



EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

March 18, 2019

TO: The Honorable Representative Chris Lee, Chair
House Committee on Judiciary

FROM: Scott Morishige, MSW, Governor's Coordinator on Homelessness

SUBJECT: **SB 567 SD2 HD1 – RELATED TO MENTAL HEALTH TREATMENT**
SB 1124 SD2 HD1 – RELATING TO MENTAL HEALTH

Hearing: Wednesday, March 13, 2019, 9:00 A.M.
Conference Room 329, State Capitol

POSITION: The Governor's Coordinator on Homelessness supports the intent of these bills, as they address key aspects of the State's framework and strategic plan to address homelessness. The Coordinator defers to the Department of Health (DOH) and to the Department of the Attorney General regarding the specific processes and implementation of assisted community treatment and related mental health services.

The Coordinator notes that assisted community treatment, also referred to as assisted outpatient treatment, is different from assertive community treatment although both terms are commonly referred to as ACT. Assisted community treatment / assisted outpatient treatment refer to court orders that require community based treatment for individuals with severe mental illness or co-occurring disorders that have a history of refusing medical care. Assertive community treatment refers to a multidisciplinary team approach to case management with assertive outreach in the community, which is designed to improve outcomes for people with severe mental illness who are most at-risk of psychiatric crisis and hospitalization and involvement in the criminal justice system.

PURPOSE: The purpose of these bills is to increase utilization of assisted community treatment orders by making changes to processes related to obtaining these orders, which

include requiring the Department of the Attorney General to assist with the petitions for assisted community treatment and related court proceedings.

SB 567 SD2 HD1 requires an individual to be examined upon commitment to a psychiatric facility for involuntary hospitalization, admission to a psychiatric facility for voluntary inpatient treatment or transported for emergency examinations, to determine whether an assisted community treatment plan is indicated and, if so, requires the Department of the Attorney General to assist with the petition for assisted community treatment and related court proceedings. The bill also requests DOH to convene a mental health emergencies task force.

SB1124 SD2 HD1 requires the administrator or attending physician of a psychiatric facility to assess whether an assisted community treatment plan is indicated and to make certain arrangements if so indicated. In addition, the bill specifies the role of the Department of the Attorney General for petitions of involuntary hospitalization and assisted community treatment, and amends the criteria for assisted community treatment.

The Coordinator appreciates the legislature's efforts to address the needs of homeless individuals experiencing severe mental illness or co-occurring mental illness and substance use disorders who may require an order for assisted community treatment. The efforts to increase the utilization of assisted community treatment orders align with goal 4, objective 11, of the State's ten-year strategic plan to address homelessness, which is to advance health and stability for people experiencing homelessness who have frequent contact with hospitals and the criminal justice system, including individuals with severe mental illness.

According to the 2018 statewide homeless point in time count, there are an estimated 1,612 homeless individuals with severe mental illness, representing 25% of the total homeless population. In addition, the Homeless Management Information System (HMIS), which is a database of individuals utilizing homeless services, identified 4,166 unduplicated homeless individuals who utilized homeless services in calendar year 2018 and reported mental health problems, representing 31.49% of all homeless individuals who utilized services that year.

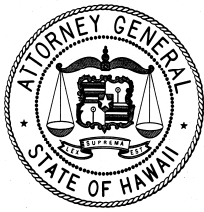
Research has found that the use of assisted community treatment orders, also referred to as assisted outpatient treatment orders, have contributed to decreased incidents of

homelessness, hospitalization, and arrests and incarceration among participants. Specifically, a 2005 report by the State of New York regarding its assisted outpatient treatment law found that over a period of three years, the incidence of homelessness among individuals ordered to participate in assisted outpatient treatment declined by 74%.¹ During that same timeframe, the incidence of incarceration, arrest, and psychiatric hospitalization declined 87%, 83%, and 77% respectively.

