

STATE OF HAWAII
DEPARTMENT OF HEALTH
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Testimony COMMENTING on H.B. 1156
RELATING TO HEALTH

REPRESENTATIVE DELLA AU BELATTI, CHAIR
HOUSE COMMITTEE ON HEALTH AND HOMELESSNESS

Hearing Date, Time and Room: Friday, February 3, 2023 at 9:30 a.m. in Room 329/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 The purpose of this measure is to temporarily amend §334-59, §334-121.5, §334-60.3,
7 §334-161, §334-162, §334-131, §334-133, Hawaii Revised Statutes until July 1, 2026.

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

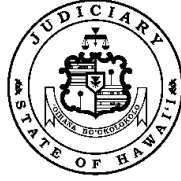
1 We support expedited processes for obtaining authorization and reducing the time to
2 initiate treatment including submitting a petition for authorization to treat concurrently with a
3 petition for civil commitment, legal assistance for filing petitions, and authorization to treat in
4 the time period 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 Lastly, we have concerns about the feasibility of adequately implementing the
18 administrative authorization process in the setting of an emergency examination pursuant to
19 §334-59(a) or (b), Hawaii Revised Statutes.

20 **Offered Amendments:** We recommend striking out Sections c-f on pages 7-8 and Section b on
21 page 9.

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



The Judiciary, State of Hawai‘i

Testimony to the Thirty-Second Legislature, 2023 Regular Session

House Committee on Health & Homelessness

Representative Della Au Belatti, Chair

Representative Jenna Takenouchi, Vice Chair

Friday, February 3, 2023 at 9:30 a.m.

State Capitol, Conference Room 329 & Videoconference

by

Matthew J. Viola

Senior Judge, Deputy Chief Judge

Family Court of the First Circuit

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

Purpose: 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. Requires orders for treatment over objection proceedings to be expedited. Expands who may file a petition for an order to treat over objection under certain circumstances.

Judiciary's Position:

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

We are concerned that the amendments proposed for subsection (b) are confusing. Subsection (b) covers the emergency examination process that allows the medical personnel to determine whether commitment to a hospital is necessary. The amendments are also ambiguous. For example, the amendments seem to suggest that “a petition for an order for treatment over the patient’s objection” could somehow be a “stand alone” petition. The amended language is inserted just before the existing language that requires an examination pursuant to Section 334-121.5 regarding assisted community treatment. That section further provides that “[n]othing in



this section shall delay the appropriate discharge of a person from the psychiatric facility after the examination for assisted community treatment (“ACT”) indication has been completed.”

We respectfully suggest that this committee delete the entire first section of this bill, from page 1, line 3, to and including page 2, line 20. This does not leave the patient without assistance since the existing statute already requires an ACT exam if hospitalization is not needed.

Similarly, we are concerned about the ambiguity found at page 8, lines 1 to 6, that appears to allow filing a petition for involuntary commitment and a petition for an order for treatment over the patient’s objection at the same time. The new subsection (e) is nestled in section 334-161 concerning involuntary treatment for persons involuntarily hospitalized. New language is then added at lines 5 to 9 that adds the emergency examinations into this section. Again, the question is whether this ambiguous language allows a “stand alone” petition for treatment over a person’s objection.

We respectfully suggest that this committee delete this language on page 6, lines 4 to 9:

~~... 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)...~~

We further respectfully suggest deletion of subsection (e) on page 8, lines 1 to 6.

~~(e) When involuntary commitment of the person is additionally sought pursuant to section 334-60.3, the petitioner shall combine the petition for involuntary commitment with the petition for an order for treatment over the patient’s objection to reduce the time the patient is involuntarily hospitalized without treatment.~~

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



The Institute for Human Services, Inc.
Ending the Cycle of Homelessness

TO: Honorable Rep. Della Au Belatti
Chair, House Committee on Health and Homelessness

FROM: Connie Mitchell, Executive Director
IHS, The Institute for Human Services, Inc.

RE: HB1156 – RELATING TO HEALTH

HEARING: February 3, 2023 at 9:30 AM

POSITION: IHS strongly supports HB 1156

The Institute for Human Services's strong support of the changes in this bill, based on our experience working with chronically homeless persons who are afflicted with serious and persistent mental illness.

As such, we advocate the use of long-acting injectable antipsychotics to help maintain many homeless individuals on their medication regimens to support their recovery. Making explicit the permitted use of long-acting injectable antipsychotics encourages their use safely in the emergency department as appropriate, especially when they may be transported to the emergency department on an emergency mental health transport order.

This bill inserts language that recommends that community hospitals be allowed to ask the Department of Health for support in seeking guardianship or assisted community treatment when someone meets criteria for such. This was recommended to perhaps provide the legal support necessary for a hospital to seek an order to treat or a guardianship on someone who is deemed to be suffering mental illness and imminently posing danger to self or others through the support of a deputy attorney general from the State Department of Health. Hospitals do not always have the legal means to petition.

This bill also recommends the use of an administrative panel to approve use of psychiatric medications over objection as is currently done at the Hawaii State Hospital. This procedure expedites the issuance of an order and also provides due process to protect the rights of the subject of an order to treat. These administrative panels would be applied to persons meeting criteria and confined to the local hospital.

HB-1156

Submitted on: 2/1/2023 9:10:45 PM

Testimony for HLT on 2/3/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Louis Erteschik	Hawaii Disability Rights Center	Oppose	Remotely Via Zoom

Comments:

We believe that the provision in Section 3 whereby an order to treat would accompany an individual who is involuntarily committed probably makes sense from a logistical point of view. We have no objection to that. Beyond that, we are very concerned about this bill and 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. The idea of expanding it to the other psychiatric facilities may not be a huge stretch and while we don't necessarily endorse it we are less troubled by that. However, the bill appears to propose 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.

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. It may even be true that the long lasting injectable medication might make sense from a medical perspective but 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 Della Au Belatti, Chair
The Honorable Jenna Takenouchi, Vice Chair
Members, House Committee on Health & Homelessness

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: February 3, 2023

Re: Comments on HB1156: 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 HB1156, which 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.

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.

TESTIMONY OF ELLEN GODBEY CARSON

I write in strong support of HB 1156, 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.

HB 1156 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.

HB 1156 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, HB 1156 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.

- HB 1156 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, HB 1156 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, HB 1156 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, HB 1156 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), and 334-161(c), as is clearly 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

HB-1156

Submitted on: 2/2/2023 11:00:54 AM

Testimony for HLT on 2/3/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Raelyn Reyno Yeomans	Individual	Oppose	Written Testimony Only

Comments:

I am submitting testimony in opposition to HB1156. I am concerned that the immediate goal of this bill is to allow for the use of long-acting psychotropic medication in order to get a longer length of forced treatment. This would be allowed by this bill even before any legal permission has been granted which would cover the length of time that the individual will be under the influence of the long-acting psychotropic medication.

We must look at the current system, availability of beds with proper staffing (whether residential or in hospital type settings), availability of short term guardians/conservators, and start the change there. These things are lacking but the answer or goal is not to just try to get some long-acting psychotropics on board without knowing whether or not this is the appropriate treatment for the individual.

Respectfully-

Raelyn Reyno Yeomans

HB-1156

Submitted on: 2/2/2023 8:35:04 PM

Testimony for HLT on 2/3/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Mary Pat Waterhouse	Individual	Support	Written Testimony Only

Comments:

At times someone who is psychotic and/or is taking certain illicit drugs does not have good decisional capacity, thus this bill allows the court or an administration panel to intervene on behalf of the individual with input from their physician and requirements in the law. This bill also allows the use of long acting medications to enable a individual to stabilize for about a month. Under current law physicians can only provide short acting medication, which lasts only a few days, when there's an order to treat. Thus the individual often becomes psychotic again and/or abusing drugs after the short-acting medication wears off.