

**STATE OF HAWAII
DEPARTMENT OF HEALTH**

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**Testimony COMMENTS ONLY on HB1686
Relating to Mental Health Treatment**

REPRESENTATIVE DELLA AU BELATTI, CHAIR
HOUSE COMMITTEE ON HEALTH

Hearing Date: February 5, 2016, 10:15 a.m. Room Number: 329

1 **Fiscal Implications:** Undetermined at this time.

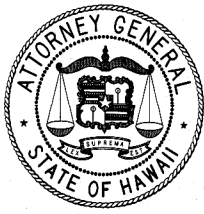
2 **Department Testimony:** The Department of Health (DOH) defers to the Department of the
3 Attorney General on this measure and would like to offer comments.

4 We thank the Legislature for its continued support and, in particular, the intent of the
5 initiatives in the bills on today's committee agenda. Only through a combination of support in
6 building a new facility, support in rebuilding community programs, and fundamental policy
7 changes will Hawaii be able to effectively address the needs of its citizens, the operation of the
8 Hawaii State Hospital (HSH), and be able to provide an effective continuum of mental health
9 supports.

10 This measure proposes a policy change affecting the Judiciary and standards to be used
11 by it in ordering civil commitment.

12 Thank you for the opportunity to testify.

13 **Offered Amendments:** None.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2016**

ON THE FOLLOWING MEASURE:

H.B. NO. 1686, RELATING TO MENTAL HEALTH TREATMENT.

BEFORE THE:

HOUSE COMMITTEE ON HEALTH

DATE: Friday, February 05, 2016

TIME: 10:15 a.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Julio C. Herrera, Deputy Attorney General

Chair Belatti and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill, but does not support the bill as it is currently written, and offers a suggested amendment to address its legal concerns.

This bill amends chapter 334, Hawaii Revised Statutes (HRS), relating to involuntary psychiatric hospitalization, assisted community treatment, and civil commitment for substance abuse outpatient treatment. Specifically, this bill amends the criteria for involuntary psychiatric hospitalization by removing the requirement that the threat of dangerousness be imminent. See page 6, lines 9 and 13; page 8, line 2; page 9, lines 2 and 20; page 11, line 6; page 12, lines 4 and 10; page 13, line 17; and page 14, line 16. We recommend that the term “imminently” not be taken out because it is constitutionally required by Suzuki v. Yuen, 617 F.2d 173, 178 (9th Cir. 1980) (Court declaring that it is unconstitutional to commit one who does not pose an imminent danger); See also, In Re: Doe, 102 Hawai’i 528, 78 P.3d 341 (App. 2003). Removing the term “imminently” from the criteria for involuntary hospitalization, would render every subsequent commitment invalid.

While the United States Supreme Court has required a showing of dangerousness in civil commitment proceedings, deference is given to state legislatures to define the term. In Re: Doe, 102 Hawai’i at 548-549, 78 P.3d at 361-362 (citations omitted). In 1984, the Legislature added the word “imminently” prior to the word “dangerous,” in HRS section 334-60.2, presumably to comply with the 9th Circuit’s ruling in Suzuki. In Re Doe, 102 Hawai’i at 551, 78 P.3d at 364. However, the term itself is not defined in chapter 334, HRS. Different people can disagree as to

the meaning of the term imminent. A strict interpretation of the term would make it difficult to fulfill the law's original purpose of protecting communities and providing necessary treatment to mentally ill individuals posing a danger to themselves or others. Therefore, to establish a clearer standard, we suggest the Legislature look to chapter 587A, HRS, also known as the Child Protective Act, for guidance. Under HRS section 587A-4, "imminent harm means that without intervention within the next *ninety days*, there is reasonable cause to believe that harm to the child will occur or reoccur." (Emphasis added.) Thus, we recommend the following definition be added to HRS section 334-1:

"Imminently dangerous to self or others" means that, without intervention, the person will likely remain dangerous within the next ninety days.

By including a definition for "imminently dangerous," the statute would provide a clearer standard that strikes the appropriate balance between protecting the community and protecting personal liberty interests.

