



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2018**

ON THE FOLLOWING MEASURE:

S.B. NO. 122, S.D. 2, H.D. 1, RELATING TO MENTAL HEALTH.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Thursday, March 29, 2018

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Russell A. Suzuki, Acting Attorney General, or
Erin LS Yamashiro, Deputy Attorney General

Chair Nishimoto and Members of the Committee:

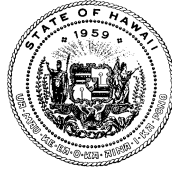
The Department of the Attorney General appreciates the intent of this bill, but suggests a modification.

The purpose of this bill is to provide notice to an individual's family when an involuntary civil commitment or an assisted community treatment proceeding is initiated. In addition, this bill would allow family members to attend the court hearings and access transcripts of these proceedings. Finally, this bill would require the Office of the Auditor of the State of Hawaii (Auditor) to audit the Adult Mental Health Division of the Department of Health (AMHD) and submit a report to the Legislature.

Section 14, p. 24, lines 18-21, would require the Auditor to review contracts, grants awarded, memoranda of understanding entered into, and procedures and policies, or otherwise involving the AMHD. The term "procedures and policies, or otherwise" is overly broad and may be outside the scope of the Auditor's duties and powers pursuant to sections 23-4 and 23-5 of the Hawaii Revised Statutes (HRS). The scope of the Auditor's duties is to discover any illegal, improper, or unsafe handling or expenditures of state funds by inspecting all financial documents of the entity. The bill, as written, may require the Auditor to review documents not involving the financial management of the AMHD. The inclusion of these documents is not necessary for the Auditor to perform its duties. Furthermore, there is pending litigation involving the AMHD that does not involve financial impropriety, and the audit should not interfere with

and/or overlap with the litigation. Based on these concerns, we recommend deleting the wording requiring the Auditor to review the “procedures and policies, or otherwise involving AMHD.”

We respectfully ask that the Committee make the suggested modification if it intends to pass this measure.



**STATE OF HAWAII
DEPARTMENT OF HEALTH**

P. O. Box 3378
Honolulu, HI 96801-3378
doh.testimony@doh.hawaii.gov

**Testimony COMMENTING on SB122 SD2 HD1
RELATING TO MENTAL HEALTH**

REPRESENTATIVE SCOTT Y. NISHIMOTO, CHAIR
HOUSE COMMITTEE ON JUDICIARY

Hearing Date and Time: Thursday, March 29, 2018 at 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
3 the Attorney General on this measure and would like to offer comments.

4 The purpose of this bill is to entitle designated family members and other
5 interested persons of a person having a mental health emergency to be notified of
6 certain procedures and actions, the option to be present in the courtroom for a hearing
7 on a petition for involuntary hospitalization or assisted community treatment (ACT), and
8 the option to receive copies of hearing transcriptions or recordings. This bill requires
9 the court to adjourn or continue a hearing on a petition for involuntary hospitalization or
10 assisted community treatment for failure to timely notify designated persons, with
11 certain exceptions.

12 Civil commitments occur relatively frequently, approximately 570 petitions are
13 filed and approximately 155 petitions are granted per year. The negative impact on the
14 operational aspects of civil commitment proceedings is a concern. While participation
15 and notification to interested family members and others may be beneficial, the effects
16 of the delay or adjournment of a legal proceeding may be significant. For example, the
17 delay or adjournment may impose an increased strain on the mental health service
18 system if patients are held longer than is medically required in order to satisfy a

1 notification requirement. Additionally, delays may impose significant operational and
2 fiscal consequences on the treating or committing facility. We assess the impact of Part
3 I will most importantly be on emergency rooms and community hospital inpatient units.

4 Regarding the newly added Part II, the content pertains quite specifically to the
5 DOH's Adult Mental Health Division (AMHD). The DOH understands the scope of the
6 audit as proposed in HD1. The addition of Part II unnecessarily complicates the original
7 intent of this bill, which has been considered by the DOH, the Attorneys General,
8 advocates, and providers.

