

STATE OF HAWAII
DEPARTMENT OF HEALTH
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TESTIMONY COMMENTING ON HB2087
RELATING TO MENTAL HEALTH FACILITIES

REPRESENTATIVE JOHN M. MIZUNO, CHAIR
HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES

REPRESENTATIVE GREGG TAKAYAMA, CHAIR
HOUSE COMMITTEE ON PUBLIC SAFETY

Hearing Date and Time: Tuesday, February 13, 2018 at 9:05 a.m. Room Number: 329

1 The Department of Health (DOH) places high priority on security at the Hawaii
2 State Hospital (HSH). We support the intent of this bill and offer the following
3 comments.

4 The purpose of this bill is to require electronic tracking of certain patients who are
5 allowed outside a psychiatric facility. Tracking of certain patients includes those who
6 have been found not guilty by reason of insanity (NGRI) of a felony offense or
7 determined by a psychiatrist or psychologist to likely commit an act of violence.

8 The DOH shares the concerns about safety for all patients, staff, and the
9 community. When a patient is authorized to leave the grounds of the HSH, whether
10 unescorted or escorted, the HSH needs to make sure the patient is properly monitored.
11 As part of the HSH security corrective action plan, electronic tracking devices have
12 been identified as appropriate for use by patients that may leave the secured grounds of
13 the HSH.

1 Currently, HSH is actively working to establish policies and procedures to
2 implement the use of electronic tracking devices by any patient who may leave the
3 secured grounds of the HSH. The policy and procedures on the use of electronic
4 tracking devices will supplement current policies and procedures on patient oversight
5 whenever a patient leaves the secured grounds of the HSH.

6 The department appreciates all efforts by the legislature to aid the HSH in
7 addressing safety concerns and will continue to keep the public informed of ongoing
8 improvements.

9 We thank the committee for considering our testimony.



Hawai'i

Committee: House Committee on Health & Human Services
House Committee on Public Safety
Hearing Date/Time: Tuesday, February 13, 2018, 9:05 a.m.
Place: Conference Room 329
Re: Testimony of the ACLU of Hawai'i with comments on H.B. 2087
Relating to Public Safety


Dear Chair Mizuno, Chair Takayama, and Committee Members:

The American Civil Liberties Union of Hawai'i ("**ACLU of Hawai'i**") writes **with comments** on H.B. 2087, which requires that certain mental health patients "housed in a psychiatric facility" wear "at all times" an electronic tracking device if they are "authorized to remain unescorted outside that facility."

We have several concerns with H.B. 2087. First, the Fourth Amendment requires that the government have probable cause or a warrant before it conducts a search on a person, which includes requiring that the person wear an electronic tracking device.¹ H.B. 2087 does not include a probable cause or warrant requirement, and therefore, it appears to be facially unconstitutional. Additionally, the bill is not narrowly tailored in that it applies to patients who commit themselves voluntarily to a psychiatric facility and requires that the device be worn "at all times," including when it is presumably unnecessary.

The ACLU of Hawai'i respectfully requests that your Committee amend H.B. 2087 to address the concerns raised above.

Thank you for the opportunity to testify.

Sincerely,

Mateo Caballero
Legal Director
ACLU of Hawai'i

The mission of the ACLU of Hawai'i is to protect the fundamental freedoms enshrined in the U.S. and State Constitutions. The ACLU of Hawai'i fulfills this through legislative, litigation, and public education programs statewide. The ACLU of Hawai'i is a non-partisan and private non-profit organization that provides its services at no cost to the public and does not accept government funds. The ACLU of Hawai'i has been serving Hawai'i for 50 years.

¹ *United States v. Jones*, 565 U.S. 400 (2012) (installing a GPS on a vehicle constitutes a search for Fourth Amendment purposes).

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Submitted on: 2/8/2018 3:30:22 PM

Testimony for HHS on 2/13/2018 9:05:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Joy Marshall		Support	No

Comments:

I was an RN at the State Hospital for 14 years, to the above stated patients and agree 100% that more aggressive monitoring such as an electronic tracker to needed and appropriate for this population Mahalo

HB-2087

Submitted on: 2/12/2018 8:13:27 AM

Testimony for HHS on 2/13/2018 9:05:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	OCC Legislative Priorities	Support	No

Comments: