

The Judiciary, State of Hawai‘i

Testimony to the Thirty-Second Legislature, 2023 Regular Session

House Committee on Judiciary & Hawaiian Affairs

Representative David A. Tarnas, Chair

Representative Gregg Takayama, Vice Chair

Wednesday, March 1, 2023 at 2:00 p.m.

State Capitol, Conference Room 325 & Videoconference

by

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Senior Judge, Deputy Chief Judge

Family Court of the First Circuit

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 1156, H.D. 1, Relating to Health.

Purpose: Part I: Authorizes the provision of long-acting psychotropic medication to patients who are subject to emergency examination or hospitalization. Authorizes a psychiatric facility or hospital where a patient is held to request the director of health to file a petition for an order for treatment over the patient's objection. Requires the director of health to review the request expeditiously and pursue a petition or convene an administrative panel. Expands who may join in such petition under certain circumstances. Expands the administration of treatment over a patient's objection to include persons in the custody of the director of health at any hospital, or subject to a court order regarding fitness to proceed, an application for involuntary hospitalization, or an emergency examination. Sunsets 7/1/2026. Part II: Authorizes psychiatrists or advanced practice registered nurses, after examination of a person for ACT indication, to request the director of health to file an ACT petition and interested parties to request the director to file an ACT petition on behalf of the interested party. Requires the family court to file final orders on ACT petitions within thirty days. Authorizes the family court to use online hearings for ACT petitions. Authorizes the subject of a petition to stipulate to the proposed order and the family court to enter the stipulated order without an evidentiary hearing. Requires DOH to report to the legislature. Effective 6/30/3000. (HD1)



Judiciary's Position:

The Judiciary takes no position on House Bill No. 1156, H.D. 1. We respectfully offer the following comments.

1. The amendments proposed to Hawai'i Revised Statutes § 334-59(b) in Part I, Section 2 are confusing and ambiguous.

Hawai'i Revised Statutes (HRS) § 334-59 covers the emergency examination process that allows medical personnel to determine whether commitment to a hospital is necessary.

Individuals transported to hospitals for examination are only hospitalized after the examining doctor or advanced practice registered nurse determines that the criteria for involuntary hospitalization persist. If the examiner determines that the criteria for involuntary hospitalization are not met or do not persist, the individual "shall be discharged expediently" into the community or to the custody of a law enforcement officer if there are criminal charges. HRS § 334-59(c).

The proposed amendment to HRS § 334-59(b) at page 3, lines 9-19 may require the director of the department of health to pursue a requested petition for an order for treatment over objection prior to a determination that the individual meets the criteria for involuntary hospitalization. This may result in instances where the director pursues a "standalone" petition for treatment over the objection of an individual who has already been discharged into the community, i.e., where the examiner determines that the criteria for involuntary hospitalization are not met.

An assisted community treatment order might be the more appropriate vehicle to compel an individual in the community to engage in medical treatment. We note that HRS § 334-59(b) already requires an examination for assisted community treatment pursuant to HRS § 334-121.5, if the examiner "determine[s] that involuntary hospitalization is not needed[.]"

We respectfully suggest that this committee delete the proposed amendment to HRS § 334-59(b) at page 3, lines 9-19 of this bill:

~~The psychiatric facility or hospital where the patient is held may request the director to file a petition for an order for treatment over the patient's objection. The request for petition shall include supporting information. The director shall review such request expeditiously and if the request appears to satisfy the four factors in section 334-161, the director shall file and pursue a petition to request an order for treatment over the patient's objection as soon as possible in court or upon request by the facility or hospital convene an administrative panel pursuant to section 334-162.~~



As noted, this does not leave the patient without assistance since the existing statute already requires an ACT exam if hospitalization is not needed.

We also respectfully suggest that this committee delete this language on page 7, lines 6 to 11:

~~... is transported to a psychiatric facility pursuant to a petition for emergency admission pursuant to section 334-59(a); or is delivered to a psychiatric facility or a behavioral health crisis center for an emergency examination under section 334-59(b)...~~

2. Part II, Section 9 of the bill, which requires courts to “endeavor to file a final order” on an assisted community treatment (ACT) petition within thirty days of the date the petition is filed unless “exigent circumstances exist,” may not be achievable.

We fully recognize the need to hear and decide ACT petitions expeditiously. While hearings are set as soon as possible -- as the existing statute already requires (HRS § 334-124) -- entering final orders within thirty days may not always be achievable.

Guardians ad litem (GAL) are appointed immediately upon filing of a petition. An initial hearing on the petition is typically set within a couple of weeks. If a contested hearing is requested and the parties indicate they are prepared to proceed with an evidentiary hearing, the hearing can be set within a month of the initial hearing. That time frame, however, is not always possible or advisable. For example, at times the petitioner needs more time to effect proper service on the subject or interested parties; sometimes the petitioner, the petitioner’s attorney, the GAL, the psychiatrist who has assessed the subject, or other important witnesses are not all available on relatively short notice. At times, the subject is incarcerated or difficult for the GAL to contact.

Further, the proposed language allowing more than thirty days for an order to be entered is ambiguous. Specifically, what “exigent circumstances” means in this context is unclear. If this provision remains, we respectfully suggest replacing “exigent circumstances exist” (p.16, lines 11-12) with “good cause exists”.

Finally, what happens if the thirty day deadline is not met is unstated. If the intent is that the petition be dismissed, we respectfully submit that it would undermine the goal of expediting these cases.

We respectfully suggest the deletion of language on page 16, lines 11 to 13:



~~Unless exigent circumstances exist, the court shall endeavor to file a final order on the petition within thirty days of the date the petition is filed.~~

3. Part II, Section 11 of the bill adds a provision to HRS § 334-127 authorizing the court to enter ACT orders based on a stipulation of the subject (p. 20, lines 14-21 to p. 21, lines 1-2).

The Judiciary has concerns about this provision.

First, given the constitutional liberty interests at issue in ACT cases, any stipulation to an order must be knowing and voluntary. Allowing subjects of these provisions to agree to ACT orders presumes that they have the capacity to do so knowingly and voluntarily. One of the statutory elements that must be proven by *clear and convincing evidence* in ACT cases is that the subject's "current mental status or the nature of the disorder limits or negates the person's ability to make an informed decision to voluntarily seek or comply with the recommended treatment[.]" HRS § 334-121(2). This statutory requirement may effectively preclude a finding that the subject knowingly and voluntarily stipulated to the proposed order, which requires the subject to comply with specific treatment.

Further, while the proposed provision allows the court appointed GAL to object to the entry of an ACT order without an evidentiary hearing, it should be noted that the role of the GALs is to represent the best interests of the subject; they are not the subject's lawyer and cannot give the subject legal advice. The provision in the proposed statute permitting the GAL to object to a stipulated order may place GALs in a difficult ethical position.

We respectfully suggest that the committee delete the new subsection HRS § 334-127(e) at page 20, lines 14-21 to page 21, lines 1-2):

~~(e) The subject may stipulate to a petition for assisted community treatment if the subject is provided a proposed order for community assisted treatment, including the proposed treatment plan, either at the time the petition is filed or prior to entry of the court's order on the petition. If the subject stipulates to the proposed order, including the proposed treatment plan, by signing the proposed order, then the court may enter the stipulated order without undergoing an evidentiary hearing, unless the guardian ad litem objects to entry of an order without an evidentiary hearing."~~

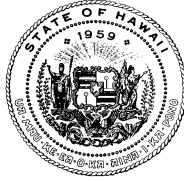


4. Part II, Sections 7, 8 and 13 allow interested parties to request the Director of the Department of Health to file ACT petitions.

The Judiciary takes no position with respect to these provisions, but wishes to note that if the result of these provisions is to substantially increase the number of ACT petitions filed in Family Court, we may require additional resources, including judge positions, to expeditiously handle the increased workload. In addition, a GAL must be appointed in each ACT case, unless a guardian has already been appointed for the subject. Currently, the pool of people who are willing to accept GAL appointments in ACT cases is small. We are concerned that there may not be enough qualified GALs if there is a significant increase in the number of ACT cases that are filed.

Thank you for the opportunity to provide testimony on this matter.

JOSH GREEN, M.D.
GOVERNOR OF HAWAII
KE KIA'ĀINA O KA MOKU'ĀINA 'O HAWAII'



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Testimony COMMENTING on H.B. 1156, H.D. 1
RELATING TO HEALTH

REPRESENTATIVE DAVID A. TARNAS, CHAIR
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

Hearing Date, Time and Room: Wednesday, March 1, 2023 at 2:00 p.m. in Room 325/VIDEO

1 **Fiscal Implications:** Undetermined.

2 **Department Position:** The Department of Health (“Department”) appreciates the intent of this
3 measure and offers comments.

4 **Department Testimony:** The Adult Mental Health Division (AMHD) provides the following
5 testimony on behalf of the Department.

6 Administrative Authorization Process

7 A purpose of this measure is to temporarily amend §334-59, §334-121.5, §334-60.3,
8 §334-161, §334-162, §334-131, §334-133, Hawaii Revised Statutes until July 1, 2026.

9 The Department is committed to addressing the needs of individuals who live with
10 behavioral health issues and need necessary medical treatment when it is in their best interest.
11 Methods to establish authorization to treat are important to ensure the application of those
12 services for those who would benefit from treatment over their objection. The Department is
13 committed to supporting the availability and effectiveness of court and administrative
14 procedures to obtain authorization to treat over objection including working with state
15 agencies, the Judiciary, and community partners to improve access and implementation.

1 We support expedited processes for obtaining authorization and reducing the time to
2 initiate treatment including submitting a petition for authorization to treat concurrently with a
3 petition for civil commitment, legal assistance for filing petitions, and authorization to treat in
4 the time period between filing a petition and obtaining an order for commitment. Additionally,
5 we support extending the availability of the administrative authorization process to patients
6 who are subject to a petition for involuntary hospitalization.

7 The Department opposes the Director of Health filing petitions for an order to treat over
8 objection or convening an administrative panel pursuant to §334-162, Hawaii Revised Statutes,
9 for other institutions. We strongly believe that the provider of care needs to prepare and
10 present information for a petition rather than a third-party. The provider has specific patient
11 health information that needs to be conveyed to the court. By introducing a third party into
12 the process, it will be inefficient, lead to increased costs by the state for the third party review,
13 and could lead to misclarifications in the petitions. Further, we strongly believe that the facility
14 or hospital should convene an administrative panel rather than a third-party. The Department
15 is committed to supporting affected stakeholders with technical assistance and trainings, and
16 believes this would better lead to the desired outcomes of this measure.

17 We have concerns about the feasibility of adequately implementing the administrative
18 authorization process in the setting of an emergency examination pursuant to §334-59(a) or
19 (b), Hawaii Revised Statutes.

20 Assisted Community Treatment

21 A purpose of this bill is to amend Hawaii Revised Statutes §334-121.5, §334-123, §334-
22 124, §334-126, §334-127, §334-131, §334-133.

23 The Department is committed to addressing the needs of individuals who live with
24 behavioral health issues and need necessary medical treatment when it is in their best interest.
25 Assisted Community Treatment (ACT) is an important method to ensure the application of

1 those services for those who would benefit from treatment over their objection. The
2 Department is committed to supporting the availability and effectiveness of ACT, including
3 working with state agencies and community partners to improve access and implementation.

4 We support expedited processes for ACT petitioning procedures including generating
5 final orders within thirty days of filing, use of online hearings, and stipulated orders without
6 undergoing an evidentiary hearing. Submitting a report on the number of requests for ACT
7 petitions submitted to the Director of Health for the 2025 legislative session is doable within
8 our current staffing and resources.

9 The Department opposes the Director of Health filing and preparing petitions for
10 assisted community treatment for other institutions. We strongly believe that the provider of
11 care needs to prepare and present information for a petition rather than a third-party. The
12 provider has the specific patient information that needs to be conveyed to the court and by
13 introducing a third party into the process, it will be inefficient, lead to increased costs by the
14 state for the third party review, and could lead to misclarifications in the petitions. DOH is
15 committed to supporting affected stakeholders with technical assistance and trainings and
16 believe this would better lead to the desired outcomes of this bill. Please see H.B. 885, H.D. 1
17 and S.B. 987, S. D. 1 for support of these activities.

18 We respectfully defer to the Judiciary on items in this bill that impact judicial
19 proceedings and defer to the Department of the Attorney General for legal matters.

20 **Offered Amendments:** We offer the attached proposed H.D. 2.

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

A BILL FOR AN ACT

RELATING TO HEALTH.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 PART I

2 SECTION 1. The purpose of this part is to:

3 (1) Authorize the provision of long-acting psychotropic
4 medication to patients who are subject to emergency
5 examination or emergency hospitalization;

6 (2) Authorize a psychiatric facility or hospital where a
7 patient is held to file a petition for an order for
8 treatment over the patient's objection;

9 (3) Expand who may join in a petition for a request for
10 treatment over a patient's objection under certain
11 circumstances; and

12 (4) Expand the administration of treatment over a
13 patient's objection.

14 SECTION 2. Section 334-59, Hawaii Revised Statutes, is
15 amended as follows:

16 1. By amending subsection (b) to read:

17 "(b) Emergency examination. A patient who is delivered for

1 emergency examination and treatment to a psychiatric facility or
2 a behavioral health crisis center shall be provided an
3 examination, which shall include a screening to determine
4 whether the criteria for involuntary hospitalization listed in
5 section 334-60.2 persists, by a licensed physician, medical
6 resident under the supervision of a licensed physician, or
7 advanced practice registered nurse without unnecessary delay,
8 and shall be provided such treatment as is indicated by good
9 medical practice~~[-]~~, which may include long-acting psychotropic
10 medication. If, after the examination, screening, and
11 treatment, the licensed physician, medical resident under the
12 supervision of a licensed physician, or advanced practice
13 registered nurse determines that the involuntary hospitalization
14 criteria persists, then a psychiatrist or advanced practice
15 registered nurse who has prescriptive authority and who holds an
16 accredited national certification in an advanced practice
17 registered nurse psychiatric specialization shall further
18 examine the patient to diagnose the presence or absence of a
19 mental illness or substance use disorder, further assess the
20 risk that the patient may be dangerous to self or others, and
21 assess whether or not the patient needs to be hospitalized. If
22 it is determined that hospitalization is not needed, an
23 examination pursuant to section 334-121.5 shall be completed."

24 2. By amending subsection (d) to read:

1 "(d) Emergency hospitalization. If the psychiatrist or
2 advanced practice registered nurse with prescriptive authority
3 and who holds an accredited national certification in an
4 advanced practice registered nurse psychiatric specialization
5 who performs the emergency examination has reason to believe
6 that the patient is:

7 (1) Mentally ill or suffering from substance abuse;

8 (2) Imminently dangerous to self or others; and

9 (3) In needed of care or treatment, or both;

10 the psychiatrist or advanced practice registered nurse with
11 prescriptive authority and who holds an accredited national
12 certification in an advanced practice registered nurse
13 psychiatric specialization shall direct that the patient be
14 hospitalized on an emergency basis or cause the patient to be
15 transferred to another psychiatric facility for emergency
16 hospitalization, or both. The psychiatric facility or hospital
17 where the patient is held may seek an order to treat pursuant to
18 section 334-162 to provide treatment as is indicated by good
19 medical practice, which may include long-acting psychotropic
20 medication. The patient shall have the right immediately upon
21 admission to telephone the patient's guardian or a family member
22 including a reciprocal beneficiary, or an adult friend and an
23 attorney. If the patient declines to exercise that right, the
24 staff of the facility shall inform the adult patient of the

1 right to waive notification to the family, including a
2 reciprocal beneficiary, and shall make reasonable efforts to
3 ensure that the patient's guardian or family, including a
4 reciprocal beneficiary, is notified of the emergency admission
5 but the patient's family, including a reciprocal beneficiary,
6 need not be notified if the patient is an adult and requests
7 that there be no notification. The patient shall be allowed to
8 confer with an attorney in private."

9 SECTION 3. Section 334-60.3, Hawaii Revised Statutes, is
10 amended by amending subsection (a) to read as follows:

11 "(a) Any person may file a petition alleging that a person
12 located in the county meets the criteria for commitment to a
13 psychiatric facility. The petition shall be executed subject to
14 the penalties of perjury but need not be sworn to before a
15 notary public. The attorney general, the attorney general's
16 deputy, special deputy, or appointee designated to present the
17 case shall assist the petitioner to state the substance of the
18 petition in plain and simple language. The petition may be
19 accompanied by a certificate of the licensed physician, advanced
20 practice registered nurse, or psychologist who has examined the
21 person within two days before submission of the petition, unless
22 the person whose commitment is sought has refused to submit to
23 medical or psychological examination, in which case the fact of
24 refusal shall be alleged in the petition. The certificate shall

1 set forth the signs and symptoms relied upon by the physician,
2 advanced practice registered nurse, or psychologist to determine
3 the person is in need of care or treatment, or both, and whether
4 the person is capable of realizing and making a rational
5 decision with respect to the person's need for treatment. If
6 the petitioner believes that further evaluation is necessary
7 before commitment, the petitioner may request such further
8 evaluation. If the petitioner believes that treatment over
9 objection is necessary before or during commitment, the
10 petitioner may join in the petition for a request for treatment
11 pursuant to section 334-161."

12 SECTION 4. Section 334-161, Hawaii Revised Statutes, is
13 amended to read as follows:

14 "~~§~~334-161~~§~~ **Criteria for issuance of court or**
15 **administrative order for treatment over the patient's objection.**

16 (a) A patient who has been committed to a psychiatric facility
17 for involuntary hospitalization or who is in the custody of the
18 director and residing in a psychiatric facility may be ordered
19 to receive treatment over the patient's objection, including the
20 taking or application of medication, if the court, or
21 administrative panel through the administrative authorization
22 process established pursuant to section 334-162, finds that:

23 (1) The patient suffers from a physical or mental disease,
24 disorder, or defect;

- 1 (2) The patient is imminently dangerous to self or others;
2 (3) The proposed treatment is medically appropriate; and
3 (4) After considering less intrusive alternatives,
4 treatment is necessary to forestall the danger posed
5 by the patient.

6 (b) For the purposes of this section, "imminently
7 dangerous to self or others" means that, without intervention,
8 the person will likely become dangerous to self or dangerous to
9 others within the next forty-five days.

10 (c) When involuntary commitment of the person is
11 additionally sought pursuant to section 334-60.3, the petitioner
12 shall combine the petition for involuntary commitment with the
13 petition for an order for treatment over the patient's objection
14 to reduce the time the patient is involuntarily hospitalized
15 without treatment.

16 SECTION 5. Section 334-162, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "~~§~~334-162~~§~~ **Criteria for administrative**
19 **authorization process.** (a) a patient who is in the custody of
20 the director and in a psychiatric facility or hospital; is the
21 subject to a court order under section 704-406(1); or is
22 subject to a petition for involuntary hospitalization under
23 section 334-59(d) may be ordered to receive medical treatment
24 over the patient's objection through an administrative

1 authorization process that includes the following due process
2 safeguards:

3 (1) The facility shall give notice to the patient of the
4 authorization process and the reasons for initiating
5 the process;

6 (2) The administrative panel shall consist of three
7 members with relevant clinical training and
8 experience, and who are not involved with the current
9 treatment of the patient;

10 (3) The patient shall have the right to attend the
11 hearing, receive assistance from an advisor, cross
12 examine witnesses, and present testimony, exhibits,
13 and witnesses; and

14 (4) The patient shall have a right to appeal the decision
15 of the administrative panel.

16 (b) The administrative process described by this section
17 is exempt from contested case requirements of sections 91-8.5 to
18 91-15.

19 (c) The department may adopt rules, pursuant to chapter 91,
20 to effectuate this part."

21 PART II

22 SECTION 6. The purpose of this part is to:

23 (1) Authorize psychiatrists or advance practice registered
24 nurses, after examination of a person for assisted

1 community treatment indication, to file an assisted
2 community treatment petition;

3 (2) Authorize the family court to use online hearings for
4 assisted community treatment petitions;

5 (3) Authorize the subject of a petition to stipulate to
6 the proposed order for treatment and the family court
7 to enter the stipulated order without an evidentiary
8 hearing; and

9 (4) Require the department of health to report to the
10 legislature prior to the regular session of 2025 on
11 the number of petitions filed for assisted community
12 treatment with family court.

13 SECTION 7. Section 334-121.5, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "[+]§334-121.5[+] **Examination for assisted community**
16 **treatment indication.** A licensed psychiatrist or advanced
17 practice registered nurse with prescriptive authority and who
18 holds an accredited national certification in an advanced
19 practice registered nurse psychiatric specialization associated
20 with the licensed psychiatric facility where a person is located
21 who was committed to involuntary hospitalization, delivered for
22 emergency examination or emergency hospitalization, or
23 voluntarily admitted to inpatient treatment at a psychiatric
24 facility pursuant to part IV shall, prior to the person's

1 discharge, examine the person to determine whether an assisted
2 community treatment plan is indicated pursuant to this part. If
3 a plan is indicated, the psychiatrist or advanced practice
4 registered nurse shall prepare the certificate specified by
5 section 334-123. The psychiatric facility may notify another
6 mental health program for assistance with the coordination of
7 care in the community for the person. Nothing in this section
8 shall delay the appropriate discharge of a person from the
9 psychiatric facility after the examination for assisted
10 community treatment indication has been completed."

11 SECTION 8. Section 334-123, Hawaii Revised Statutes, is
12 amended to read as follows:

13 **"§334-123 Initiation of proceeding for assisted community**
14 **treatment.** (a) Any interested party may file a petition with
15 the family court alleging that another person meets the criteria
16 for assisted community treatment. (a) The petition shall state:
17 (1) Each of the criteria under section 334-121 for
18 assisted community treatment;
19 (2) Petitioner's good faith belief that the subject of the
20 petition meets each of the criteria under section 334-
21 121;
22 (3) Facts that support the petitioner's good faith belief
23 that the subject of the petition meets each of the
24 criteria under section 334-121; and

1 (4) That the subject of the petition is present within the
2 counter where the petition is filed.

3 The hearing on the petition need not be limited to the
4 facts stated in the petition. The petition shall be executed
5 subject to the penalties of perjury but need not be sworn to
6 before a notary public.

7 (b) The petition may be accompanied by a certificate of a
8 licensed psychiatrist or advanced practice registered nurse with
9 prescriptive authority and who holds an accredited national
10 certification in an advanced practice registered nurse
11 psychiatric specialization who has examined the subject of the
12 petition within twenty calendar days prior to the filing of the
13 petition. For purposes of the petition, an examination shall be
14 considered valid so long as the licensed psychiatrist or
15 advanced practice registered nurse with prescriptive authority
16 and who holds an accredited national certification in an
17 advanced practice registered nurse psychiatric specialization
18 has obtained enough information from the subject of the petition
19 to reach a diagnosis of the subject of the petition, and to
20 express an professional opinion concerning the same, even if the
21 subject of the petition is not fully cooperative. If the
22 petitioner believes that further evaluation is necessary before
23 treatment, the petitioner may request further evaluation.

24 (c) The petition shall include the name, address, and

1 telephone number of at least one of the following persons in the
2 following order of priority: the subject of the petition's
3 spouse or reciprocal beneficiary, legal parents, adult children,
4 and legal guardian, if one has been appointed. If the subject
5 of the petition has no living spouse or reciprocal beneficiary,
6 legal parent, adult children, or legal guardian, or if none can
7 be found, the petition shall include the name, address, and
8 telephone number of at least one of the subject's closest adult
9 relatives, if any can be found."

10 SECTION 9. Section 334-124, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "**§334-124 Hearing date.** The family court shall set a
13 hearing date on a petition, and any subsequent hearing dates for
14 the petition, as soon as possible.

15 SECTION 10. Section 334-126, Hawaii Revised Statutes, is
16 amended by amending subsections (c) and (d) to read as follows:

17 "(c) Hearings may be held at any convenient place within
18 the circuit. The subject of the petition, any interested party,
19 or the family court upon its own motion may request a hearing in
20 another court because of inconvenience to the parties,
21 witnesses, or the family court or because of the subject's
22 physical or mental condition. The court may use online hearings
23 to accommodate the needs of the parties and witnesses, in
24 accordance with family court rules.

1 (d) The hearing shall be closed to the public, unless the
2 subject of the petition requests otherwise. Individuals
3 entitled to notice are entitled to be present in the courtroom
4 or other approved location for the hearing and to receive a copy
5 of the hearing transcript or recording, unless the court
6 determines that the interests of justice require otherwise."

7 SECTION 11. Section 334-127, Hawaii Revised Statutes, is
8 amended to read as follows:

9 "**§334-127 Disposition.** (a) If after hearing all relevant
10 evidence, including the results of any diagnostic examination
11 ordered by the family court, the family court finds that the
12 subject of the petition does not meet the criteria for assisted
13 community treatment, the family court shall dismiss the
14 petition. Notice of the dismissal shall be provided to those
15 persons entitled to notice pursuant to section 334-125.

16 (b) If after the hearing all relevant evidence, including
17 the results of any diagnostic examination ordered by the family
18 court, the family court finds that the criteria for assisted
19 community treatment under section 334-121(1) have been met
20 beyond a reasonable doubt and that the criteria under section
21 334-121(2) to 334-121(4) have been met by clear and convincing
22 evidence, the family court shall order the subject to obtain
23 assisted community treatment for a period of no more than one
24 year. The written treatment plan submitted pursuant to section

1 334-126(g) shall be attached to the order and made a part of the
2 order.

3 If the family court finds by clear and convincing evidence
4 that the beneficial mental and physical effects of recommended
5 medication outweigh the detrimental mental and physical effects,
6 if any, the order may authorize types or classes of medication
7 to be included in treatment at the discretion of the treating
8 psychiatrist or advanced practice registered nurse with
9 prescriptive authority and who holds an accredited national
10 certification in an advanced practice registered nurse
11 psychiatric specialization.

12 The court order shall also state who should receive notice
13 of intent to discharge early in the event that the treating
14 psychiatrist or advanced practice registered nurse with
15 prescriptive authority and who holds an accredited national
16 certification in an advanced practice registered nurse
17 psychiatric specialization determines, prior to the end of the
18 court ordered period of treatment, that the subject should be
19 discharged early from assisted community treatment.

20 Notice of the order shall be provided to the Department of
21 Health for data tracking and reporting purposes, the interested
22 party who filed or requested the petition, and those persons
23 entitled to notice pursuant to section 334-125.

24 (c) The family court shall also designate on the order the

1 treating psychiatrist or advanced practice registered nurse with
2 prescriptive authority and who holds an accredited national
3 certification in an advanced practice registered nurse
4 psychiatric specialization who is to be responsible for the
5 management and supervision of the subject's treatment, or shall
6 assign an administrator of a designated mental health program
7 to, in turn, designate the treating psychiatrist or advanced
8 practice registered nurse with prescriptive authority and who
9 holds an accredited national certification in an advanced
10 practice registered nurse psychiatric specialization during the
11 treatment period without court approval, and may designate
12 either a publicly employee psychiatrist or advanced practice
13 registered nurse with prescriptive authority and who holds an
14 accredited national certification in an advanced practice
15 registered nurse psychiatric specialization, or a private
16 psychiatrist or advanced practice registered nurse with
17 prescriptive authority and who holds an accredited national
18 certification in an advanced practice registered nurse
19 psychiatric specialization shall agree to the designation. The
20 order for assisted community treatment shall be subject to the
21 Health Care Privacy Harmonization Act, chapter 323B.

22 (d) Nothing in this section shall preclude the subject's
23 stipulation to the continuance [toff].

24 (e) The subject may stipulate to a petition for assisted

1 community treatment if the subject is provided a proposed order
2 for community assisted treatment, including the proposed
3 treatment plan, either at the time the petition is filed or
4 prior to entry of the court's order on the petition. If the
5 subject stipulates to the proposed order, including the proposed
6 treatment plan, by signing the proposed order, then the court
7 may enter the stipulated order without undergoing an evidentiary
8 hearing, unless the guardian ad litem objects to entry of an
9 order without an evidentiary hearing."

10 SECTION 12. Section 334-121, Hawaii Revised Statutes, is
11 amended by amending subsection (b) to read as follows:

12 "(b) The notice shall be filed with the family court which
13 issued the order for assisted community treatment, and served by
14 personal service or by certified mail on the interested party
15 who filed or requested the petition and those persons whom the
16 order for assisted community treatment specifies as entitled to
17 receive notice

18 (c) The family court shall notify the department of health
19 for data and reporting purposes for all petitions and all orders
20 for assisted community treatment filed with family court."

21 SECTION 13. Section 334-133, Hawaii Revised Statutes, is
22 amended as follows:

23 1. By amending subsection (a) to read:

24 "(a) Before the expiration of the period of assisted

1 community treatment ordered by the family court, any interested
2 party may file a petition with the family court for an order of
3 continued assisted community treatment. The petition shall be
4 filed, and unless the court determines the existence of a
5 guardian, a guardian ad litem appointed, and notice provided in
6 the same manner as under sections 334-123 and 334-125.

7 2. By amending subsection (c) to read:

8 "(c) Nothing in this section shall preclude the subject's
9 stipulation to the continuance of an existing [~~court~~] order.

10 This section shall be in addition to the provisions on the
11 objection to discharge."

12 PART III

13 SECTION 14. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 15. This Act shall take effect on June 30, 3000;
16 provided that on July 1, 2026, part I of this Act shall be
17 repealed and sections 334-59, 334-60.3, 334-161, and 334-162,
18 Hawaii Revised Statutes, shall be reenacted in the form in which
19 they read on the day prior to the effective date of this Act.

Report Title:

Department of Health; Administration of Treatment Over the Patient's Objection; Emergency Examination and Hospitalization; Long-acting Psychotropic Medication; Assisted Community Treatment; Petitions

Description:

Part I: Authorizes the provision of long-acting psychotropic medication to patients who are subject to emergency examination or hospitalization. Authorizes a psychiatric facility or hospital where a patient is held to file a petition for an order for treatment over the patient's objection. Expands who may join in such petition under certain circumstances. Expands the administration of treatment over a patient's objection. Sunsets 7/1/2026. Part II: Authorizes psychiatrists or advanced practice registered nurses, after examination of a person for ACT indication, to file an ACT petition on behalf of the interested party. Requires the family court to file final orders on ACT petitions within thirty days. Authorizes the family court to use online hearings for ACT petitions. Authorizes the subject of a petition to stipulate order without an evidentiary hearing. Requires the family court to notify the department of health for data and reporting purposes for all petitions and all orders for assisted community treatment filed with family court. Requires DOH to report to the legislature. Effective 6/30/333 (HD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

DEPARTMENT OF THE PROSECUTING ATTORNEY
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THE HONORABLE DAVID A. TARNAS, CHAIR
HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS
Thirty-Second State Legislature
Regular Session of 2023
State of Hawai`i

March 1, 2023

RE: H.B. 1156, H.D. 1; RELATING TO HEALTH.

Chair Tarnas, Vice-Chair Takayama and members of the House Committee on Judiciary and Hawaiian Affairs, the Department of the Prosecuting Attorney of the City and County of Honolulu (“Department”) submits the following testimony in **support** of H.B. 1156, H.D. 1, specifically Sections 4 and 5.

While the Department’s primary function is to fairly and effectively prosecute criminal offenses, our overarching concern is public safety and welfare. In light of this, the Department actively supports many programs and initiatives that address some of the root causes for criminal behavior, such as mental health issues and substance abuse. To the extent people with serious, untreated mental health or substance abuse issues can receive needed treatment **before** any dangerous or potentially criminal acts are committed—while safeguarding their constitutional rights—the Department strongly supports these efforts.

For people who suffer from serious mental illness or substance abuse, who also pose an imminent danger to self or others, the Department strongly believes that providing swift and appropriate mental health treatment is both the most humane and safest approach for that person and for everyone around them. When a person is found mentally unfit in the course of a criminal prosecution (as per HRS §704-406(1)), or subject to MH-1 as a result of law enforcement contact (as per HRS §334-59(a)), and meets the criteria for providing treatment over objection—including being an imminent danger to self or others—the Department believes this is a reasonable step in the process of providing that person with stabilization care and hopefully long-term treatment.

For all of the foregoing reasons, the Department of the Prosecuting Attorney of the City and County of Honolulu **supports** the passage of H.B. 1156, H.D. 1. Thank you for the opportunity to testify on this matter.

HB-1156-HD-1

Submitted on: 2/27/2023 4:00:05 PM

Testimony for JHA on 3/1/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Louis Erteschik	Hawaii Disability Rights Center	Oppose	In Person

Comments:

This bill attempts to merge the former HB 1555 into this measure as a separate Part Two. As to that, we think it may be a good idea. Clearly a lot of families are not sure how to navigate the legal system and so having the Director of Health (or the AG) file the petition may indeed help.

However, we are strongly opposed to Part One of the bill and do not believe it complies with applicable case law or constitutional standards. Specifically, we are very concerned about the expanded use of administrative panels to decide whether the individual should be involuntarily medicated.

Current law at 334-162 HRS authorizes these panels in the specific case of someone who is at the State Hospital. It was intended to address specific situations where doctors at the State Hospital felt the need to treat residents and they argued that the judicial process was lengthy. Interestingly, at the time the law was passed, the Department of Public Safety opted not to seek that change in the law for prison inmates and they still utilize the Courts. However, the bill proposes to expand it to a scenario where someone is brought in on a 48 hour hold. It has no place in that context. For one thing, unless a court were to order a longer hold there is simply no time to do it. Even the administrative panels they use at the State Hospital have a built in " due process" component that takes time. There is just no way it can be done that fast.

Aside from the practical challenges, there are huge legal and constitutional implications. To begin with, the individual has not been found otherwise to meet the criteria for longer confinement. As a practical matter, the criteria for bringing someone to a hospital on an MH1 or MH2 seems to be a relatively lower threshold and the determination is made by a Police Department psychologist who receives a telephone call from an Officer so to go from there to a point where the individual is being involuntarily medicated with a long lasting medication is a major leap. While we don't pretend to speak for the Attorney General we did have conversations with them last year regarding a similar proposal and they seemed to concur in that view. Our collective understanding was that Hawaii case law sets forth the judicial procedure which needed to be followed to involuntarily medicate an individual and it was not the process set forth in this bill. It certainly did not involve substituting the judgment of an administrative panel for the Courts.

We do note that the Attorney General seemed to testify along those lines in opposition to HB 597 which contained a similar provision and was deferred by the Committee on Health and Homelessness because it was deemed " problematic". Certainly if the prior Committee deemed

HB 597 to be problematic, then we are not clear why it chose to advance this measure. The Public Defender has also raised the same issues in testifying in opposition to SB 916, which is the companion measure to HB 1156 and which was deferred by the Senate Committee on Health and Human Services.

Currently, hospitals release these individuals deemed "stable". We share the concern about the revolving door and we understand the frustration that some of our colleagues in the advocacy field are expressing. While we believe that this bill violates the law, we are certainly open to being part of an ongoing discussion to explore ways in which that situation can be remedied.



THE QUEEN'S HEALTH SYSTEM

To: The Honorable David Tarnas, Chair
The Honorable Gregg Takayama, Vice Chair
Members, House Committee on Judiciary & Hawaiian Affairs

From: Sondra Leiggi-Brandon, Vice-President - Patient-Care and Behavioral Health, The Queen's Health System

Jacce Mikulanec, Director, Government Relations, The Queen's Health System

Date: March 1, 2023

Re: Comments on HB 1156 HD1: Relating to Health

The Queen's Health System (Queen's) is a nonprofit corporation that provides expanded health care capabilities to the people of Hawai'i and the Pacific Basin. Since the founding of the first Queen's hospital in 1859 by Queen Emma and King Kamehameha IV, it has been our mission to provide quality health care services in perpetuity for Native Hawaiians and all of the people of Hawai'i. Over the years, the organization has grown to four hospitals, and more than 10,000 affiliated physicians, caregivers, and dedicated medical staff statewide. As the preeminent health care system in Hawai'i, Queen's strives to provide superior patient care that is constantly advancing through education and research.

Queen's appreciates the opportunity to provide comments on HB 1156 HD1, which in-part authorizes long-acting psychotropic medication to be provided to patients who are subject to emergency examination or hospitalization, expands the administration of treatment over a patient's objection to include persons in director of health custody at any hospital, subject to an emergency examination, subject of an application for involuntary hospitalization, and subject to a court order regarding fitness to proceed for a criminal trial. The bill also requires orders for treatment over objection proceedings to be expedited and expands who may file a petition for an order to treat over objection under certain circumstances. Our comments primarily concern Part I of the measure.

Queen's commends the Committee for taking a thoughtful approach to statutorily enabling timely and necessary care for individuals requiring emergency hospitalization (HRS 334-59 (d)); we share and appreciate your commitment to addressing the needs of those suffering from serious mental health and substance abuse in our community. While the changes proposed herein allow for more timely and medically appropriate administration of long-acting psychotropic medication we would ask the Committee to consider setting clear timeframes within which requests must be acted upon by the Director of Health. Clarity will assist hospital and/or other facilities to determine when they can file a petition should the Director not act expeditiously.

Thank you for the opportunity to testify on this measure.

The mission of The Queen's Health System is to fulfill the intent of Queen Emma and King Kamehameha IV to provide in perpetuity quality health care services to improve the well-being of Native Hawaiians and all of the people of Hawai'i.

HB-1156-HD-1

Submitted on: 2/27/2023 5:15:10 PM

Testimony for JHA on 3/1/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Gerard Silva	Individual	Oppose	Written Testimony Only

Comments:

These people can no longer be TRUSTED!!!!

TESTIMONY OF ELLEN GODBEY CARSON IN SUPPORT OF HB1156, HD1

I write in strong support of HB1156, HD1 with a request for one amendment to conform section 334-59(d) to language in other sections in the bill (described below).

While I write as an individual, I have served as President of Hawaii Women Lawyers, the Hawaii State Bar Association, and the Institute for Human Services. The major part of my legal career and volunteer community work have been spent seeking to protect constitutional rights and the rights of vulnerable persons.

We only need to walk down our urban streets to see that we are failing to protect persons with severe mental illness. They live on our streets, rotating between the ER, jail, and the streets again in a never-ending downward cycle. Over 100 of our homeless residents die on our streets each year, at an average age of only 54. [Deaths of homeless people continue to climb on Oahu | Honolulu Star-Advertiser](#) In other words, they lose 25-30 years of their expected lifespan due to the very real dangers of living on the street without effective treatment. Many of them are so mentally ill they do not know they need medication, and they are unable to make decisions for life-saving medication and self-preservation.

This bill will increase the likelihood that persons suffering from severe mental illness or substance abuse will receive timely and appropriate care and treatment. We have miracles of modern medicine that can treat even the most severe mental illnesses. But treatment requires either actual consent or legal procedures for ordering treatment. We owe it to these individuals to provide them life-saving treatment and help restore their lucidity when they lack their own decision-making authority.

This bill will help us better address these needs in the following ways:

- Our “Orders To Treat over Objection” laws (HRS 334-161 and 334-162) currently only help persons committed to the State Hospital. This bill expands those orders to include persons:
 - in DOH director custody at any hospital;
 - subject to an MH4 emergency examination under HRS 334-59(b);
 - subject of an MH6 application for involuntary hospitalization under HRS 334-59(d); and
 - subject to a court order under HRS 704-406(1)(unfit to proceed for criminal trial).All these situations involve persons at imminent risk of harm to self or others, where prompt treatment is warranted to help them get better and either avoid or minimize any time needed in involuntary hospitalization.
- Because these persons are imminently dangerous, SB 916 requires Orders to Treat proceedings to be brought on an expedited basis with a final order to be rendered within 30 days of the date of the petition, absent exigent circumstances, so that treatment can be promptly provided.

- This bill allows a psychiatric facility or hospital to request the DOH director to file and pursue a petition for an Order to Treat, and allows the facility or hospital to file a petition if the director does not file expeditiously. It is very appropriate for DOH take the lead on these petitions based on community need, just as for involuntary commitment orders.
- Where an MH4 emergency examination occurs, this bill authorizes a psychiatric facility or hospital to request the director to file a petition for order to treat. And where a petition for MH6 involuntary hospitalization is filed, this bill authorizes the petitioner to seek an order to treat. Expediting these orders at these points allows early intervention and prompt treatment which may avoid altogether or at least diminish, the time needed in involuntary hospitalization.
- Where involuntary commitment is requested, this bill authorizes a simultaneous request for an order to treat, so as to minimize the time of involuntary hospitalization without any treatment. It is cruel to many of these individuals, who lack decisional authority, to be committed indefinitely to involuntary hospitalization, with no means to provide treatment until an order to treat is obtained.

I request an amendment to conform the language in section 334-59(d) to that found in 334-59(b), as appears intended by the bill, so that all references to seeking an order to treat may be made to the director, who shall review and act on such requests expeditiously. This can be done by inserting the boldfaced language below into the proposed amended language in section 59(d) to say:

The facility or hospital where the patient is held may ***request the director to file a petition for*** an order to treat pursuant to section 334-162, to provide such treatment as is indicated by good medical practice, which may include long-acting psychotropic medication. ***The facility or hospital shall provide supporting information. The director shall review such request expeditiously and if the request appears to satisfy the four factors in section 334-161, the director shall file and pursue a petition to request order for treatment over the patient's objection as soon as possible by convening an administrative panel pursuant to section 334-162.***

This bill relies on the due process protections already embedded in HRS 334-161 and 334-162 that strike an appropriate balance between the individuals' rights and the need to help to help treat and stabilize them so they can regain their decisional capacity. In so doing, we can help avoid the very real dangers of irreversible disability and death that these severely ill persons face if they are left on their own on the streets.

Thank you for your consideration of my testimony and helping protect our most vulnerable residents.

Ellen Godbey Carson, Honolulu, Hawaii, February 28, 2023