9 As a department, the DOH has taken a number of steps to address some of the
10 specific issues raised in the last audit. For the DOH's AMHD, the personnel
11 reorganization, together with corresponding personnel adjustments currently in process
12 will further enhance the AMHD's alignment across procurement, provider payment,
13 program monitoring, reimbursement, and other areas.

14 A potentially helpful audit focus might be the areas that impact the AMHD's
15 capacity to effectively and efficiently develop and provide services in the community
16 including procurement, program capacity, mental health network adequacy,
17 reimbursement rates, and mental health substance abuse treatment parity analysis on
18 neighbor islands. The DOH respectfully asks that this committee return this bill to
19 include language as previously drafted in SD2 with the change suggested by the
20 Department of the Attorney General.

21 Thank you for the opportunity to testify.

22 **Offered Amendments:** None.

SB-122-HD-1

Submitted on: 3/27/2018 3:05:34 PM

Testimony for JUD on 3/29/2018 2:00:00 PM

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

Comments:

SB-122-HD-1

Submitted on: 3/27/2018 2:27:48 PM

Testimony for JUD on 3/29/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

Testimony Of:
Chanel Chandler
Individual

On The Following Measure:
SB 122, SD2, HD1: Relating to Mental Health

Before The:
Committee on Judiciary

Date: Thursday, 29 March 2018, Time: 2:00 p.m.
Location: State Capitol, 415 South Beretania Street, Room 325

Dear Committee on Judiciary

I strongly encourage you to support SB 122.

To understand my firm position, let me briefly explain the situation leading to the importance of this bill. My nephew, Shendon Taniguchi, who was mentally disabled, attended a hearing without family members present (a power of attorney did identify family members). Instead, with only a mental health physician in attendance, Shendon faced the court on his own. The exact details of what took place in the courtroom is unknown, Shendon's family requested to review the court's transcripts but it was disapproved by the State. I do know, based on Shendon's physician, the reason the court convened was to petition for Shendon's involuntary hospitalization. When the court adjourned, Shendon was released into the community where he roamed the streets for several hours. His family was dispatched to find and return him home only after the mental health physician notified the family Shendon was dismissed from the courtroom. The next morning, Shendon had a mental episode resulting in the death of two individuals, to include himself, and injuring three more. He was only 21 years old.

If the designated family members were notified of the hearing, they would've been able to attend the hearing and advocate, based on previous documented cases, their support for Shendon's continued hospitalization. Ultimately, preventing the horrific incident from occurring.

Again, I urge the Committee on Judiciary to support SB 122.

SB 122 is a step in the right direction to allow designated family members and other interested parties the opportunity to advocate on behalf of mentally disabled individuals. The designated representative would provide the court a competent discussion and better portrayal of the individual's mental health while away from mental health assistance. Additionally, the family members and interested parties' perspective could help in determining the demand for involuntary hospitalization or assisted community treatment. Overall, the bill would continue to protect mentally disabled individual's legal rights while providing them with the appropriate care.

Thank you for the opportunity to comment on this bill.

SB-122-HD-1

Submitted on: 3/28/2018 11:40:53 AM

Testimony for JUD on 3/29/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Oahu County Committee on Legislative Priorities of the Democratic Party of Hawai'i	Support	No

Comments:

State House Committee On Judiciary
Testimony Of Gary T. Kubota
In Support of Senate Bill 122

While I was a newspaper reporter, I stayed away from voicing my opinions on issues and focused on presenting facts and other people's opinion. I no longer work as a news person and have returned to my home island Maui. But I do feel I should express my support for SB 122, since I was involved in investigating the events that have prompted this bill.

Imagine how you would feel if you took a family member to be admitted to the psychiatric ward, then found out that you weren't notified of a court hearing that released that patient and ended up being the one that had to take care of the patient again? Then imagine that patient going on a killing rampage the next day and you being told later that you can't get a copy of the court transcripts of the patient's release because you weren't at the court hearing.