We respectfully ask this Committee to incorporate these changes before passing this bill.

**Testimony of the Office of the Public Defender,
State of Hawaii to the House Committee on
Health**

February 5, 2016

H.B. No. 1686: RELATING TO MENTAL HEALTH TREATMENT

Chair Belatti and Members of the Committee:

We oppose passage of H.B. No. 1686. This bill would lower the standard under which a person can be civilly committed to a psychiatric facility against his/her will. Currently, one of the criteria which must be proven in court before a civil commitment can be ordered is that the subject must be shown to be “imminently dangerous to self or others.” H.B. No. 1686 seeks to remove the term “imminently” from the dangerousness element.

The change suggested by this bill would dramatically lower the standard by which a person would be sent to a psychiatric facility and would result in a much greater number of court-ordered hospitalizations. The suggested change is probably unconstitutional and violates Suzuki v. Alba, 438 F.Supp. 1106 (D. Haw. 1977), which held that the simple “dangerousness” element was too broad and ambiguous as to the degree of danger required for civil commitment. The State of Hawaii is in a crisis situation with regard to a shortage of psychiatric bedspace and is not able to handle a large influx of court-ordered patients. The current standard ensures that only those who are in absolute need of forced hospitalization are so confined.

If the purpose of the bill is to force mentally ill persons off the streets and into facilities, this measure could end up causing the government more problems in the form of overcrowded psychiatric facilities than it solves. Moreover, detaining persons against their will is an unacceptable solution to the homeless issue.

Thank you for the opportunity to provide testimony in this matter.

The Honorable Cynthia Thielen
Hawaii House of Representatives
Hawaii State Capitol, Room 443
repthielen@Capitol.hawaii.gov

Dear Representative Thielen:

On behalf of the Hawaii Academy of Physician Assistants (HAPA) and the more than 300 PAs providing care to Hawaii's residents, we would like to address **HB 1686**, relating to mental health treatment, and the opportunity the bill presents to amend statutory language that creates a barrier to PA practice in the state.

As HB 1686 aims to revise language relating to involuntary hospitalization and treatment for the protection of mentally ill individuals and the public, we hope that you will also take the opportunity to clarify and amend language contained in these same provisions that omits PAs and limits PAs from providing care they are authorized to provide.

HRS section 334-59 currently omits PA in language that authorizes a judge to issue an ex parte order requiring a person be taken to a facility for emergency examination and treatment upon an application from physicians, APRNs, psychologists, attorneys, clergy members, health or social service professionals, or any state or county employee in the course of employment. PAs are also omitted in language that directs information about a person being transported to be provided to a physician, APRN, psychiatrist or psychologist.

PAs are currently included in two provisions that allow PAs to examine persons who are believed to be mentally ill and dangerous and subsequently direct they be taken to a psychiatric facility for evaluation. PAs are also allowed to administer treatment for the patient's safe transport to the facility. However, PAs are omitted in the next section regarding the performance of an emergency examination and authorization of hospitalization on an emergency basis or transfer to another psychiatric facility for emergency hospitalization.

As you may be aware, PAs often work in behavioral health facilities and psychiatric units of rural and public hospitals, where psychiatrists are in short supply. In private practices, PAs regularly conduct initial assessments and perform maintenance check-ups for patients on psychiatric medications. In jails and prisons, PAs help meet the need for psychiatric services and medical care. Additional PA practice areas include assertive community treatment teams, psychiatric emergency departments, geriatric psychiatry, addiction medicine and care for posttraumatic stress patients.

We believe these omissions are due to oversight and are not intended to preclude PAs from performing any of the tasks described. Ensuring that PAs are included in statutes that clearly describe tasks PAs are able to perform under the law is a constant goal of HAPA's. PA inclusion in these laws increases access to care by removing unnecessary barriers to the delivery of care by PAs.

