



**STATE OF HAWAII
DEPARTMENT OF HEALTH**

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**Testimony COMMENTING on SB1124 SD1
RELATING TO MENTAL HEALTH**

SENATOR KARL RHOADS, CHAIR
SENATE COMMITTEE ON JUDICIARY

Hearing Date and Time: Tuesday, February 26, 2019 at 9:00 a.m.

Room: 016

1 **Fiscal Implications:** Undetermined.

2 **Department Testimony:** The Department of Health (DOH) supports the intent of this measure.

3 Unfortunately, we find the proposed changes create precarious or contradictory legal or
4 programmatic situations. For instance, that a court would consider assisted outpatient
5 commitment after just finding an individual met criteria for involuntary commitment would
6 potentially leave the community provider in a dubious circumstance.

7 The DOH has continued, on a very small scale, to utilize the law to provide for
8 compulsory outpatient treatment for individuals with repeated hospitalization who typically
9 engage in refusal of helpful medicine once discharged from an inpatient setting. This is a
10 sensitive and complex issue involving civil rights, court intervention, and the mandate for
11 treatment.

12 At this time, the DOH respectfully urges the Senate Committee on Judiciary to transition
13 this discussion to the vehicle of SB0567 SD1.

14 Thank you for the opportunity to testify.

15 **Offered Amendments:** We recommend consideration of SB0567 SD1 and SB1051 SD1 as the
16 primary, promising vehicles to enhance assisted outpatient treatment.



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

ON THE FOLLOWING MEASURE:

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

LATE

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Tuesday, February 26, 2019 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Erin LS Yamashiro,
Deputy Attorney General, at 693-7081)

Chair Rhoads 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 allows interested parties to file a petition for a mental health order and for the Department to assist in filing these petitions, expands the definition of “dangerous to self”, requires a court to consider the appropriateness of ordering assisted community treatment during the disposition of an involuntary commitment hearing, and modifies the criteria for assisted community treatment.

Comments on Section 2

As written, this bill would allow interested parties to file a petition for a “mental health order”; however, this phrase is not defined. In addition, section 2 refers to the commitment of the subject, which is inconsistent with an order to participate in assisted community treatment. Also, the criteria and petitioning procedures for involuntary commitment and assisted community treatment petitions are already set forth in sections 334-60.2, 334-60.3, 334-121, and 334-123, HRS, which conflict with section 2 of this bill. If the Committee intended to modify the petitioning and hearing procedures for involuntary commitment and assisted community treatment matters, then it should

delete section 2 and amend the bill to include amendments to the above-mentioned statutory sections consistent with that intent.

The Department suggests the technical amendment of not deleting a comma on page 5, lines 1 through 2, so that it reads as “nourishment, essential medical care, including treatment for a mental illness, shelter, or self-”.

Comments on Section 4

Section 4 of the bill also needs clarification of how a court will determine whether an assisted community treatment is appropriate for an individual after conducting a hearing on a petition for involuntary hospitalization, given that the criteria for each is different. For example, it is unclear whether a separate motion or petition for assisted community treatment must be filed or whether the evidence adduced at the hearing on the petition for involuntary hospitalization is sufficient to justify having the court, in the alternative, order the individual to participate in assisted community treatment. This section should be amended to include changes to section 334-60.7, HRS, rather than section 334-60.5, HRS, so that an assessment for assisted community treatment is required before the individual is released from the psychiatric facility. This suggested amendment would accomplish the intent of the Committee to increase the use of assisted community treatment. We suggest section 4 be amended in its entirety to read as follows:

SECTION 4. Section 334-60.7, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) ~~[For civil commitments that do not result directly from legal proceedings under chapters 704 and 706, w]~~When the administrator or attending physician of a psychiatric facility contemplates discharge of an involuntary patient, the administrator ~~[may]~~ shall assess whether an assisted community treatment plan is indicated pursuant to section 334-123 and, if so indicated, ~~[may communicate with an aftercare provider as part of discharge planning, as appropriate.]~~ a licensed psychiatrist or advanced practice registered nurse of the facility shall prepare the certificate specified by section 334-123(b), and shall notify the department of the attorney general, who shall assist with the petition for assisted community treatment and the related court proceeding. The facility

may notify another mental health program for assistance with the coordination of care in the community.”

Finally, the Department will need additional funding and resources to carry out the statewide responsibility articulated in this bill.

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

SB-1124-SD-1

Submitted on: 2/21/2019 10:30:57 PM

Testimony for JDC on 2/26/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Louis Erteschik	Testifying for Hawaii Disability Rights Center	Comments	No

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. Beyond that, the bill provides that if an individual does not meet the criteria for civil commitment the Court shall nonetheless conduct an analysis to see if the individual does meet the criteria for assisted community treatment. It also provides that even if the individual does meet the civil commitment criteria the Court has the option of ordering the individual to obtain assisted community treatment. We see these as positive provisions that can help people who either may not qualify for civil commitment or who can benefit from assisted community treatment as a less restrictive alternative.

