



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2022**

ON THE FOLLOWING MEASURE:

S.B. NO. 2137, RELATING TO TRANSITIONAL HOUSING.

BEFORE THE:

SENATE COMMITTEES ON GOVERNMENT OPERATIONS AND ON HEALTH

DATE: Thursday, February 10, 2022 **TIME:** 3:00 p.m.

LOCATION: State Capitol, Via Videoconference

TESTIFIER(S): Holly T. Shikada, Attorney General, or
Michelle Nakata, Deputy Attorney General

Chairs Moriwaki and Keohokalole and Members of the Committees:

The Attorney General provides the following comments.

This bill amends section 46-4(d), Hawaii Revised Statutes (HRS), by adding a public informational meeting requirement before a county permit shall be issued for a halfway house, a clean and sober home, or a drug rehabilitation home. Page 6, lines 1-5.

Section 46-4(d), HRS, currently provides that group living facilities of up to eight residents may not be prohibited by law, county ordinance, or rule, as long as they meet certain requirements. A clean and sober home, a drug rehabilitation home, and a halfway house are small group living homes for persons recovering from alcohol and substance abuse. This population is protected from discrimination in housing by the federal Fair Housing Amendments Act of 1988 (FHAA), codified in 42 U.S.C. sections 3601 to 3631. Generally, the FHAA prohibits discrimination against persons with any "handicap" (now referred to as a disability). The term "handicap" is defined very broadly to mean with respect to a person -- "(1) a physical or mental impairment which substantially limits one or more of such person's major life activities, (2) a record of having such an impairment, or (3) being regarded as having such an impairment" 42 U.S.C. § 3602(h).

In Step by Step v. City of Ogdensburg, 176 F. Supp. 3d 112, 125 (E.D. Mich. 2016), the United States District Court determined that the FHAA's definition of "handicapped" includes persons with a mental illness or personality disorder, such as

recovering alcoholics and drug addicts. In Oxford House, Inc. v. City of Baton Rouge, Louisiana, 932 F. Supp. 2d 683, 689 (M.D. La. 2013), the United States District Court concluded that "there is no per se rule that categorizes recovering alcoholics and drug addicts as disabled or handicapped, and a case-by-case evaluation is necessary." The Court found that residents of an Oxford House for recovering alcoholics and drug addicts were disabled and/or handicapped for the purposes of the FHAA and the Americans with Disabilities Act and their testimony established that they had a disability that limited major life activities. Id. A halfway house would be protected under the FHAA to the extent that persons with disabilities, including "recovering alcoholics and drug addicts," are living in the home. The FHAA's purposes include ending segregation of the housing available to persons with disabilities and giving persons with disabilities the right to choose where they wish to live.

If the public informational meeting requirement of this bill is applied to all family homes, the bill would not violate the FHAA. However, as defined in this bill on page 6, lines 1-5, "public informational meeting" requirements do not apply to all family homes; rather, they would apply only to the small group homes added to section 46-4(d), HRS. If the counties were to enact such ordinances, those ordinances would violate the FHAA. The State could also be exposed to liability, because enacting this bill could be interpreted to provide state approval for discriminatory public meeting requirements to county zoning ordinances.

Similarly, this bill would amend section 321-193.7, HRS, by adding a public informational meeting requirement before approval of a clean and sober home registry application. Page 7, lines 1-4. In addition, this bill would prohibit the inclusion of clean and sober homes on the registry by a "geographic spacing requirement" defined as "no clean and sober home located within one-half mile of a public or private elementary or secondary school shall be included on the department's registry." Page 9, lines 10-12.

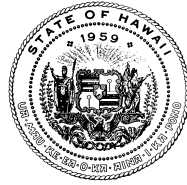
The public informational meeting required by this bill (page 6, lines 1-5) in the affected community before approval of the application may also discriminate against clean and sober homes for persons with disabilities. In Potomac Group Home Corp. v. Montgomery County, Md., 823 F. Supp. 1285, 1299 (D. Md. 1993), the United States

District Court concluded that open meetings for a public program review board, as held in connection with the application of a group home for disabled elderly, have a discriminatory effect on plaintiffs in violation of the FHAA.

Under the FHAA, discrimination includes "a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling." 42 U.S.C. § 3604(f). An administrative rule to add a geographic spacing requirement of one-half mile between a clean and sober home on the registry and an elementary or secondary school would likely violate the FHAA. A clean and sober home is protected under the FHAA and any administrative rule would need to provide a reasonable accommodation.

In conclusion, the FHAA as interpreted by the courts, prohibits discrimination against community-based group living homes for persons with disabilities. This bill would mandate extensive public informational meeting requirements for clean and sober homes, drug rehabilitation homes, and halfway houses, that are not required for any other type of group living facility. Because persons recovering from alcohol and substance abuse and adults that may have mental illness live in these clean and sober homes, the public notice requirements and geographic spacing requirements proposed in this bill may violate the FHAA.

Thank you for the opportunity to provide comments.



STATE OF HAWAII
DEPARTMENT OF HEALTH
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Testimony COMMENTING on SB2137
RELATING TO TRANSITIONAL HOUSING.

SENATOR SHARON Y. MORIWAKI, CHAIR
SENATE COMMITTEE ON GOVERNMENT OPERATIONS

SENATOR JARRETT KEOHOKALOLE, CHAIR
SENATE COMMITTEE ON HEALTH

Hearing Date: 2/10/2022

Room Number: Via videoconference

1 **Fiscal Implications:** Undetermined

2 **Department Testimony:** The Department supports the intent of the measure that clean and
3 sober homes should comply with all county, state, and federal nondiscriminatory laws and offers
4 the following comments on this measure..

5 Hawaii continues to have limited resources for those in recovery to have a stable and safe
6 environment in which to reside. The Department's clean and sober homes registry currently has
7 59 clean and sober homes statewide, with up to 534 bed spaces in dwelling units that provide a
8 stable independent environment and living conditions free of alcohol and drugs to support and
9 sustain the recovery process. Because clean and sober homes are a critical strategy to assist a
10 client's recovery, the Department is working to expand the number of homes and thus improve
11 the state's recovery capacity. According to the National Survey on Drug Use and Health, over
12 76,000 Hawaii adults statewide need but are not receiving treatment for substance use disorders.
13 The transition from active addiction into lasting recovery is often difficult and emotionally trying
14 for many with a substance-use disorder. According to an August 2018 report by the National
15 Institute on Drug Abuse (NIDA), relapse rates for substance-use disorders are approximately 40-
16 60 percent. Drug relapses could signify the need to reexamine a client's course of treatment, as
17 relapses can be very dangerous and in many instances deadly. Relapse rates suggest the critical
18 role clean and sober homes play in supporting the recovery process.

1 The Department defers to the Department of the Attorney General on the measure's consistency
2 with the Americans with Disability Act (ADA) and the Fair Housing Act (FHA). Both the ADA
3 and the FHA include people recovering from alcoholism and drug addiction as having a handicap
4 or disability.

5 The Department also defers to the counties regarding the implementation of Section 1.

6 **Offered Amendments:** The Department respectfully requests an amendment to grandfather
7 clean and sober homes established prior to the effective date of the Act if this measure becomes
8 law.

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



SB2137 Relating to Recovery Homes Requiring Information Meetings and Restricting Locations

COMMITTEE ON GOVERNMENT OPERATIONS

Senator Sharon Y. Moriwaki, Chair

Senator Donovan M. Dela Cruz, Vice Chair

COMMITTEE ON HEALTH

Senator Jarrett Keohokalole, Chair

Senator Rosalyn H. Baker, Vice Chair

Thursday, Feb 10 2022: 3:00 pm : Videoconference

Hawaii Substance Abuse Coalition opposes SB2137

ALOHA CHAIR, VICE CHAIR AND DISTINGUISHED COMMITTEE MEMBERS. My name is Alan Johnson. I am the current chair of the Hawaii Substance Abuse Coalition (HSAC), a statewide organization for substance use disorder and co-occurring mental health disorder treatment and prevention agencies.