Proposed amendment to HB 1686, amending HRS Section 334-59:

- **Page 7, Line 11-**
practice registered nurse, ***physician assistant***, or psychologist at the
- **Page 7, Line 15-**

physician, advanced practice registered nurse, *physician assistant*,

- **Page 9, Line 16-**
advanced practice registered nurse, *physician assistant* or psychologist who performs
- **Page 10, Line 2-**
the physician, advanced practice registered nurse, *physician assistant*, or

We appreciate your consideration in this matter and hope that you will **amend the bill to include physician assistants as indicated above.**

Regards,

HLTtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 03, 2016 7:40 PM
To: HLTtestimony
Cc: wailua@aya.yale.edu
Subject: Submitted testimony for HB1686 on Feb 5, 2016 10:15AM

HB1686

Submitted on: 2/3/2016

Testimony for HLT on Feb 5, 2016 10:15AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Wailua Brandman	Hawaii Assoc. of Professional Nurses	Comments Only	No

Comments: Aloha Chair Au Belatti, Vice Chair Creagan and members of the House Committee on Health. Mahalo for this opportunity to testify in Support of HB1686. This bill is essential to support the personal safety of those with serious mental illness as well as public safety. Increasingly, principal mental health care providers include Advance Practice Registered Nurses (APRNs) in Hawai`i. In it's wisdom, the Legislature has included APRNs in most instances in the relevant statute here, however there are two locations in this bill where they are omitted. HAPN suggests amendments to include them as follows: Section 2, 1, a, 1 - insert "APRN or Psychologist" after the last incidence of "psychiatrist" in the following language: "reasons therefor which shall be transmitted with the person to a physician, advanced practice registered nurse, or psychologist at the facility, or to a licensed psychiatrist at a designated mental health program." In ~334-121 Criteria for assisted community treatment, insert "APRN or psychologist" in part 2, after, "based on the professional opinion of a psychiatrist." With these two amendments, this bill would appear complete. Mahalo for all you do to uphold the safety and welfare and health of the people of our great state. Wailua Brandman APRN PMHCNS/NP BC FAANP, HAPN Legislative Committee Chair

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HLTtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 03, 2016 7:46 PM
To: HLTtestimony
Cc: wailua@aya.yale.edu
Subject: Submitted testimony for HB1686 on Feb 5, 2016 10:15AM

HB1686

Submitted on: 2/3/2016

Testimony for HLT on Feb 5, 2016 10:15AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Wailua Brandman	Hawaii Assoc. of Professional Nurses	Support	No

Comments: Previous testimony was submitted with Comments Only in error instead of in Support Wailua Brandman, HAPN Legislative Committee Chair

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HLTtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 04, 2016 1:20 PM
To: HLTtestimony
Cc: wailua@aya.yale.edu
Subject: Submitted testimony for HB1686 on Feb 5, 2016 10:15AM

HB1686

Submitted on: 2/4/2016

Testimony for HLT on Feb 5, 2016 10:15AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Wailua Brandman	Hawaii Assoc. of Professional Nurses	Support	No

Comments: My previous testimony for this bill on behalf of HAPN was submitted as "Comments Only" in error. It should have been submitted as "Support." Mahalo, Wailua

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HLTtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 04, 2016 12:58 PM
To: HLTtestimony
Cc: louis@hawaiidisabilityrights.org
Subject: Submitted testimony for HB1686 on Feb 5, 2016 10:15AM

HB1686

Submitted on: 2/4/2016

Testimony for HLT on Feb 5, 2016 10:15AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Louis Erteschik	Hawaii Disability Rights Center	Comments Only	No

Comments: Subject: The purpose of the bill is to make it easier to civilly commit individuals with mental illness by removing the requirement that a court make a finding that the person is imminently dangerous. While obtaining proper treatment for individuals with mental illness is a worthy goal, we do need to point out that this bill would conflict with the 9th Circuit Case law that currently prevails in Hawaii. In 1980 the Court held in the case of Suzuki vs. Yuen (617 F.2d 173) that the Hawaii statute in effect at that time was unconstitutional because it did not contain a provision that the danger be imminent before an individual could be involuntarily committed. In response to that, the legislature amended the Hawaii Revised Statutes to include that requirement. In light of the 9th Circuit's ruling it would appear to be unconstitutional to eliminate this requirement. While the legislature has the prerogative to address this by defining the word "imminent", Court precedents would seem to suggest that any definition would need to be based upon a time frame that looked towards future, as opposed to past, actions of the individual. It also would need to be based upon a time frame that was addressing the relatively immediate future as opposed to a time frame that was further remote.


