

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
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**Testimony COMMENTS ONLY on HB2559, H.D. 1  
Relating to Mental Health**

REPRESENTATIVE KARL RHOADS, CHAIR  
HOUSE COMMITTEE ON JUDICIARY

Hearing Date: February 23, 2016, 2:00 p.m. Room Number: 325

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. This bill proposes a policy  
4 change; specifically asking family courts to consider assisted community treatment (ACT) as an  
5 alternative to involuntary civil commitment.

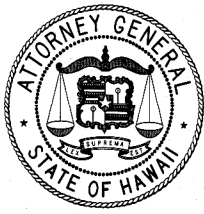
6 The purpose of this bill is to require the family court to consider using assisted  
7 community treatment as an alternative to commitment to a psychiatric facility when a person is  
8 subject to a petition for involuntary hospitalization. The use of ACT in the State of Hawaii has  
9 been minimal. From the time the ACT went into effect through June 30, 2015, no petitions for  
10 ACT have been granted by Family Courts. DOH understands the intention of this bill is to  
11 encourage the use of ACT. However, more effective methods to encourage the use of ACT are  
12 possible. DOH met with the Department of the Attorney General to initiate the review and  
13 discussion of more effective ACT alternatives among state agencies and other stakeholders.

14 As currently written, and based on time estimates for administrative document  
15 preparation and processing, this bill will significantly increase the paperwork burden for mental

1 health professionals when seeking to petition for civil commitments. We believe this bill likely  
2 will decrease access to mental health services because Hawai'i already has a shortage of mental  
3 health professionals, especially on the outer islands. For example, this measure will increase the  
4 time spent on legal paperwork with uncertain and possibly minimal benefits. We recommend the  
5 current practice of separate petitions for civil commitment and ACT.

6 Thank you for the opportunity to testify.

7 **Offered Amendments:** None.



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

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 2559, H.D. 1, RELATING TO MENTAL HEALTH.

**BEFORE THE:**

HOUSE COMMITTEE ON JUDICIARY

**DATE:** Tuesday, February 23, 2016 **TIME:** 2:00 p.m.

**LOCATION:** State Capitol, Room 325

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

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Chair Rhoads and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill, but does not support this bill as it is currently written.

This bill amends chapter 334, Hawaii Revised Statutes (HRS), relating to involuntary psychiatric hospitalization and assisted community treatment. Specifically, this bill requires the family court to consider assisted community treatment as an alternative to commitment to a psychiatric facility for a person subject to a petition for involuntary hospitalization.

Section 1 of this bill inserts a requirement that a petitioner for involuntary hospitalization also request assisted community treatment, pursuant to part VIII of this chapter, as alternative relief, on page 1, starting on line 6. Section 2 of this bill inserts a requirement that the notice in a petition for involuntary hospitalization include a statement that the family court could order assisted community treatment, in lieu of involuntary hospitalization, on page 4, starting on line 16. Section 3 of this bill inserts a requirement that if the family court finds that a person does not meet criteria for involuntary hospitalization, that it assess whether the person meets criteria for assisted community treatment and, if so, order that treatment to commence, on page 5, starting on line 14. Section 4 of this bill inserts an explanation that a petition for assisted community treatment can be initiated independently or as a request for alternative relief in a petition for involuntary hospitalization, on page 6, starting on line 3. Finally, sections 5, 6, and 7 strike the repeal provisions, set for July 1, 2020, from pertinent session laws.

We have concerns regarding the practical implications of this bill. First, involuntary hospitalization proceedings and assisted community treatment proceedings are different matters,

with different criteria, and require separate petitions. Second, the parties requesting these matters to be heard by the court are different.

The criteria for involuntary hospitalization are laid out in section 334-60.2, HRS, stating that a person may be committed to psychiatric facility, if a court finds that:

- (1) The person is mentally ill or suffering from substance abuse;
- (2) The person is imminently dangerous to self or others; and
- (3) The person is in need of care or treatment, or both, and there is no suitable alternative available through existing facilities and programs which would be less restrictive than hospitalization.