The bill calls designated family members and other interested persons to be notified of a court hearing where an individual is the subject of involuntary hospitalization or assisted community treatment, unless otherwise determined by the courts. It also enables designated family members and other interested persons to receive copies of the court transcripts.

As a news reporter for the Honolulu Star-Advertiser on Dec. 2, 2011, I reported on the multiple stabbings of Kauai people, including the stabbing death of 68-year-old Waimea resident Edita Padamada and her attacker/neighbor 21-year-old Shendon Chandler-Taniguchi. I was troubled by the fact that no apparent explanation was given by authorities about the motive of the attack and decided to conduct an investigation. I found an employee at a store where Shendon worked and found out that he had been released from a hospital psychiatric unit the day before the attack. Eventually, I spoke to a relative Chanel Chandler and other sources about this tragedy.

The courts have denied Shendon's family and the family of the late Edita Padamada a copy of the transcripts of what happened in Family Court that prompted a judge to release Shendon on Dec. 1, 2011 from the psychiatric unit. The state courts have cited confidentiality laws that protect the individual under psychiatric care and family members from the stigma of disclosure and also state HIPA laws that protect a patient's confidentiality. I've never been able to understand the court's argument in this case, since the individual under psychiatric care was dead and Shendon's family members themselves were denied access to the court transcripts. Additionally, I felt since this incident involved multiple deaths and took place on a public street, there was an compelling public interest in the release of the transcripts. The state courts response was, "You can always file a request through an attorney." Chanel Chandler will tell you the family wasn't able to afford an attorney. Edita Padamada's family told me they were unable to find an attorney on Kauai who would look into the matter.

While authorities withheld the release of the court transcripts, the state Office of Information Practices did order the release of the toxicology report, which showed only trace amounts of an anti-psychotic drug in Shendon's body after death, indicating he had not taken his prescribed medication.

The tragedy in this is that Shendon's family were the ones who called police and had him taken to the psychiatric ward. Yet Shendon's family wasn't notified about the court hearing and Shendon's release by the judge. Chanel Chandler has said that if the family had been notified of the hearing, they would have come to the hearing and told the judge that they were opposed to Shendon's release because the problem was that Shendon was not taking his medication while at home. Family members first learned of Shendon's release through a telephone call from a hospital

employee. Chanel Chandler said they found Shendon wandering in the streets of Lihue and took him to his grandfather's home.

I don't know if their presence and testimony in court would have changed the judge's mind about releasing Shendon. But I do think that as a matter of fairness and common sense, the family deserved an opportunity to speak in court since they were the ones taking care of him and who had him committed. I also think they deserved to know what happened during the court hearing.

Mahalo,
Gary Kubota (808) 268-3918

(END)



SB122 SD2 HD1 Family Members Notified for SMI Committed Patient’s Admission, Emergencies and Release

COMMITTEE ON JUDICIARY:

- Representative Scott Nishimoto, Chair; Representative Joy San Buenaventura, Vice Chair
- Thursday, March 29, 2018: 2:00 pm
- Conference Room 325

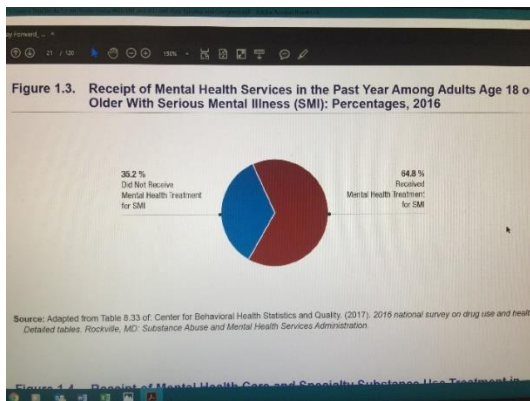
Hawaii Substance Abuse Coalition (HSAC) Supports SB122 SD2 HD1:

GOOD MORNING 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 of almost 40 non-profit alcohol and drug treatment and prevention agencies.