The Coordinator notes that, if the bills proceed and result in increased utilization of the assisted community treatment law and increased numbers of individuals receiving assisted community treatment orders, there will be increased demand for shelter and housing programs that meet the unique needs of individuals with severe mental illness and co-occurring disorders who are mandated to comply with treatment against their consent. SB1051 SD1 HD1, which is also being heard before this committee, establishes a task force to design a pilot program to address the shelter and housing needs of this target population and appropriates funds to support this effort.

Thank you for the opportunity to testify on these bills.

¹ New York State, Office of Mental Health (March 2005). Retrieved on March 16, 2019 from: https://omh.ny.gov/omhweb/kendra_web/finalreport/lt_findings.htm



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

ON THE FOLLOWING MEASURE:

S.B. NO. 1124, H.D. 1, RELATING TO MENTAL HEALTH.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Monday, March 18, 2019

TIME: 2:05 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Clare E. Connors, Attorney General, or
Erin LS Yamashiro, Deputy Attorney General

Chair Lee and Members of the Committee:

The Department of the Attorney General (Department) appreciates the intent of this bill and provides the following comments.

The purpose of this bill is to facilitate the use of assisted community treatment for individuals with serious mental illness by amending chapter 334, Hawaii Revised Statutes (HRS). This bill expands the definition of "dangerous to self," amends the petitioning and hearing procedures for involuntary commitment and assisted community treatment matters, modifies the criteria for assisted community treatment, requires an assessment for assisted community treatment before the individual is released from a psychiatric facility, and for the Department to file the petition for assisted community treatment.

The Department will need additional funding and resources to carry out the statewide responsibility articulated in this bill. We suggest that the amount of money needed to accomplish this bill's purpose is the sum of \$332,000 for fiscal year 2019-2020, which includes a one-time cost of \$24,000 to set-up an office, and the sum of \$308,000 for fiscal year 2020-2021 for the appointment of two deputy attorneys general and support staff. We suggest that these appropriations be included in this bill.

Thank you for the opportunity to provide comments.



**STATE OF HAWAII
DEPARTMENT OF HEALTH**

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

**Testimony in SUPPORT of SB1124 SD2 HD1
RELATING TO MENTAL HEALTH**

REPRESENTATIVE CHRIS LEE, CHAIR
HOUSE COMMITTEE ON JUDICIARY

Hearing Date and Time: Monday, March 18, 2019 at 2:05 p.m.

Room: 325

1 **Fiscal Implications:** Undetermined.

2 **Department Testimony:** The Department of Health (DOH) supports this measure in its current
3 HD1 form to enhance and expand assisted community treatment and related services for the
4 most vulnerable populations of seriously mentally ill individuals.

5 The DOH recognizes a critical need to coordinate a comprehensive continuum of care
6 that includes leveraging assisted community treatment as well as civil commitment as part of
7 that continuum.

8 Thank you for the opportunity to testify.

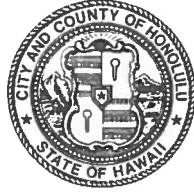
9 **Offered Amendments:** None.

POLICE DEPARTMENT
CITY AND COUNTY OF HONOLULU

801 SOUTH BERETANIA STREET · HONOLULU, HAWAII 96813
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LATE

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SUSAN BALLARD
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JONATHON GREMS
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OUR REFERENCE **ML-NC**

March 18, 2019

The Honorable Chris Lee, Chair
and Members
Committee on Judiciary
House of Representatives
Hawaii State Capitol
415 South Beretania Street, Room 325
Honolulu, Hawaii 96813

Dear Chair Lee and Members:

SUBJECT: Senate Bill No. 1124, S.D. 2, H.D. 1, Relating to Mental Health

I am Mike Lambert, Captain of the Community Outreach Unit of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD strongly supports Senate Bill No. 1124, S.D. 2, H.D. 1, Relating to Mental Health.

The City and County of Honolulu is currently experiencing a homeless crisis. During the 2018 Oahu Point in Time Count, it was reported that approximately 1,000 of the 4,500 homeless suffered from serious mental illness. Many of these individuals do not contain the rational ability to take the necessary steps to treat their mental illness. This places the community and themselves at risk of becoming perpetrators or victims of physical assault, sexual assault, property damage, and/or other crimes against public order.

