



**STATE OF HAWAII**  
**DEPARTMENT OF HEALTH**  
P. O. Box 3378  
Honolulu, HI 96801-3378  
doh.testimony@doh.hawaii.gov

**Testimony COMMENTING on HB1221**  
**RELATING TO MENTAL HEALTH**

REPRESENTATIVE JOHN M. MIZUNO, CHAIR  
HOUSE COMMITTEE ON HEALTH

Hearing Date and Time: Thursday, February 14, 2019 at 9:31 a.m.

Room: 329

1 **Fiscal Implications:** Undetermined.

2 **Department Testimony:** The purpose of HB1221 is to allow law enforcement and hospital  
3 workers to intervene and temporarily take individuals into custody when certain medication or  
4 necessary mental health treatment is refused. Additionally, the definitions of “dangerous to  
5 others” and “dangerous to self” in chapter 334, Hawaii Revised Statutes are amended to include  
6 the refusal to take medication or undergo mental health treatment necessary to help prevent  
7 self-inflicted violence and violence to others.

8 The Department of Health (DOH) offers the following comments on this measure.

9 While the proposed revisions to the definitions of “dangerous to others” and “dangerous  
10 to self” to include refusal of mental health treatment may be well intended, doing so may have a  
11 significant impact on the implementation of emergency admission, emergency examination, and  
12 involuntary hospitalization.

13 Refusal of treatment alone is not sufficient to establish dangerousness. The refusal of  
14 treatment must be sufficiently associated with causing an elevated risk of danger.

15 The DOH defers to the Department of the Attorney General for proposed language  
16 consistent with establishing a link between treatment refusal and dangerousness.

17 Thank you for the opportunity to testify on this measure.

18 **Offered Amendments:** None.



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTIETH LEGISLATURE, 2019**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 1221, RELATING TO MENTAL HEALTH.

**BEFORE THE:**

HOUSE COMMITTEE ON HEALTH

**DATE:** Thursday, February 14, 2019      **TIME:** 9:31 a.m.

**LOCATION:** State Capitol, Room 329

**TESTIFIER(S):** Clare E. Connors, Attorney General, or  
Erin K. S. Torres, Deputy Attorney General

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Chair Mizuno and Members of the Committee:

The Department of the Attorney General (Department) appreciates the intent of this bill and offers comments with suggested amendments that would fulfill the Legislature's intent and minimize constitutional challenges.

This measure amends the definitions of "dangerous to others" and "dangerous to self" in section 334-1, Hawaii Revised Statutes (HRS), to include refusal to take medication or participate in mental health treatment that is necessary to prevent dangerous acts, attempts or threats against self or others.

As it is written, this bill is subject to possible constitutional challenge because imminent danger is required prior to involuntary hospitalization 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). It is unclear whether refusal to take medication or participate in mental health treatment alone is equivalent to imminent danger. Therefore, we suggest that the Committee consider changing the bill's proposed definitions of "dangerous to self" and "dangerous to others" to make it absolutely clear that refusal of medication or mental health treatment is considered to be "dangerous" only if dangerous behaviors will predictably result when the person does not receive medication or mental health treatment.

The Department recommends that the new paragraph (3) on page 3, lines 11 through 14, be deleted and instead, paragraph (2) be amended to read as follows:

- (2) Behaved in such a manner as to indicate that the person is unable, without supervision and the assistance of others, to satisfy the need for nourishment, essential medical care, including treatment for a mental illness, shelter or self-protection, so that it is probable that death, substantial bodily injury, or serious physical debilitation or disease will result unless adequate treatment is afforded.

The Department also recommends that the new paragraph (2) on page 2, lines 15 through 18, be amended to read as follows:

- (2) Refuses to take medication or participate in mental health treatment so that it is probable that the person will cause, attempt to cause, or threaten substantial physical or emotional injury to another.

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

**HB-1221**

Submitted on: 2/12/2019 12:38:01 PM

Testimony for HLT on 2/14/2019 9:31:00 AM

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

Comments:

This bill seems overbroad. Despite our general predisposition to be fairly cautious about legislation that forces individuals to involuntarily be medicated or be subject to civil commitments without compelling evidence, we have nonetheless been supportive this session of efforts to expand the assisted community treatment law.

This proposal, however, seems a bit extreme. The definition of "dangerousness" in our law has been expanded in recent years and as it currently reads, it encompasses a variety of situations. To expand it to include the mere refusal to take medication or attend a treatment may be taking it a bit far. While it is very important for people to take their medication and attend mental health treatment, if the person refuses to do those things and it leads to the behavior that the law is concerned about, then the person would likely meet the definition of "dangerousness". While we are not suggesting that we have to "wait for the accident to happen", we do think that the current definition, which has a 45 day window would encompass the concern that this bill is trying to address.

Testimony of  
Joy Barua  
Senior Director, Government and Community Relations & Community Benefit

Before:  
House Committee on Health  
The Honorable John Mizuno, Chair  
The Honorable Bertrand Kobayashi, Vice Chair

February 14, 2019  
9:31 a.m.  
Conference Room 329

**Re: HB1221, Relating to Mental Health**

Chair Mizuno, Vice-Chair Kobayashi, and committee members, thank you for this opportunity to provide testimony on HB1221, which amends the definitions of “dangerous to others” and “dangerous to self” in chapter 334, Hawaii Revised Statutes, to include the refusal to take medication or undergo mental health treatment necessary to help prevent self-inflicted violence and violence to others.

**Kaiser Permanente Hawai‘i offers COMMENTS and proposes AMENDMENTS as follows:**

Kaiser Permanente appreciates the general intent of HB1221 to prevent harm, either to persons suffering from mental illness or substance abuse, or to members of the public, AND proposes the following AMENDMENTS (highlighted in yellow):

SECTION 2. Section 334-1, Hawaii Revised Statutes, is amended as follows:

1. By amending the definition of "dangerous to others" to read:

"Dangerous to others" means a person who:

(1) Is likely to do substantial physical or emotional injury on another, as evidenced by a recent act, attempt or threat[-]; or

(2) Refuses to take psychiatric medication or attend mental health treatment that is necessary to help prevent the person from committing or making an act, attempt, or threat as a described in paragraph (1)."

2. By amending the definition of "dangerous to self" to read:

" "Dangerous to self" means the person recently has:

(1) Threatened or attempted suicide or serious bodily harm; [ø#]

(2) Behaved in such a manner as to indicate that the person is unable, without supervision and the assistance of others, to satisfy the need for nourishment, essential medical care, shelter or self-protection, so that it is probable that death, substantial bodily injury, or serious physical debilitation or disease will result unless adequate treatment is afforded[-]; or

(3) Refused to take psychiatric medication or attend mental health treatment that is necessary to help prevent the person from threatening or attempting suicide or serious bodily harm."

(4) Suffering from serious mental illness.

Thank you for the opportunity to offer comments and propose amendments.