Naito", is written over a horizontal line.

SEAN C. NAITO, Major
District 1

APPROVED:

A handwritten signature in black ink, appearing to read "Louis M. Kealoa", is written over a horizontal line.

LOUIS M. KEALOHA
Chief of Police



Committee: Committee on Health
Hearing Date/Time: Wednesday, February 13, 2013, 8:30 a.m.
Place: Conference Room 329
Re: Testimony of the ACLU of Hawaii in Opposition to H.B. 991
Relating to Mental Health Treatment

Dear Chair Belatti and Members of the Committee on Health:

The American Civil Liberties Union of Hawaii (“ACLU of Hawaii”) writes in opposition to H.B. 991, relating to mental health treatment. While the sponsors of this bill no doubt have the best of intentions, H.B. 991 erodes the current standard such that otherwise competent individuals may be involuntarily committed and forcibly treated in violation of their constitutional rights.

Involuntary commitment and forcible treatment are serious deprivations of liberty than can be justified only in the narrow circumstance where there is mental illness and an *imminent* physical danger to the person to be committed or to others, evidenced by observed behavior and where there is no less restrictive alternative. In such cases, strong procedural safeguards must be in place throughout to insure that the due process rights of the individual are protected.

H.B. 991 opens the door to abuse and may violate individuals’ constitutional rights by eroding the requirement that the person be “imminently” dangerous to him/herself or others. This bill would allow the involuntary commitment and forced treatment of individuals who may not be imminently dangerous to themselves or others – persons who are “unlikely to live safely in the community...” and need treatment to prevent them from becoming “gravely disabled.” No justification has been given to show why it is necessary to lessen this standard nor has any information been given to show that there are no less restrictive alternatives.

H.B. 991 would allow an otherwise functioning person who is fighting addiction to be committed against his or her will. The ACLU of Hawaii has great concern that passing this bill into law raises the possibility of misuse by family members who petition the court (“My wife is doing drugs”).

Committing a person to treatment against his or her will is a significant loss of liberty and freedom and it is a policy that is inherently doomed to failure due to its punitive nature. Because this legislation invites abuse and puts otherwise competent individuals at risk of losing their freedom, the ACLU of Hawaii opposes H.B. 991.

Thank you for this opportunity to testify.

American Civil Liberties Union of Hawaii
P.O. Box 3410
Honolulu, Hawaii 96801
T: 808-522-5900
F: 808-522-5909
E: office@acluhawaii.org
www.acluhawaii.org

Chair Belatti and Members of the Committee on Health
February 13, 2013
Page 2 of 2

Sincerely,

Laurie A. Temple
Staff Attorney and Legislative Program Director
ACLU of Hawaii

The ACLU has been the nation's guardian of liberty since 1925 and the ACLU of Hawaii since 1965 and works daily in the courts, legislatures and communities to defend and preserve the individual rights and liberties equally guaranteed to all by the Constitutions and laws of the United States and Hawaii. The ACLU works to ensure that the government does not violate our constitutional rights, including, but not limited to, freedom of speech, association and assembly, freedom of the press, freedom of religion, fair and equal treatment, and privacy. The ACLU network of volunteers and staff works throughout the islands to defend these rights, often advocating on behalf of minority groups that are the target of government discrimination. If the rights of society's most vulnerable members are denied, everyone's rights are imperiled.

American Civil Liberties Union of Hawaii
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February 12, 2013

TO: House Committee on Health
Rep. Della Au Belatti, Chair

HB991, Mental Health, Involuntary Outpatient Treatment, Assisted Community Treatment

IN STRONG SUPPORT

Chair and Committee Members:

We are writing to express the strong support of Mental Health America of Hawaii for HB991. This law is vitally needed for the safety and health of our community and of our most severely mentally ill individuals. As psychiatrist Sara Hartley, M.D., wrote in the New York Times:

“... in the name of civil liberty, severely disturbed people end up undertreated, at the expense of the “rights” of the community to be safe.

“People suffering the harangues of command hallucinations and terrorizing paranoid delusions cannot demand civil liberty, failing any test of the capacity for informed consent (which requires an understanding of what refusing treatment means).