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THE QUEEN'S HEALTH SYSTEMS

To: The Honorable Della Au Belatti, Chair, Committee on Health
The Honorable Richard P. Creagan, Vice Chair, Committee on Health
Members, Committee on Health

From:  Karen Schultz, Vice President, Patient Care, The Queen's Medical Center

Date: February 4, 2016

Hrg: House of Representatives, Committee on Health; Friday, February 5, 2016 at 10:15 am in Room 329

Re: **Comments on HB 1686, Relating to Mental Health Treatment**

My name is Karen Schultz, and I am the Vice President for Patient Care at The Queen's Medical Center (Queen's). I would like to provide comments on HB 1686, relating to mental health treatment.

While Queen's recognizes the intent of the legislation, we are concerned about the unintended consequences that will impact our hospitals and overall patient care. Although the removal of "imminent" from statute provides for additional patients to qualify to be hospitalized, that does not mean that their treatment can be administered. A patient is still afforded the right to refuse treatment once they are admitted. Therefore, this measure may not fulfil the intent to provide for greater access to mental health care. We appreciate the action that the legislature has taken to address the lack of a robust continuum of mental health care in Hawaii. While we respect the intent of this measure, we would advocate for more support of community-based services for our mentally ill population.

Thank you for your time and attention to this important issue.

The mission of The Queen's Health Systems is to fulfill the intent of Queen Emma and King Kamehameha IV to provide in perpetuity quality health care services to improve the well-being of Native Hawaiians and all of the people of Hawai'i.

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 02, 2016 2:49 PM
To: HLTtestimony
Cc: mamaupin@hotmail.com
Subject: *Submitted testimony for HB1686 on Feb 5, 2016 10:15AM*

HB1686

Submitted on: 2/2/2016

Testimony for HLT on Feb 5, 2016 10:15AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Margaret Maupin, APRN	Individual	Support	No

Comments:

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HLTtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 04, 2016 9:50 AM
To: HLTtestimony
Cc: shyla.moon@ymail.com
Subject: Submitted testimony for HB1686 on Feb 5, 2016 10:15AM

HB1686

Submitted on: 2/4/2016

Testimony for HLT on Feb 5, 2016 10:15AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Shyla Moon	Individual	Support	No

Comments: Many times the people who need the help can't get the help. If they're a danger to themselves or others, they need mental counselling.

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From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 04, 2016 10:45 AM
To: HLTtestimony
Cc: alnnovak@msn.com
Subject: Submitted testimony for HB1686 on Feb 5, 2016 10:15AM

HB1686

Submitted on: 2/4/2016

Testimony for HLT on Feb 5, 2016 10:15AM in Conference Room 329

Submitted By	Organization	Testifier Position	Present at Hearing
Allen Novak	Individual	Support	No

Comments: Aloha Chair Au Belatti, Vice Chair Creagan and members of the House Committee on Health. Mahalo for this opportunity to testify in Support of HB1686. This bill will improve the personal safety of those with serious mental illness as well as public safety. Increasingly, principal mental health care providers include Advance Practice Registered Nurses (APRNs) in Hawai`i. In its wisdom, the Legislature has included APRNs in most instances in this bill, however there are two locations in this bill where they are omitted. I suggests amendments to include as follows: Section 2, 1, a, 1 - insert "APRN or Psychologist" after the last incidence of "psychiatrist" in the following language: "reasons therefor which shall be transmitted with the person to a physician, advanced practice registered nurse, or psychologist at the facility, or to a licensed psychiatrist at a designated mental health program." In ~334-121 Criteria for assisted community treatment, insert "APRN or psychologist" in part 2, after, "based on the professional opinion of a psychiatrist." With these two amendments, this bill would appear complete. Mahalo for all you do to uphold the safety and welfare and health of the people of our great state. Allen Novak, APRN Hilo, Hawaii

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