The criteria for assisted community treatment are laid out in section 334-121, HRS, stating that a person may be ordered to obtain assisted community treatment, if a court finds that:

- (1) The person is mentally ill or suffering from substance abuse; and
- (2) The person is unlikely to live safely in the community without available supervision based upon the professional opinion of a psychiatrist; and
- (3) The person, at some time in the past: (A) has received inpatient hospital treatment for mental illness or substance abuse or (B) has been found to be imminently dangerous to self or others, as a result mental illness or substance abuse; and
- (4) The person, based on the person's treatment history and current condition, is now in need of treatment in order to prevent a relapse or deterioration which would predictably result in the person becoming imminently dangerous to self or others; and
- (5) The person has a history of a lack of adherence to treatment for mental illness or substance abuse, and the person's current mental status or the nature of the person's disorder limits or negates the person's ability to make an informed decision to voluntarily seek or comply with recommended treatment; and
- (6) The assisted community treatment is medically appropriate, and in the person's medical interests; and
- (7) Considering less intrusive alternatives, assisted community treatment is essential to prevent the danger posed by the person.

Aside from the first criteria, requiring that an individual be mentally ill or suffering from substance abuse, these proceedings require very different findings. Combining these two

complex proceedings on one petition, would have the effect of inserting uncertainty and confusion into the implementation of this law.

Adding further to the confusion, the parties requesting the respective petitions are different. Our Department assists the various psychiatric hospitals in the filing of petitions for involuntary hospitalization. Their requests ask the court to order an individual to remain in the hospital to receive treatment for up to ninety days. Contrast that with a petition for assisted community treatment, which asks the court to order an individual to receive treatment in the community. Combining the two processes, would require the psychiatric hospitals to follow the individual's treatment in the community, in the event that they do not meet criteria for involuntary hospitalization. However, the statutory scheme for assisted community treatment is designed so that an individual's treatment in the community is followed not by a hospital, but by an aftercare provider.

Currently, section 334-60.7(b), HRS, already allows a psychiatric hospital contemplating discharge of an involuntary patient to assess whether an assisted community treatment plan is indicated. If so indicated, that hospital can coordinate with an aftercare provider as part of discharge planning. The aftercare provider, in turn, would file the petition for assisted community treatment, if appropriate. This section demonstrates that these are two different proceedings, requiring separate petitions, requested by different entities.

We take no position on the sections of this bill striking the repeal provisions.

We urge this Committee not to combine these two different proceedings.



*The Judiciary, State of Hawai‘i*

**Testimony to the House Committee on Judiciary**  
Representative Karl Rhoads, Chair  
Representative Joy A. San Buenaventura, Vice Chair

Tuesday, February 23, 2016, 2:00 p.m.  
State Capitol, Conference Room 325

**WRITTEN TESTIMONY ONLY**

by  
R. Mark Browning  
Senior Judge, Deputy Chief Judge  
Family Court of the First Circuit

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**Bill No. and Title:** House Bill No. 2559, H.D.1, Relating to Mental Health

**Purpose:** Assisted community treatment as alternative to involuntary hospitalization.

**Judiciary's Position:**

The Judiciary takes no position on this bill and respectfully offers the following comments.

On February 5, 2016, the Department of Health submitted testimony on House Bill 2559 to the House Committee on Health, noting on page 1, lines 8-10:

“The use of ACT [assisted community treatment] in the State of Hawaii has been minimal. From the time the ACT went into effect through June 30, 2015, no petitions for ACT have been granted by Family Courts.”

In order to clarify the reasons for the minimal use of ACT, we offer the following information about the cases that have been brought before the courts.

1. One case was filed in the Third Circuit (Big Island), which was withdrawn by the petitioner.



House Bill No. 2559, H.D.1, Relating to Mental Health  
House Committee on Judiciary  
Tuesday, February 23, 2016, 2:00 p.m.  
Page 2

2. Only three cases were filed in the First Circuit. One case was dismissed. One case was withdrawn by the petitioner. The third case was filed by the Department of the Attorney General and the parties agreed to the granting of the ACT petition.

Thank you for the opportunity to comment on this measure.

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 22, 2016 12:13 PM  
**To:** JUDtestimony  
**Cc:** louis@hawaiidisabilityrights.org  
**Subject:** Submitted testimony for HB2559 on Feb 23, 2016 14:00PM

**HB2559**

Submitted on: 2/22/2016

Testimony for JUD on Feb 23, 2016 14:00PM in Conference Room 325

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

Comments: The assisted community treatment program is a very good idea. However, we question whether mixing that procedure with the civil commitment statute makes sense. It may be less confusing to maintain them separately, especially since the criteria are different.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Saturday, February 20, 2016 8:37 PM  
**To:** JUDtestimony  
**Cc:** rkailianu57@gmail.com  
**Subject:** \*Submitted testimony for HB2559 on Feb 23, 2016 14:00PM\*

**HB2559**

Submitted on: 2/20/2016

Testimony for JUD on Feb 23, 2016 14:00PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Rachel L. Kailianu	Individual	Support	Yes

Comments:

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