The community needs to have a reasonable process to make the seriously mentally ill participate in involuntary treatment when that individual appears to be a danger to self or others and is unable to improve their situation without assistance. Assisted Community Treatment can create a mechanism to help someone who is unable to help themselves.

The Honorable Chris Lee, Chair
and Members
March 18, 2019
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The HPD is committed to ensuring public safety. This requires that the seriously mentally ill are treated by both voluntary and involuntary means.

The HPD respectfully urges you to support Senate Bill No. 1124, S.D. 2, H.D. 1, Relating to Mental Health.

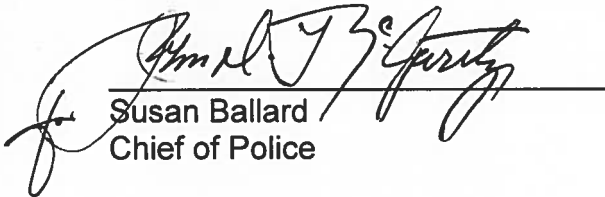
Thank you for the opportunity to testify.

Sincerely,



Mike Lambert, Captain
Community Outreach Unit

APPROVED:



Susan Ballard
Chief of Police

SB-1124-HD-1

Submitted on: 3/15/2019 6:07:55 PM

Testimony for JUD on 3/18/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Louis Erteschik	Hawaii Disability Rights Center	Comments	Yes

Comments:

This bill represents a significant overhaul of the assisted community treatment law. As in other measures pending this session it provides that the Attorney General shall assist in the filing of the the petition. This would be a huge help to mental health advocates or family members who are trying to assist people in obtaining treatment, and are struggling with the intricacies of the judicial system.

The most significant change to the law is the elimination of the requirement of a prior psychiatric hospitalization as a prerequisite to a qualification for assisted community treatment. This may well enable the law to reach individuals who otherwise would not qualify simply because they had never been "picked up" by the system. We were involved in the initial drafting of this legislation and at the time it was felt that this provision was a valuable safeguard to prevent against potential overreach of the law. However, the experience to date is that the law has been extremely underutilized and one possible reason may be that the requirement of the prior hospitalization may have been too restrictive. This SD1 version of the bill did maintain a requirement of a prior psychiatric history and that seemed to be a reasonable safeguard in that a single episode would not in and of itself have subjected someone to this procedure. The SD2 version, however, significantly loosened the criteria so that either a prior finding of dangerousness or simply a current refusal to accept treatment would qualify the individual for the ACT program.

We believe the current HD1 version, based upon the suggested amendments by the Office of the Attorney General strikes a better balance in terms of providing opportunities to treat individuals, while not eroding protections of their civil liberties for individuals.



Hawai'i

Committees: House Committee on Judiciary
Hearing Date/Time: Monday, March 18, 2019, 2:05 p.m.
Place: Conference Room 325
Re: Testimony of the ACLU of Hawai'i with Comments and Suggested Amendments to S.B. 1124, S.D. 2, H.D. 1, Relating to Mental Health

Dear Chair Lee, Vice Chair San Buenaventura, and members of the Committee on Judiciary,

The American Civil Liberties Union of Hawai'i ("ACLU of Hawai'i") writes **with comments and suggested amendments to S.B. 1124, S.D. 2, H.D. 1**, which makes sweeping changes to the Assisted Community Treatment law, and amends the definition of "dangerous to self" under Chapter 334, Hawaii Revised Statutes.

The ACLU of Hawai'i understands the importance of ensuring that people struggling with severe illness receive the medical treatment that they need. The ACLU of Hawai'i agrees with that goal and appreciates the intent of the drafters of this measure in trying to achieve it. However, we are concerned that certain changes proposed in this measure may infringe on the civil liberties of the people this measure seeks to help. To ensure that care is provided in a way that protects the civil liberties of those being treated, no form of involuntary treatment should be attempted until all less restrictive alternatives have been tried for at least 12 months. This is not only a question of civil rights, but also of effective treatment. Treatment submitted to voluntarily is more effective than involuntary treatment and offering services such as housing should be prioritized above forced medication.