The Federal government’s New Freedom Commission on Mental Health concluded that *“for too many Americans with mental illnesses, the mental health services and supports that they need remain fragmented, disconnected and often inadequate, frustrating the opportunity for recovery.”*¹

- Without access to supportive care, many family members are caught in impossible situations, become distraught, or give up entirely.
- We need government standards that are integrated with community solutions to improve care for highly disabled, mentally ill people.

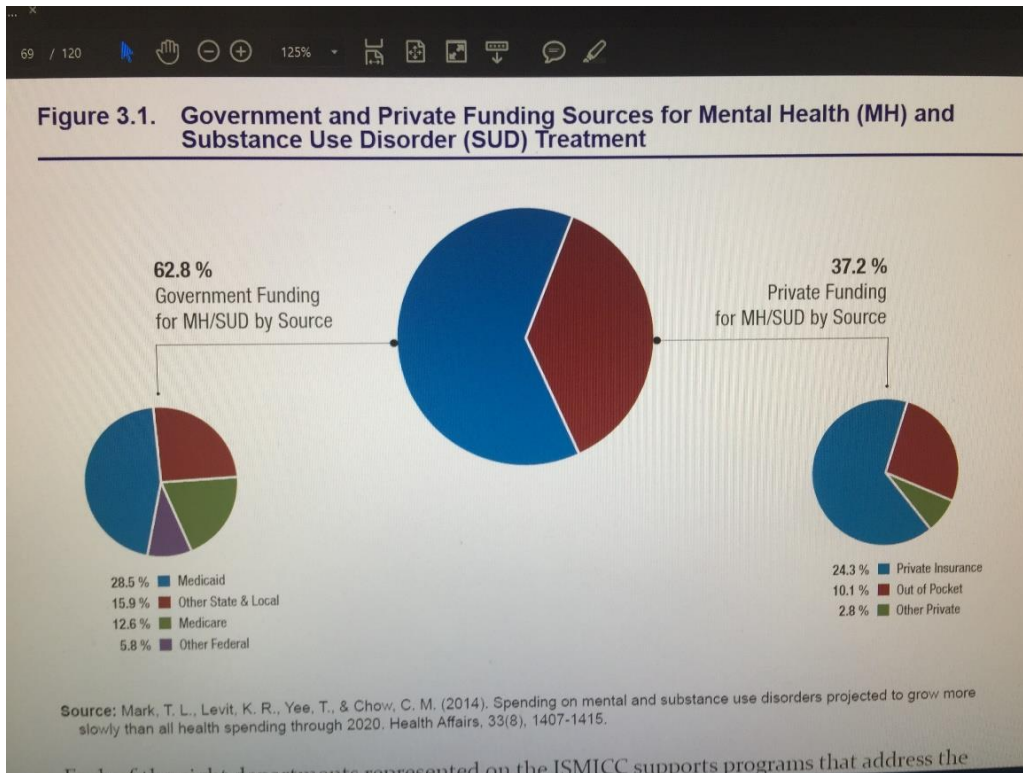
SB122 is part of a commitment to coordinate and collaborate at the state and local levels to develop systems tailored to the needs of each person by involving their family and caregivers when appropriate. As a community, we need community support because more people are receiving care and even more people will receive needed care in the future.



¹ New Freedom Commission on Mental Health: The Way Forward: Federal Action for a System That Works for All People Living with SMI and SED and Their Families and Caregivers, 2017. <https://store.samhsa.gov/shin/content/PEP17-ISMICC-RTC/PEP17-ISMICC-RTC.pdf>

Peer services, including peer family support, promotes recovery and resiliency through instilling hope, engaging in treatment, and improving outcomes. (Repper & Carter, 2011) and (Center for Health Care Strategies, 2013). Moreover, many people with severe mental illness (SMI) are financially dependent upon family and friends.

Major advances have been made in recent decades to promote peer and family support, with 40 states that now include family support as a billable Medicaid optional service.



As part of recovery support services to reduce homelessness and incarceration, families can play a major role for improving self-care and general health. Later, down the road as a means to improve care and reduce costs, we could help families, who often bear a significant emotional burden, to better support their SMI loved one by making available more learning experiences through functional family therapies.

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