The most significant change to the law is the elimination of the requirement of a prior psychiatric hospitalization or a finding of having been imminently dangerous 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 or declaration of being imminently dangerous may have been too restrictive. This bill does maintain a requirement of a prior psychiatric history and that seems to be a reasonable safeguard so that a single episode would not in and of itself subject someone to this procedure.



CATHOLIC CHARITIES HAWAI'I

TESTIMONY IN SUPPORT OF SB 1124, SD1: **Relating to Mental Illness**

TO: Senator Karl Rhoads, Chair, Senator Glenn Wakai, Vice Chair, and Members,
Committee on Judiciary

FROM: Betty Lou Larson, Legislative Liaison, Catholic Charities Hawai'i

Hearing: **Tuesday, 2/26/19; 90:00 am; CR 211**

Chair Rhoads, Vice Chair Wakai, and Members, Committee on Judiciary:

Thank you for the opportunity to provide testimony **in support** of SB 1124, SD1 which facilitates the treatment of individuals with mental health issues. I am Betty Lou Larson, with Catholic Charities Hawai'i. We are also a member of Partners in Care.

Catholic Charities Hawai'i (CCH) is a tax exempt, non-profit agency that has been providing social services in Hawai'i for over 70 years. CCH has programs serving elders, children, families, homeless and immigrants. Our mission is to provide services and advocacy for the most vulnerable in Hawai'i.

The Assisted Community Treatment (ACT) law, enacted in 2013, was an attempt to help individuals with serious mental illnesses obtain the treatment and medications that they needed. However, it has proven difficult to utilize. Less than 10 orders for court-mandated treatment have been issued in the past 5 years. Catholic Charities Hawai'i supports the intent of this bill to clarify the law and allow more flexibility on the part of family courts. We hope these changes will enable more utilization of this law to help very seriously mentally ill individuals receive the treatment needed to live their lives in safety and dignity.

Many of these individuals now live on the streets, cycling in and out of emergency rooms. They suffer from psychosis, hallucinations and bizarre behaviors. They are at great risk of assault, and for women, rape. They have been unreachable by homeless outreach teams. Refining the ACT law can encourage more usage of this law to help this very difficult to reach population.

We need to seek humane solutions to help these most vulnerable homeless persons. These changes to the ACT law can make it a more useful option. We urge your support for SB 1051. Please contact me at (808) 373-0356 or bettylou.larson@catholiccharitieshawaii.org if you have any questions.





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 1124, SD1: Relating to Mental Illness

TO: Senator Karl Rhoads, Chair, Senator Glenn Wakai, Vice Chair, and Members, Committee on Judiciary

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

Hearing: **Tuesday, 2/26/19; 9:00 am; CR 211**

Chair Rhoads, Vice Chair Wakai, and Members, Committee on Judiciary:

Thank you for the opportunity to provide testimony **in support** of SB 1124, SD1. I am Marya Grambs, member, Board of Directors of Partners in Care, Oahu's continuum of care for individuals experiencing homelessness.

SB1124 SD1 does the following:

- Clarifies that any interested party may file a petition for a mental health order;
- Requires the court to assess whether a person meets the criteria for assisted community treatment (ACT) order before discharging a person who has been involuntarily hospitalized
- Clarifies the ACT criteria of "dangerousness to self" include attempted suicide or serious bodily harm and needs treatment for mental illness as part of essential medical care.
- Streamlines and clarifies the criteria for ACT order

These changes to the Assisted Community Treatment (ACT) law 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.

These changes will facilitate getting desperately needed treatment for those individuals with whom we are all familiar because they are so visibly distressed and manifest destructive and delusional behavior: they are extremely mentally ill and do not have the capacity to take care of themselves; they live in inhumane circumstances without adequate hygiene or medical care; and they are often victims of violence or, in the case of women, sexual assault; and they cycle repeatedly between street, hospital, and jail.

Helping Hawai'i Live Well

To: Senator Karl Rhoads, Chair, Senator Gilbert Keith-Agaran, Vice Chair, Members, Senate Committee on Judiciary

From: Trisha Kajimura, Executive Director

Re: TESTIMONY IN SUPPORT OF SB 1124 SD1 RELATING TO MENTAL HEALTH

Hearing: February 26, 2019, 9:00 am, CR 016

Thank you for hearing **Senate Bill 1124 SD1**, which amends Chapter 334 of the Hawaii Revised Statutes by adding a new section that allows any interested party to file a petition for a mental health order alleging that another person qualifies for Assisted Community Treatment (ACT) and makes other amendments to improve implementation of ACT.

Mental Health America of Hawaii is a 501(c)3 organization founded in Hawai'i 77 years ago, that serves the community by promoting mental health through advocacy, education and service.

Assisted Community Treatment was passed by the Legislature in 2013 and was intended to help people who are so sick from mental illness that they are unable to recognize the need for their own treatment. Without assisted community treatment, these are community members living in terrible conditions, often homeless, unable to care for themselves and their own basic physical needs, hallucinating and suffering needlessly. With the proper treatment as provided through an ACT order, they are capable of a much higher level of functioning and can recover from their illness.

Currently, private service providers, community organizations and families do not have the resources to navigate the complex and congested system. The law needs to be further adjusted to improve the ACT process and bring more people with untreated mental illness enter recovery, escaping homelessness and its lack of dignity and humanity.

Thank you for considering my **testimony in support of SB 1124 SD1**. Please contact me at trisha.kajimura@mentalhealthhawaii.org or (808)521-1846 if you have any questions.



O`ahu County Committee on Legislative Priorities

COMMITTEE ON JUDICIARY

Senator Karl Rhoads, Chair
Senator Glenn Wakai, Vice Chair

DATE: Tuesday, February 26, 2019

TIME: 9:00 a.m.

PLACE: Conference Room 016, State Capitol

RE: SB 1124, SD 1, Relating to Mental Health

To the Honorable Karl Rhoads, Chair; the Honorable Glenn Wakai, Vice Chair; and Members of the Committee on Judiciary:

I am Melodie Aduja, Chair of the O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai'i ("DPH"). Mahalo for this opportunity to submit testimony on SB 1124, SD 1. The O`ahu County Committee on Legislative Priorities ("OCCLP") hereby submits its testimony in **SUPPORT of SB 1124, SD 1, Relating to Mental Health**.

SB 1124, S.D 1, facilitates the treatment of individuals with mental health issues. Provides that any interested party may file a petition for a mental health order for involuntary hospitalization or assisted community treatment alleging that another person has a mental illness and qualifies for assistance. SB 1124, S.D.1, requires the court to assess whether a person meets the criteria for assisted community treatment before discharging a person who has been involuntarily hospitalized. It authorizes the court to order a person to obtain assisted community treatment as an alternative to involuntary hospitalization; and clarifies the criteria for assisted community treatment.

DPH believes that we must treat mental health issues with the same care and seriousness that we treat issues of physical health, support a robust mental health workforce, and promote better integration of the behavioral and general health care systems. Recognizing that maintaining good mental health is critical to all people, including young people's health and development, DPH will work with health professionals to ensure that all children have access to mental health care. We must also expand community-based treatment of substance abuse disorders and mental health condition and fully enforce our parity law. *Democratic Party of Hawai'i Platform (2018), p. 12, ln. 20-25.*

For the foregoing reasons, i.e., to expand community-based treatment of substance abuse disorders and mental health condition and fully enforce our parity law, OCCLP supports HB 1124, SD 1, and urges its passage out of Ways and Means.

Mahalo nui loa
Me ka `oia`i`o

/s/ Melodie Aduja

Melodie Aduja
Chair, O`ahu County Committee on Legislative Priorities of the Democratic Party of
Hawai`i
Ph. (808) 258-8889
Email: legislativepriorities@gmail.com



The Institute for Human Services

Ending the Cycle of Homelessness

To: The Honorable Senator Karl Rhodes, Chair
The Honorable Senator Glenn Wakai, Vice Chair
Senate Judiciary Committee

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

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Subject: IHS Support for SB1124-SD1 with Proposed Revision

Aloha Senate Committee Members,

The Institute for Human Services (IHS) has been at the forefront of multiple attempts to utilize the Assisted Community Treatment Law to assist current homeless individuals with severe mental illnesses who are unaware they are sick, and who continue to refuse treatment and decompensates on the streets year after year. After 5-failed attempts through family court judge's ruling against the law based on technicalities, we believe consolidation of the criteria, clarification and inclusion of clinical terminology will further advance our Hawaii State law and provide us with the opportunity to help residents who struggle everyday with mental health diseases.

IHS offers proposed revisions to this draft of SB1124-SD1:

1. Section 2 (c) on Page 3 current states "The petition may be accompanied by a certificate of a licenses physician, advanced practice registered nurse, or psychologist who as examined the person within two days before submission of the petition..."

Under Act 221, the law currently allows for the examination and assessment to be completed within twenty days prior to filing the petition. Twenty days, while skim, allow both medical and legal teams the necessary time to build its defense in court. Examination and assessment not only include a medical evaluation; it includes obtaining a medical history, public safety information including arrests made, visits to correctional facilities, medical centers and human service systems. It also requires gathering family history, conducting a mental status examination, and updating the diagnosis – all of which takes more than two days of work. We humbly ask for the necessary time needed to conduct a thorough assessment of our clients prior to filing the petition.

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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





2. Our second proposal is to clarify and amend the criteria to state the following:

Section 5: **§334-121 Criteria for assisted community treatment.** A person may be ordered to obtain assisted community treatment if the family court finds that:

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- (1) A health care professional has determined that the person is mentally ill, and/or suffering from substance abuse, to a degree that one or both limits or negates the person's ability to make an informed decision to voluntarily seek or comply with recommended treatment. A health care professional in this context shall be defined as: psychiatrist or advanced practice registered nurse with prescriptive authority and who holds an accredited national certification in an advanced practice registered nurse psychiatric specialization (hereinafter "health care professional");
- (2) The person is, based upon all evidence presented, unlikely to live safely in the community without available supervision and medical treatment, is now in need of outpatient treatment in order to prevent a continuation of current behavior, a relapse to past behavior or deterioration in behavior that would predictably result in the person continuing to or becoming imminently dangerous to self or others, 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, based on the professional opinion of a psychiatrist or advanced practice registered nurse with prescriptive authority and who holds an accredited national certification in an advanced practice registered nurse psychiatric specialization;
- (3) The person's mental illness has, on more than one occasion in the past, caused that person to refuse needed and appropriate mental health services in the community, which resulted in the person becoming imminently dangerous to self or others, and which now would predictably result in the person becoming imminently dangerous to self or others based on the professional opinion of a psychiatrist or advanced practice registered nurse with prescriptive authority and who holds an accredited national certification in an advanced practice registered nurse psychiatric specialization;
- (4) Considering less intrusive alternatives, Assisted Community Treatment is essential to prevent the imminent danger posed to or by the person, is in the interest of public safety, is medically appropriate, and in the person's best medical and mental health interests; and





- (5) The person is, based upon all evidence presented, to be imminently dangerous to self or others as a result of the mental illness or substance abuse, as per paragraph (1), above, and has no public guardian assigned as of the date of judicial hearing;

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3. Our last proposal amends Section 7 (b) which currently states:

“ If after hearing all relevant evidence, including the results of any diagnostic examination ordered by the family court, the family court finds that the criteria for assisted community treatment under section 334-121(1) have been met beyond a reasonable doubt and that the criteria under section 334-121(2) to ~~[334-121(7)]~~ 334-121(4) have been met by clear and convincing evidence, the family court shall order the subject to obtain assisted community treatment for a period of no more than one year. The written treatment plan submitted pursuant to section 334-126(h) shall be attached to the order and made a part of the order.”

We propose that this section is amended to state:

“If after hearing all relevant evidence, including the results of the assessment as per (1) above, the Family Court finds that the criteria for Assisted Community Treatment under section 334-121 (1) have been met beyond clear and convincing evidence ~~a reasonable doubt~~ and that the criteria under section 334-121 (2)-(5) have been met by clear and convincing evidence, the Family Court shall order that the subject ~~to obtain~~ shall be appointed a Public Guardian, and shall be subject to Assisted Community Treatment for no longer than a period of one (1) year. The written treatment plan submitted at hearing, pursuant to HRS Section 334-126(h), shall be attached to the Order and shall be made part of the Order.

I close my remarks by stating that IHS is committed to solving chronic homelessness and serving those with severe mental illnesses. IHS has the experience and skills to support this law and the team that follows it. We are committed to the positive impacts this will have on our community.

Mahalo for your support in passing SB1124-SD1.

Respectfully,

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



SB-1124-SD-1

Submitted on: 2/22/2019 11:26:05 AM

Testimony for JDC on 2/26/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Ellen Godbey Carson	Individual	Support	No

Comments:

I am a former president of the Institute for a Human Services and the Hawaii State Bar Association, and urge you to support this bill, to give us better remedies to assist those who are mentally ill. Many pose significant risks to themselves or others, but because of their illness lack insight to the dangers they pose, are unwilling to receive treatment. This bill will assist family members who love them and want to secure evaluation and treatment that can help address their illness.

SB-1124-SD-1

Submitted on: 2/22/2019 6:38:51 PM

Testimony for JDC on 2/26/2019 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
A Kathleen Lee	Individual	Support	No

Comments:

Aloha honourable senators of the state of Hawaii,

I am a psychologist and have run homeless shelter in a town of 250000. Many of our social issues revolve around the fact that we have not provided mental health for our citizens. I do affirm that you pay attention to the needs of these individuals; as we take care of those who have cancer and other physical illnesses, but have neglected to take care of these sensitive individuals who suffer from mental and emotional illnesses.

Mahalo for approving this bill

April Lee

Hawi, HI