To address these concerns, we respectfully request that the Committee make the following amendments to the measure:

334-121 Criteria for assisted community treatment.

P. 7 line 15. Insert language providing that:

"Assisted community treatment will not be imposed until voluntary supports, including housing, intensive case management (social worker with 10 or fewer clients at a time), and a range of treatment options (including harm reduction for addiction) have been offered over a period of no less than 12 months."

334-1 Definitions

P. 2 line 7. Amend 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; or
- (2) Behaved in such a manner as to indicate that the person is unable, even with support, 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 more likely than not that death, substantial bodily injury, or serious physical debilitation or disease will result unless adequate treatment is afforded."

Chair Lee and Members of the Committee on Judiciary
March 18, 2019
Page 2 of 2

334-126 Hearing on petition.

Page 11, line 1. Section (e) should be amended to read:

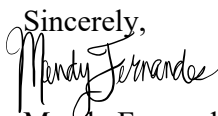
(e) The subject of the petition shall be present at the hearing. However, if the subject has been served with the petition and does not appear at the hearing, the court ~~may~~ shall appoint a ~~guardian ad litem~~ an attorney to represent the best interests of the subject through the proceedings.

This amendment will address the serious due process concerns with allowing a court to proceed without the potential “subject” of the treatment present. We also have concerns with appointing a guardian ad litem to represent ‘the best interests’ of an adult. Instead, we would suggest that the court must appoint an attorney, not a guardian ad litem, to represent the stated interests of the subject should the subject of the petition not be present in court.

Page 14, lines 8-10. The ACLU of Hawai‘i appreciates this as an attempt to recognize that psychiatric medications have both beneficial effects and side effects. The problem is that this varies greatly from person to person. To address this, we request that the Committee consider adding language to provide that testimony should also come from the individual, not just the nurse or doctor.

In addition to the amendments suggested above, the ACLU of Hawai‘i has concerns about Section 8, p. 11, line 6, 334-126(f), which seems to allow the state to remove itself from petitions for involuntary outpatient treatment if the petitioner has retained private counsel. Given the liberty interest at stake, we find the privatization of this process to be troubling.

Thank you for the opportunity to testify.

Sincerely,

Mandy Fernandes
Policy 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.

American Civil Liberties Union of Hawai‘i
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SB-1124-HD-1

Submitted on: 3/16/2019 5:55:44 AM

Testimony for JUD on 3/18/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Mike Goodman	Hawaii Kai Homeless Task Force	Support	No

Comments:

TO:	The House Committee on the Judiciary
FROM:	Mike Goodman, Director of the Hawaii Kai Homeless Task Force & Member of the Partners In Care Advocacy Committee.
RE:	SB1124 SD2, HD1
HEARING:	Monday, March 18, 2019, 2:05 p.m. Conference Room 325

Dear Representative Lee, Chair, and Representative San Buenaventura, Vice Chair, and all Members of this Committee, thank you for the opportunity to provide testimony in strong support of SB 1124 and to suggest amendments.

Suggested Amendments.

One of the reasons the ACT program is ineffective, is because of cumbersome technical requirements which provide no constitutional due-process benefits. SECTION 6 on page 7 of SD2, HD1 adds the following language to § 334-121 HRS, which will make things worse:

"(3) The person's mental illness has caused that person to refuse needed and appropriate mental health services in the community, and the person has a history of lack of adherence to treatment for mental illness or substance abuse, that resulted in the person becoming dangerous to self or others, and that now would predictably result in the person becoming imminently dangerous to self or others; and"

The foregoing language creates unnecessary evidentiary problems and is otherwise overly-broad.

First; The phrase "The person's mental illness has caused that person to refuse" should be stricken because it's difficult and unnecessary to prove what in-fact caused that person to refuse treatment. From a constitutional due process point of view, you only need to show the person is an imminent danger to themselves or others and they refused treatment, not why.

Second; The phrase "has a history of lack of adherence" is overly-broad; Does it mean the person refused treatment once, twice or a dozen times? The phrase "that resulted

in the person becoming dangerous” is problematic because it’s the person’s mental illness that makes he or she dangerous and not their refusal to succumb to treatment. The language “would predictably result in the person becoming imminently dangerous”, places an almost impossible burden on a petitioner to prove that someone is likely to do something dangerous in the future. It also may be constitutionally repugnant.

I Recommend the entire paragraph be stricken and replaced with the following:

"3) The person is dangerous to themselves or others, and has refused or refuses appropriate treatment; and"

Why This Bill is Important.

“Assisted Community Treatment” under HRS Chapter 134 (“ACT”), is contemplated to address the problem of impaired persons, many who are homeless, who are a danger to themselves or others, and refuse treatment for their underlying conditions. Most of these individuals are incapable of making informed decisions about their care. The ACT program was created to fulfill constitutional requirements of due process and ensure that the rights and liberties of persons adopted into the program are not infringed upon. The problem is that since 2013, only 10 individuals have received court-ordered treatment under ACT.

SB1124 is a crucial part of a series of bills including SB567, SB1124, SB1051, SB1464 and SB1465, all of which are intended to make critical improvements to the ACT program, so it can operate more efficiently. It’s important for **all** of these bills to pass.

Just within a 10-block radius of the Capitol, dozens of severely mentally ill and substance addicted homeless live unsheltered under appalling conditions. They cycle endlessly between jails and hospitals or wander aimlessly with their worldly belongings stuffed into shopping carts.

The life expectancy of an unsheltered impaired homeless person is about twenty years shorter than a person with a home. Mired in filth and exposed to the elements, life-threatening diseases are common and small injuries can become festering sores;

According to the last PIT count, unsheltered homelessness increased to about 2400 people. While the homeless suffer, the quality of life for residents and tourists is severely impacted; For example, Chinatown is now a dystopian mix of the fortunate and unfortunate; where the aroma of garlic clashes with the stench of urine and feces; Sidewalks, freeway medians and world class beaches are now routinely used as trash dumps and bathrooms; Many Honolulu City Parks and even Iolani Palace, will be closing at night to prevent property damage; The Children’s Discovery Center in Kaka’ako might go out of business, because parents don’t feel safe bringing their children. Their fears are not completely irrational; Statistically, crime rates increase sharply around homeless camps.

Severely mentally ill and substance addicted homeless also impose the greatest burden on taxpayers. The aggregate cost for emergency medical services, law enforcement, the judiciary, repair and cleanup of public and private property, homeless sweeps is hard to quantify, but could exceed \$200 million dollars a year.

Because mental impairments interfere with their ability to make rational decisions, many chronic homeless persons refuse services and treatment. This is an untenable situation SB567, SB1124, SB1051, SB1464 and SB1465 aims to address.

The cost of helping and treating impaired homeless persons should result in a net savings to the State. According to the UH Center on the Family, estimated healthcare cost savings for impaired homeless who get mental health treatment through Housing First programs, result in a savings of \$6,197 per client per month, which is estimated to be a 76% decrease in costs. Based on these figures, if all impaired chronic homeless are housed and treated, the State could save roughly \$140 million a year, just on medical expenses.

Thank you for the opportunity to testify.



PARTNERS IN CARE

Oahu's Continuum of Care

Our mission is to eliminate homelessness through open and inclusive participation and the coordination of integrated responses.

TESTIMONY IN SUPPORT OF SB 567 SD2, HD1, RELATING TO MENTAL HEALTH TREATMENT

TO: Rep Chris Lee, Chair, Rep. Joy San Buenaventura, Vice Chair, and members, Committee on Judiciary

FROM: Marya Grambs, member, Board of Directors, Partners in Care

Hearing: **3/18/2019, 2:05, rm 325**

Chair Lee, Vice Chair Joy Mizuno, and members:

Thank you for the opportunity to provide testimony **in support** of SB1124 SD2 HD1. I am Marya Grambs, member, Board of Directors of Partners in Care, a planning, coordinating, and advocacy alliance that develops recommendations for programs and services to fill needs within Oahu's Continuum of Care for persons experiencing homelessness.