“More important, it is in the interest of people with acute psychotic torments to get care, to protect them from doing horrific acts and, often, committing suicide. The right to treatment has been muddled by the misguided legal impositions.

“In the past, egregious overuse of electroconvulsive therapy, toxic medication and long involuntary hospitalization motivated a reasonable patient rights movement. Times have changed. Treatment is more often withheld as insurers and risk managers shrink the obligations of decent care.”

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DIRECTOR, MAUI BRANCH

Pro Bono Attorney

PAUL ALSTON,
ALSTON HUNT FLOYD & ING

Many of these individuals bounce among the streets, the E.R., hospital, and jail, primarily because they are too ill to understand that they need to be in treatment. This is a very costly and inhumane way to treat the sickest and most vulnerable members of our society. Many roam the streets lost in their own psychotic reality, behave in bizarre and unpredictable ways, or become so incapacitated by their mental illness that they lie, day after day, in the rain or sun, in extremely degraded circumstances, oblivious about the reality of their condition.

This bill proposes Assisted Community Treatment, whereby individuals would be ordered by Family Court to receive treatment in the community. HB991 modifies the current law for Involuntary Outpatient Treatment. The law has rarely if ever been implemented because it is too vague in terms of who the bill is designed to serve, does not have sufficient protections for those individuals, and lacks specificity in treatment process.

Many states, such as New York's Kendra's Law, have enacted laws such as this one, frequently after a horrific act of violence by a psychotic individual who was not accepting treatment. Ours in fact was modeled after Kendra's Law. **These laws have been shown to reduce hospitalization, arrests/imprisonment, and homelessness, to reduce violence on the part of individuals who have been violent in the past, and reduce the victimization of these individuals. They are constitutional.**


The proposed bill protects the rights of people with mental illness by narrowing the eligibility for those who would be subject to this order so that it only affects those most severely ill who have a record of cycling between streets, hospitals and jails. In fact, all seven criteria listed in the bill must be met before the person can be ordered by the Court for Assisted Outpatient Treatment. The bill specifies that the person must have an attorney and spells out the process and procedures for getting the person treatment. The order is for no more than 180 days.

Thank you for the opportunity to submit testimony on this critically needed bill, and we appreciate your consideration.

Sincerely yours,



Mary Pat Waterhouse
President, Board of Directors



Marya Grambs
Executive Director



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EXECUTIVE DIRECTOR
Kathleen Hasegawa



Aloha United Way

An Aloha United Way
Partner Agency and
Combined Federal
Campaign Member

Testimony in Support of HB991

House Committee on Health
Wednesday, February 13, 2013 8:30 a.m.
State Capitol, Conference Room 329

The National Alliance on Mental Illness, Hawaii State Chapter, supports this bill which allows amends the criteria and procedure for helping people with severe mental illness receive treatment.

Every day NAMI receives telephone calls from family members of people who are gravely ill. These family members are desperate because they are unable to assist their loved one to receive treatment. Rather they must watch the mental health of someone they love or deeply care about deteriorate on a daily basis. Frequently the ill family member's condition leads them to become homeless and sometimes physical complications come into play.

A person with a mental illness is just that, a person with a brain disease. Some of the people living with mental illness have a condition called anosognosia. People with this condition have an impairment which comes with their mental illness and impacts their ability to know they are sick. Anosognosia affects the lives of approximately 60 percent of the people who have schizophrenia and 40 percent of the people who suffer from bi-polar disorder. As a result of not knowing they are ill and getting help with their illness many of these ill people spend their adult life cycling in and out of hospitals and jails. If a person receives treatment for a mental illness when it first manifests itself and continues to receive treatment at times that the disease recurs that person has a better long term prognosis. The longer or more frequently the disease goes untreated the more the likelihood that the person's prognosis will worsen.

This bill enables a process under which some of the people who are living in dire and life threatening circumstances can receive treatment on an outpatient basis through an entity in their community. It offers some exceedingly ill people the possibility of regaining their health and returning to a better life.

Thank you for your consideration.

Kathleen Hasegawa
Executive Director

TESTIMONY IN SUPPORT OF HB 991: RELATING TO MENTAL HEALTH

TO: Health Committee Chair, Rep. Della Au Belatti
Vice Chair Rep. Dee Morikawa
Members of the House Committee on Health

FROM: Connie Mitchell, Executive Director
IHS The Institute for Human Services, Inc.

Hearing: Wednesday, 2/13/13; 8:30 am; CR 329

Thank you for the opportunity to testify in support of HB991 which will be an important enhancement to our devastated mental health system. Our current system is fragmented and siloed by lack of transitions between places of treatment, poor communication between service providers who are engaged in a person's care and a separation of physical and mental health care. This bill creates stronger bridges between these environments of care and the providers who offer treatment.

As a homeless services provider in Honolulu, we encounter many people who are chronically homeless and chronically mentally ill who do not have the capacity to appreciate the benefit of treatment due to the nature of their illness. We also receive calls from concerned family members of persons suffering from chronic mental illness who do not have a way of helping their loved ones be maintained in treatment if the patient chooses not to take their medication as result of judgment impaired by their mental illness.

This bill took a statute that was rarely successfully petitioned (only once in thirteen years in family court) and amends it to provide an avenue for mentally ill persons who have a history of mental instability and failure to adhere to prescribed treatment to be maintained in the community and to avoid incarceration and hospitalization. It also creates the possibility of smoother transitions between different settings where a person may be treated by allowing the assisted community order to follow a person from an inpatient setting to an outpatient setting and vice versa.

Some concerned might argue that this bill is meant to serve people in the community and language should not include reference to treatment in jails or inpatient hospitals based on the dichotomous concept of inpatient and outpatient treatment and keeping them separate. In fact, the most recent literature on homeless and mental health systems of care point to the need for smoother transitions and handoffs between institutional and non-institutional settings to be critical for an effective system. An order to treat that could follow person from community based treatment into the jail (i.e Oahu Community Correctional Center, OCCC) where people stay an average of less than 30

days. Jails are a part of the community and the court order should be effective there to promote continuity of care. Secondly for people in the leaving prison who are assessed to require medications to remain stable, the amendments to the statute would allow initiation of the Assisted Community Treatment order process before release .

Another argument you will hear is that there are constitutional rights that may be at risk with this bill related to involuntary mental health treatment. While these arguments have not always been specific, time and time again, when other states with similar assisted community treatment statutes have been challenged legally, judges have upheld the constitutionality of court orders to treat mental illness involuntarily when evidence has been presented supporting the need for such. Part of the reason for that is that medical treatment of mental illness has improved remarkably and have far fewer side effects than they have in the past.

We need not go back too far in Hawaii's history to be reminded of what tragedy could happen when a person that is clearly suffering from mental illness is not required to remain in treatment. In 2009, Waianae school teacher Asa Yamashita was stabbed to death by Tittleman Fauatea who was diagnosed with schizophrenia and had a long history of mental health treatment and aggressive behavior. He had stopped taking his medications. While serious violence is not typical of persons with mental illness, when dangerous behavior has been documented as part of a person's history, involuntary medication is an option that protects the individual (from wrong doing, repeated arrests and loss of freedom) AND the community (destruction that might be caused by command hallucinations, paranoid ideas or manic episodes) .

We would like to make a few recommendations that have been incorporated into the bill since a Senate version was heard and some additional changes that simply add clarity to the intent of the proposed statute. These are summarized in a separate grid for ease of editing.

Please help Hawaii pass this bill for the sake of the person suffering serious and persistent mental illness and for the sake of the community's health and safety.

Proposed changes to HB911

LOCATION IN BILL	PROPOSED CHANGE	RATIONALE
Section 2. 334.121 (2) (Page 2, Line 19)	Change " unlikely to survive safely" to "unlikely to live safely"	We do not want people to meet a standard of not simply "surviving", but "living safely" in the community
Section 2. 334.121 (3) Page 3 , line 6)	delete "is" immediately before "gravely disabled."	We want to allow that the person has demonstrated <u>past</u> grave disability, not requiring grave disability now, but likely grave disability without treatment, in order to petition for the order to treat.
Section 2. 334.121 (4) Page 3, Line 14	Change "is gravely disabled" to "obviously ill"	"gravely disabled" is defined differently in another statute. "obviously ill" is language that has been used in model mental health law in other states. It also allows distinction to be made between the definition of "gravely disabled" which is found in the emergency mental health commitment law and the definition of "obviously ill" which is found in this proposed statute amendment.
Section 2 334.121 (5) Page 3, line 15	<p>Amend 334.121(5) as follows:</p> <p>(5) The <u>In recent years, the person has a history of lack of adherence to treatment for mental illness or substance abuse that includes but is not limited to the following examples which has been a significant factor in causing him or her to become dangerous to self or others or gravely disabled. Such history may be established by:</u></p> <p>(A) [At] evidence that at least twice within the last thirty-six months, the lack of adherence to treatment has been a significant factor in necessitating: [law enforcement being called in response to the person's behavior and in meeting the criteria for] involuntary transportation of the person_ to a hospital for</p>	The language, recommended by the Treatment Advocacy Center, more clearly states the intent of the bill to focus on those person who have repeatedly demonstrated need to have treatment adherence monitored to avoid untoward events because of their behavior while untreated. It also more clearly states how that history can be established for the court's consideration

	<p>psychiatric evaluation; [in necessitating] hospitalization <u>of the person</u> in a facility providing inpatient treatment; or [in] treatment [by] <u>of the person</u> in a forensic or other mental health or substance abuse unit of a correction local correctional facility; or];</p> <p>(B) [The] <u>evidence that within the last forty-eight months, the</u> lack of adherence to treatment has resulted in one or more acts of serious violent behavior toward self or others or threats[of], <u>attempts</u> or acts of serious physical harm to self or others[within the last forty eight months]; <u>or</u></p> <p><u>(C) other clear and convincing evidence within the discretion of the court.</u></p> <p><u>Add:</u> <u>(d) A person who knowingly makes a false statement or knowingly provides false information or false testimony in a petition or hearing under this part shall be subject to criminal prosecution pursuant to [must reference the section of Hawaii law that criminalizes false pleadings].</u></p>	<p>The addition of (c) also allows a judge to evaluate the evidence and decide if the subject of the petition should be placed under the court's order for treatment if other risky circumstances would indicate benefit of treatment for the subject of the order.</p> <p>To allay concerns about malicious petitioning:</p>
<p>Section 3. 334.122 Page 6, Line 5</p>	<p>Change "Gravely disabled" to "Obviously ill"</p>	<p>To provide the definition for the earlier reference to "Obviously ill"</p>
<p>Section 3 334.122 Page 6, Line 15</p>	<p>Either add" adult child," after" sibling,"</p>	<p>Adult children may be in a position to assist their mentally ill parent.</p>

	OR change it back to "Any person" as it was in the original statute	To allow those who have an interest in the subject of the order, but as yet excluded in the proposed language.
Section 4. 334.123 Page 10, Line 17	Change "24" hours to "48" hours	To make consistent with current standard of time allowed for examination under existing mental health commitment law.
Section 9 334.129 Page 14, Line 12	Add "or" after " hospitalized"	Meant to refer to two different settings that are part of the community system.

TESTIMONY IN SUPPORT OF HB 991: RELATING TO MENTAL HEALTH

TO:

[COMMITTEE ON HEALTH](#)

Rep. Della Au Belatti, Chair
Rep. Dee Morikawa, Vice Chair

Rep. Rida T.R. Cabanilla

Rep. Bertrand Kobayashi

Rep. Mele Carroll

Rep. Justin H. Woodson

Rep. Jo Jordan

Rep. Lauren Kealohilani Cheape

FROM: Kathleen M. Pahinui, North Shore Resident

Hearing: Wednesday, February 13, 2013, 8:30 am, CR 329

Aloha Chair Belatti and Vice Chair Morikawa, and Members of the Committee on Health:

I am writing in support of HB 991 which is meant to promote better access to mental health treatment for individuals who are so disabled by their mental illness that they are unable to understand or accept their diagnosis or continue in an orderly way on their prescribed medication.

This bill would affect those who have demonstrated a history of non-adherence to treatment that has resulted in repeated emergency room visits, hospitalization or jail time.

This issue is not limited only to Honolulu, we see it everyday in the homeless population on the North Shore and are working closely with service providers to provide those with mental issues the help that they need and deserve. Unfortunately many of them are unable to understand how ill they are and they become a danger to themselves and others in our community.

Your support of this bill and passing it into law will facilitate access to treatment for these members of our community.

Mahalo for your consideration.

Kathleen M. Pahinui

Larry Geller
Honolulu, HI 96817

COMMITTEE ON HEALTH
Rep. Della Au Belatti, Chair
Rep. Dee Morikawa, Vice Chair

HB991
HLT
Wednesday, February 13, 2013
8:30 a.m.
Room 329

February 12, 2013

Re: HB991 Relating Mental Health Treatment

In Opposition

Dear Rep. Belatti, Rep. Morikawa and members of the Committee:

I am aware that the original law was flawed and that this bill is intended to replace it, and that those who support the bill are acting with compassion and concern. Nevertheless, I believe that this bill is also seriously flawed, and so I oppose it.

This bill permits the involuntary commitment of individuals who are **not** a danger to themselves or others, and who have the same civil liberties we all enjoy. The process of petition, taking into custody and commitment to the state hospital described in this bill is easily subject to abuse by family members or others, and the affected person, perhaps more vulnerable than many others, will be unable to mount a defense against those who would take them away.

This bill is not aimed at minor children--the person who is the object of a petition is a **fully emancipated adult** with no responsibilities to live life as a parent dictates. The person may also be an ex-spouse or have other relationship to the petitioner, who could abuse a state law to impose their view of a proper lifestyle on the object of the petition.

Note that a person who is made to appear in court has to bear the cost of hiring an attorney and paying for experts (e.g., a private psychiatrist). The provision for a court-appointed public defender does not alleviate this, because a person has a right to be represented by an attorney of their choice. If the court finds that the petition is not adequate, there is no provision for the person filing the petition to be made to pay all attorneys fees and court costs. So even in a contrived, malicious or frivolous situation, the person who is the object of the petition is damaged.

In the case of a homeless person, the individual would almost certainly be unable to afford their own experts as this bill purports to allow.

There are also problems with medical privacy. This bill would appear to bring protected medical information into the public record.

While the stated intent of this bill is to prevent criminalization of mental illness, it is hard to see what the difference is. Note that while the object of the petition has a right to hire an attorney, alternatively, the court may appoint a public defender. How is this different from a criminal case? Public defenders are experienced in criminal law, not in complex mental health issues. The object of the petition is still

subject to physical detention in this draft of the bill. In other words, they are deprived of liberty and freedom of motion as in a criminal case. There will also be a public record of the proceeding with the person's name on it, and the person may end up on federal lists of those with mental health issues.

If a person with mental illness has difficulty advocating for him-or herself, how will they fare in court, with an inexperienced defense attorney and unable to afford their own expert witness to counter the testimony of state-paid experts? If they are allegedly unable to make informed decisions about their treatment, then they are being coerced without question: how can they suddenly be expected to make informed decisions about their options when in court?

Finally, unless I'm missing something, the text does not require that the paraprofessionals or mental health professionals who may petition (the definition is vague) have experience with the treatment history of the individual. This would appear to permit shopping around for sympathetic persons rather than those acting on the basis of evidence.

This bill could also result in a sweep by the City and County to cull out of the homeless population those whom they feel can be removed from the streets through the action of this bill, if it becomes law.

Accordingly, my concern lies with the individuals who could find themselves swept into the legal system almost exactly as though they were criminals, but are disadvantaged by their situation from adequately defending themselves in court.

I recommend that the Committees put more thought into this bill and the consequences of passage. If the law it seeks to replace is defective, perhaps repeal is the best course.

Larry Geller