

SB 1124

Measure Title:	RELATING TO MENTAL HEALTH.
Report Title:	Mental Health; Assisted Community Treatment; Petitions
Description:	Facilitates the treatment of individuals with mental health issues. Provides that any interested party may file a petition for a mental health order alleging that another person has a mental illness and qualifies for assistance.
Companion:	
Package:	None
Current Referral:	CPH, JDC
Introducer(s):	K. RHOADS, S. CHANG, RIVIERE, Ruderman, Shimabukuro



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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH

DATE: Wednesday, February 13, 2019 **TIME:** 9:10 a.m.

LOCATION: State Capitol, Room 229

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

Chair Baker 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.

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. This bill should be amended to clarify whether a mental health order will result in the individual’s commitment to a psychiatric facility or an order mandating an individual 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 for a

mental health order to result in committing the individual to a psychiatric facility or assisted community treatment, it should delete section 2 and modify the above-mentioned statutory sections consistent with that intent.

The Department notes that section 3, as written, is subject to 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 Hawaii 528, 78 P.3d 341 (App. 2003). Section 334-1, HRS, applies to both involuntary commitment and assisted community treatment matters. It is unclear whether mental health decompensation is equivalent to imminent danger.

However, while the United States Supreme Court has required a showing of dangerousness in civil commitment proceedings, deference is given to state legislatures to define the term. *In re Doe*, 102 Hawai'i at 548-49, 78 P.3d at 361-62 (citations omitted). The Committee should consider amending the definition of "dangerous to self" to include when an individual is non-compliant with medical care for his or her mental illness. Expanding the definition of "dangerous to self" to include non-compliance with medical care could better fulfill the intent of the Legislature to facilitate the use of assisted community treatment and eliminate the possibility of a constitutional challenge. Section 3, page 4, lines 10-21, should be deleted and replaced as follows:

““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, 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.”

Section 4 of the bill also needs to clarify 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. We provided written testimony on S.B. No. 567, hearing also heard by this Committee, suggesting that the psychiatric facility, which the individual has been committed to, consider whether assisted community treatment is appropriate for the patient after his or her commitment, which may accomplish the intent of the Committee to increase the use of assisted community treatment. The suggested modifications in our testimony for S.B. No. 567 are as follows:

“§334 - Examination for assisted community treatment indication.

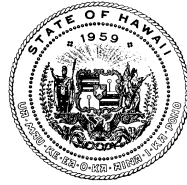
After the commitment of a person to a psychiatric facility for involuntary hospitalization pursuant to sections 334-60.2 and 334-60.5, a licensed psychiatrist or advanced practice registered nurse with prescriptive authority and who holds an accredited national certification in an advanced practice registered nurse psychiatric specialization associated with the licensed psychiatric facility where the individual is located shall examine the individual to determine whether an assisted community treatment plan is indicated pursuant to section 334-123. If a plan is indicated, the psychiatrist or nurse shall prepare the certificate specified by section 334-123(b), and the facility 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.”

The Department also suggests modifying section 5, page 10, lines 18-21, of the bill to avoid a possible constitutional challenge because involuntary non-emergency administration of medication invades an individual’s liberty interests unless the individual poses a danger to him, herself or others. *State v. Kotis*, 91 Hawai’i 319, 334, 984 P.2d 78, 93 (1999). Accordingly, section 5, page 10, lines 18-21, should be amended to read as follows:

“(7)] 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; and”

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.



STATE OF HAWAII
DEPARTMENT OF HEALTH
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Testimony COMMENTING on SB1124
RELATING TO MENTAL HEALTH

SENATOR ROSALYN H. BAKER, CHAIR
SENATE COMMITTEE ON HEALTH

Hearing Date and Time: Wednesday, February 13, 2019 at 9:10 a.m.

Room: 229

1 **Fiscal Implications:** Undetermined.

2 **Department Testimony:** SB1124 proposes to facilitate treatment to individuals with mental
3 health issues. The measure proposes to amend §334, Hawaii Revised Statutes, by adding a
4 section and by inserting new criteria for filing of petitions so that any interested party may file a
5 petition for a mental health order alleging that another person has a mental illness and qualifies
6 for assistance. Additionally, this measure specifies procedures for family court when hearing
7 petitions on civil commitment, specifically, for instance if court assesses that the person meets
8 criteria the court may order, within 10 days of the hearing that a treatment plan to be developed
9 and submitted to the court by a designated mental health facility or program for assisted
10 outpatient treatment and such plan shall be attached to the order. Similarly the bill provides,
11 that instead of civil committing an individual, the court may order the development and
12 implementation of an assisted outpatient treatment plan, instead.

13 Since 2013, the Department of Health (DOH) has been working with legislators and
14 stakeholders to support refinement in Hawaii's approach to then called involuntary outpatient
15 commitment. Advocates hoped that those initiatives would reach people who need, but refuse
16 help.

17 The DOH has continued, on a very small scale, to utilize the law to provide for
18 compulsory outpatient treatment for individuals with repeated hospitalizations, typically who
19 engage in refusal of helpful medicine once discharged from an inpatient setting.

1 The DOH acknowledges that access to timely mental health treatment is a critical
2 component of ongoing community-based health care. The DOH offers comments on this
3 measure and provides the following information for consideration:

4 Most of the petitions for involuntary civil commitment arise from community and private
5 hospitals. The process described in the proposed legislation will have effects on the involuntary
6 civil commitment process at these facilities.

7 This measure proposes a changed role for the department of the attorney general in this
8 process and thus, the department of the attorney general is in the best position to address
9 implications on the department's work.

10 The measure proposes changed process for the Judiciary, which hears the involuntary
11 civil commitment and assisted out patient petitions; we defer to the Judiciary regarding the
12 implication of the proposed changes on the Family Court process and procedures.

13 It is not clear that proposed changes in the criteria are either clinically clear enough or
14 that these meet the fairly high bar required.

15 For these reasons, we are not confident how operationally the processes outlined in the
16 measure would be realized in the instances of actual individuals facing civil commitment.

17 The DOH thanks the committee for hearing this measure and looks forward to continued
18 collaboration with the Senate Committee on Health, other legislators, and community
19 stakeholders in addressing the intent and spirit of this measure.

20 Thank you for the opportunity to testify.

21 **Offered Amendments:** None.

SB-1124

Submitted on: 2/12/2019 7:42:50 AM

Testimony for CPH on 2/13/2019 9:10:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Testifying for O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments:



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 Strong Support of SB 1124: Related to Mental Health Treatment

TO: Committee on Commerce, Consumer Protection, and Health

FROM: Partners in Care (PIC)

HEARING: Wednesday, February 13, 2019 at 9:00 a.m., Conference Room 229

Dear Chair Baker, Vice Chair Chang, and members of the Committee on Commerce, Consumer Protection, and Health:

Thank you for the opportunity to provide testimony on SB 1124, which would help to ensure that people experiencing severe illness are connected to the services they need to ensure their safety and stability. Partners in Care (PIC)—a coalition of more than 50 non-profit homelessness providers—strongly supports this bill as a critical component of a comprehensive plan to address homelessness in Hawaii.

People experiencing severe mental illness represent a small, but significant portion of the population experiencing homelessness in Hawai'i. These are those individuals we see every day on our streets: psychotic, hallucinating, behaving erratically, with very poor hygiene and living in degrading and inhumane circumstances. They are extremely high utilizers of ambulance, police, ER, inpatient treatment, crisis services, arrest, and adjudication—at great expense; have been non-responsive to repeated homeless outreach attempts; are frequently victims of assault and, for women, rape; and do not understand that they are ill and therefore refuse treatment. Their untreated psychosis/schizophrenia causes brain damage, resulting in reduced brain functioning and decreased likelihood of recovery.

Such persons have a “right to treatment” in light of these circumstances, and desperately need it. One avenue for this is the Assisted Community Treatment (ACT) law, which enables the Court to order individuals like these, who meet very specific criteria, to receive treatment in the community. However, due to technical issues, ACT has been infrequently used. SB 1124 seeks to make changes that would help ACT to accomplish its intended purpose, including the following:

- (1) requires the Attorney General to assist in the preparation of ACT orders where requested by a petitioner;
- (2) clarifies who can petition to file ACT orders (e.g., certain family members, case workers, mental health professionals, etc.);
- (3) adds “mental health decompensation” to the definition of what constitutes danger to self; and
- (4) streamlines the criteria for ACT orders

SB 1124 is an important component of a plan that will enable us as a community to address the plight of those homeless individuals who are severely mentally ill and in dire need of treatment. For these reasons, PIC urges the passage of SB 1124. Thank you for your consideration of this very important bill.

PARTNERS IN CARE, OAHU'S CONTINUUM OF CARE

200 North Vineyard • Suite 210 • Honolulu, Hawaii 96817 • www.PartnersinCareOahu.org

Helping Hawai'i Live Well

To: Senator Rosalyn Baker, Chair, Senator Stanley Chang, Vice Chair, Members, Senate Committee on Consumer Protection and Health

From: Trisha Kajimura, Executive Director

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

Hearing: February 13, 2019, 9:10 am, CR 229

Thank you for hearing **Senate Bill 1124**, 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.

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 (ACT) 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**. Please contact me at trisha.kajimura@mentalhealthhawaii.org or (808)521-1846 if you have any questions.

SB-1124

Submitted on: 2/9/2019 8:06:27 PM

Testimony for CPH on 2/13/2019 9:10:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Louis Erteschik	Testifying for 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.

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.



The Institute for Human Services

Ending the Cycle of Homelessness

To: The Honorable Senator Rosalyn Baker, Chair
The Honorable Senator Stanley Chang, Vice Chair
Senate Committee on Commerce, Consumer Protection & Health

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

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Subject: IHS Support for SB1124 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 one proposed revision to this draft of SB1124:

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.

The evolution and advancement of medication no longer results in the negative side effects once experienced by those with severe mental illnesses when taking their medication. (see page 2)

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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.

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Page 2

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.... Unfortunately, the legal system we once had in place to civilly commit a homeless person with severe mental illnesses has advanced to become a system that now protects a mentally ill person's right to refuse treatment without knowing they're sick, despite medical diagnoses such as anosognosia- meaning a lack of insight into a person's own illness that commonly occurs with majority of individuals diagnosed with schizophrenia. Our current legal system has ultimately become our biggest obstacle and struggle in pursuing court order treatment under Act 221. However, hope is in reach – within the past 2-years of implementing our privately funded Street Medicine program, more than two-dozen homeless with severe mental illnesses whose decompensated on the streets for an average 12-15 years have accepted psychiatric treatment. Fixtures who once occupied our streets and parks are now stabilized in our specialty shelters, in mental health group homes, adult foster care homes, and some have also reconnected with family members. SB1124 strikes the perfect balance to advance of our legal system to support the defense in obtaining court ordered treatment while protecting the civil rights of mentally ill homeless.

I close my remarks by stating that IHS is committed to solving chronic homelessness and serving those with severe mental illnesses. As in the past under Assertive Community Treatment orders and the Department of Health's former model for Consent to Decree- we are committed to building a team that supports the Office of the Public Guardian and the Attorney General's office by offering clinically trained case managers, a psychiatrist, homeless outreach specialist who are specialized in mental health outreach, nurses and housing specialists who together 'build a village' around the client. This model has proven in the past to be successful in providing stabilization and supporting a mentally ill person's rehabilitation. Guardians and lawyers cannot do this job alone. 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.

Respectfully,

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



SB-1124

Submitted on: 2/7/2019 9:51:14 AM

Testimony for CPH on 2/13/2019 9:10:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
David Deges	Testifying for Hawaii Island HIV/AIDS Foundation	Support	Yes

Comments:

SB-1124

Submitted on: 2/9/2019 3:32:24 PM

Testimony for CPH on 2/13/2019 9:10:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Brian Isaacson	Individual	Comments	No

Comments:

Due process must be maintained in whatever language this bill develops during drafts, etc. Without due process, this could be a very dangerous bill.

SB-1124

Submitted on: 2/10/2019 2:00:15 PM

Testimony for CPH on 2/13/2019 9:10:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
austin keliinoi-westbrook	Individual	Oppose	No

Comments:

SB-1124

Submitted on: 2/12/2019 4:08:36 PM

Testimony for CPH on 2/13/2019 9:10:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Andrea Quinn	Individual	Support	No

Comments:

Dear Honorable Committee Members:

Please support SB1124. It is estimated that up to 70% of those on the street have mental health issues, many of whom self-medicate because there are no services available to them. Many also are veterans.

Thank you for the opportunity to present my testimony.

Andrea Quinn

Kihei

LATE

SB-1124

Submitted on: 2/12/2019 7:28:05 PM
Testimony for CPH on 2/13/2019 9:10:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Mike Goodman	Testifying for Hawaii Kai Homeless Task Force	Support	Yes

Comments:

Testimony in Strong Support of SB1124

TO: Senate Committee on Commerce, Consumer Protection and Health)

FROM: Mike Goodman, Hawaii Kai Homeless Task Force & Member Partners in Care (PIC)

HEARING: Wednesday, February 13, 2019, 9:10 AM

The Hawaii Kai Homeless Task Force strongly supports SB1124. We have no suggested amendments for this bill.

“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. 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. 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, serious diseases are common and small injuries become festering sores;

Over the last few decades, homelessness amongst severely mentally ill and substance addicted persons increased to about 1600-2000 people. Along with their suffering, the quality of life for residents and tourists is severely impacted; Chinatown became 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 likely to 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 correct.

Helping the Chronic Homeless May Actually Save the State Money,

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.

LATE

SB-1124

Submitted on: 2/13/2019 2:26:38 AM

Testimony for CPH on 2/13/2019 9:10:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
De MONT R. D. CONNER	Testifying for Ho'omanapono Political Action Committee (HPAC)	Support	Yes

Comments:

We Support this measure with an amendment: We request that an amendment be added to ban sending or continuing to confine, in a prison or jail, any person found to be in need of mental health treatment by a court. Mahalo.