SB1124 SD2 HD1 includes changes to the ACT law which are recommended by multiple stakeholders, based on the past five years of difficulty in obtaining ACT orders, resulting in a miniscule number of orders having been granted.

This bill helps address some of the barriers to getting ACT orders: it defines needed medical treatment to include treatment for mental illness; streamlines the criteria for obtaining an ACT order; and requires the AG to assist in the filing of an ACT petition.

This bill will facilitate getting desperately needed treatment for the most vulnerable, severely mentally ill, chronically homeless individuals. These are the people with whom we are all familiar because they are so visibly distressed and manifest destructive and delusional behavior, often hallucinating wildly: because of their mental illness they do not have the capacity to take care of themselves or make informed decisions about treatment; they live in inhumane, degrading circumstances without adequate hygiene or medical care; they are often victims of violence or, in the case of women, sexual assault; and they cycle repeatedly between street, hospital, and jail, with enormous costs to society.

Letting them languish in the streets is inhumane – untreated psychosis causes brain damage, thereby lessening the likelihood that their illness can improve. The nature of their mental illness is that they literally do not know they are ill, which is why they refuse treatment. We believe they have a right to treatment and a chance to live a better life. That is what the ACT law is designed to do, and these are some of the changes that are necessary for its successful implementation.



The Institute for Human Services

Ending the Cycle of Homelessness

To: The Honorable Representative Chris Lee, Chair of House Judiciary Committee
The Honorable Representative Joy Buenaventura, Vice Chair of House Judiciary Committee

Subject: IHS Testimony in Support of SB-1124-SD2-HD1

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Tammy Yokogawa-King

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Roberta DuTeil
The Rev. Msgr.
Terrance Watanabe

Aloha House Committee Members,

Thank you for the opportunity to provide testimony **in support** of SB1124 SD2 HD1.

IHS has attempted to utilize this law 7-times in the past 5-years with only one success. SB1124-SD2-HD1 includes changes to the ACT law that we believe will assist our legal representation with the clarification needed to obtain court ordered treatment for our mentally ill homeless who are unaware they are sick, but who deserve every opportunity to become contributing members of our community.

This bill helps address some of the barriers to getting ACT orders: it defines needed medical treatment to include treatment for mental illness; streamlines the criteria for obtaining an ACT order; and requires the AG to assist in the filing of an ACT petition.

This bill will facilitate getting desperately needed treatment for the most vulnerable, severely mentally ill, chronically homeless individuals. These are the people with whom we are all familiar because they are so visibly distressed and manifest destructive and delusional behavior, often hallucinating wildly: because of their mental illness they do not have the capacity to take care of themselves or make informed decisions about treatment; they live in inhumane, degrading circumstances without adequate hygiene or medical care; they are often victims of violence or, in the case of women, sexual assault; and they cycle repeatedly between street, hospital, and jail, with enormous costs to society.

Letting them languish in the streets is inhumane – untreated psychosis causes brain damage, thereby lessening the likelihood that their illness can improve. The nature of their mental illness is that they literally do not know they are ill, which is why they refuse treatment. We believe they have a right to treatment and a chance to live a better life. That is what the ACT law is designed to do, and these are some of the changes that are necessary for its successful implementation.

I close my remarks by stating that IHS is committed to solving chronic homelessness and serving those with severe mental illnesses who need community treatment orders. We are committed to the positive impacts this will have on our community.

Respectfully,

Kimo K. Carvalho
Director of Community Relations
IHS, The Institute for Human Services, Inc.

Business Office | 546 Kaaahi Street, Honolulu, HI 96817
Phone 808.447.2800 | Fax 808.845.7190

IHS, The Institute for Human Services, Inc. is Hawaii's oldest, largest and most comprehensive homeless services agency focused exclusively on ending and preventing homelessness in Hawaii.

www.ihshawaii.org



LATE

SB-1124-HD-1

Submitted on: 3/18/2019 11:01:18 AM
Testimony for JUD on 3/18/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dylan P. Armstrong	Individual	Support	No

Comments: