



**STATE OF HAWAII
DEPARTMENT OF HEALTH**

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**Testimony OPPOSING HB1221 HD1
RELATING TO MENTAL HEALTH**

REPRESENTATIVE CHRIS LEE, CHAIR
HOUSE COMMITTEE ON JUDICIARY

Hearing Date and Time: Tuesday, February 19, 2019 at 2:05 p.m.

Room: 325

1 **Fiscal Implications:** Undetermined.

2 **Department Testimony:** The purpose of HB1221 HD1 is to allow law enforcement and
3 hospital workers to intervene and temporarily take individuals into custody when certain
4 medication or necessary mental health treatment is refused.

5 The Department of Health (DOH) opposes this measure for the following reasons.

6 It is our assessment that HB1221 HD1 does not adequately address concerns raised in
7 the HB1221 including concerns raised by the Department of the Attorney General (DAG).

8 The definitions of "dangerous to others" and "dangerous to self" in §334, Hawaii Revised
9 Statutes, are amended to include the refusal to take medication or undergo mental health
10 treatment necessary to help prevent self-inflicted violence and violence to others.

11 The proposed revisions to these two definitions will impact implementation of emergency
12 admissions, emergency examination, and involuntary hospitalization. Refusal of treatment
13 alone, is not sufficient to establish dangerousness. To be sufficient, the refusal of treatment
14 needs to be associated with causing an elevated risk of danger. More specifically, the mere
15 refusal of medication or treatment without causal connection of that refusal to dangerousness is
16 required. The recent suffering from symptoms of a mental illness is not sufficient to establish
17 dangerousness.

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

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

4 **Offered Amendments:** The reference to “suffered from serious mental illness” should be
5 removed from this measure.



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

ON THE FOLLOWING MEASURE:

H.B. NO. 1221, H.D. 1, RELATING TO MENTAL HEALTH.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Tuesday, February 19, 2019 **TIME:** 2:05 p.m.

LOCATION: State Capitol, Room 325

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

Chair Lee 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 definition of "dangerous to self" 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 wording of paragraph (3) on page 3, lines 13 through 16, be amended to read as follows:

- (3) Refused to take psychiatric medication or participate in mental health treatment such that it is probable that the person will threaten or attempt suicide or serious bodily harm.

This change will lower the chances of constitutional challenge as well as mirror the change in definition for “dangerous to others” on page 2, lines 15 through 19.

We also recommend that the new paragraph (4) on page 3, line 17, be deleted in its entirety because it does not have a clear element of dangerousness. We note that a determination that an individual is mentally ill or suffering from substance abuse is already required at the time of emergency examination, emergency hospitalization, and involuntary hospitalization under chapter 334, HRS.

Finally, the Department suggests the technical amendment of adding a comma on page 3, line 8, so that it reads as “treatment for a mental illness, shelter, or self-”.

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

**Testimony of the Office of the Public Defender,
State of Hawaii to the House Committee on
Judiciary**

February 19, 2019

H.B. No. 1221 HD 1 RELATING TO MENTAL HEALTH

Chair Lee and Members of the Committee:

We wish to provide **comments** on H.B. No. 1221 HD 1 which proposes to amend the definitions of “dangerous to self” and “dangerous to others” under the involuntary commitment statute. This bill adds the situations where the subject refuses psychiatric medication or mental health treatment.

This measure is not likely to lessen the proof required to subject a person to involuntary commitment. Even under this measure, there must be proof that it is “probable that the person will cause, attempt to cause, or threaten substantial physical or emotional injury on another.” Thus, this would result in the required type of evidence now used to demonstrate that there is an imminent danger that the person will harm himself or another. In the court hearing, this is usually shown by acts in the subject’s recent past or by current acts which led to the petition being filed. Also, currently the subject’s refusal to take prescribed medication and refusal to submit to mental health treatment is routinely submitted as evidence in the commitment hearing for the subject.

Therefore, H.B. No. 1221 HD1 is not likely to change or lessen the evidentiary requirements in involuntary commitment proceedings. Thank you for the opportunity to provide testimony in this matter.

HB-1221-HD-1

Submitted on: 2/15/2019 7:49:42 PM

Testimony for JUD on 2/19/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
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.

While the HD1 version purported to address some of these concerns we don't think it really does. Additionally, we are not sure if this is a drafting error on page 3, lines 16 and 17- but the presence of the word "or" would mean that anyone suffering from a mental illness is automatically legally "dangerous". We doubt that was anyone's intent.

HB-1221-HD-1

Submitted on: 2/16/2019 2:04:23 PM

Testimony for JUD on 2/19/2019 2:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Gerard Silva	Individual	Oppose	No

Comments:

LATE

Testimony in support of HB 1221
HEARING: Tuesday, February 19, 2019 - 205 PM, in CR 325

TO: Rep. Chris Lee, Chair, and members of the Committee on
Judiciary.

HB 1221 will help health officials to better be able to serve
patients who are mentally ill and my not even be aware that they
are ill.

There are many patients who come into the emergency or are
brought there by police because the are wondering around lost
and unaware of surroundings.

This bill will help officials to treat and administer medicine to
patients that are a danger to themselves and others.

For the above reasons, I urge you to pass this bill.

Miguel Rivera,