In 2014 Hawaii laws were modified to comply with:

- 1. The Americans with Disability Act (ADA) and Fair Housing Act as well as the U.S. Supreme Court rulings that protect people in recovery as well as clean and sober housing.**
- 2. Both the Fair Housing Act and the ADA include people recovering from alcoholism and drug addiction within the definition of handicap (disability).**
- 3. Group homes or sober houses for people in recovery from drug or alcohol addiction are protected from discrimination by the state and federal fair housing laws same as any other disability.**

In 2014, State laws were changed under Act 193¹ following a 2 year a multi-department task forceⁱ that met to determine the appropriate legislation for clean and sober housing that complies with the complex federal and state laws pertaining to disability housing for people in recovery.

These complex Fair Housing Act and ADA laws protect individuals with disabilities such as recovering alcoholics as well as recovering drug addicts who are currently drug free and also people who are involved in continuing professional rehabilitation and mentoring programs.

¹ (HB2224) https://www.capitol.hawaii.gov/session2014/bills/HB2224_CD1_.pdf

- The laws for recovering people are the same as if a person had any other disabilities such as an individual with a physical or mental impairment that substantially limits one or more major life activities.
- Keep in mind that most clean and sober homes as well as half-way houses are independently operated.

Federal precedence has created increasingly protective measures to safeguard equal access to housing for people with disabilities.

We understand that some communities have been frustrated with lack of accountability and some states have proposed regulations to legislate monitoring of clean and sober homes, only to see them struck down in Federal court.

- Recognizing that clean and sober housing arrangements have protective civil rights and
- Recognizing that recovery homes are a cost effective and valuable means to transition recovering individuals back into their chosen communities, and
- Recognizing that quality and compliance would improve if government could establish and monitor performance criteria, therefore,

Act 193 also passed a VOLUNTARY registration process to accomplish this objective. The Department of Health established a registry to:

- a. Help clean and sober housing facilities obtain proper county permits and meet all zoning requirements.
- b. Train registered clean and sober operators on policies and procedures for good management, including good neighbor practices.
- c. Respond and enforce compliance for registered houses.
- d. Provide a list to referring agencies that they refer to registered homes.

Summary:

SB2137 is in violation of ADA and Fair Housing Act laws. Federal courts strictly enforce rights for people in recovery. National coalitions have formed in recent years to aid clean and sober housing as well as halfway houses to help them protect their rights. Independent operators have been successful in other states to win settlements from states for any loss of business due to state laws that are in violations of Federal laws.

While we have empathy for communities who are frustrated for any poor performance issues in the community, they must pursue legal avenues same as they would for any other home with disabilities.

We appreciate the opportunity to provide testimony and are available for questions.

ⁱ The Task Force, led by members from both the Senate and House, had widespread representation and was most active with large attendance for the entire two years 2012-2013: Please see below.

Legislators	State Agencies	Community
Sen. Espero, Sen. Tokuda	Deputy Attorney General	Hawaii Substance Abuse Coalition
Rep. Carroll, Rep. Jordan	Department of Health	Clean and Sober Houses
Senate and House. leadership offices.	County Planning and Zoning Supervisors from every County	Halfway House agency
	Public Safety and Parole	Homeless agencies
	Adult Client Services	Various Community

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Submitted on: 2/9/2022 11:21:04 AM

Testimony for GVO on 2/10/2022 3:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Greg Tjapkes	Testifying for Coalition for a Drug-Free Hawaii	Oppose	No

Comments:

We oppose this legislation as it appears that it violates ADA and Fair Housing Laws.

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Submitted on: 2/8/2022 11:11:23 AM

Testimony for GVO on 2/10/2022 3:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Jeff Nash	Testifying for Habilitat, Inc	Oppose	Yes

Comments:

Aloha,

My name is Jeff Nash, executive director for Habilitat, Inc. We adamantly opposes this bill. This bill blatantly violates the American with Disabilities act, goes against FHA standards and similar state laws have been litigated and overturned by the federal government for violating the fair housing act.

Hawaii has two major social ills, drug abuse and homelessness. While nonprofits step up, often using our own resources to address these problems, the state seems to be content on making the problems worse and creating barriers to common sense solutions.

Frankly these bills and continued frivolous regulation make Hawaii a very difficult place to help.

Habilitat is the largest capacity licensed treatment program in the state of Hawaii. Founded in 1971 on Oahu, we have been helping people overcome addiction and homelessness for 51 years in Hawaii.

Several years ago we were asked by ADAD to find a way to help fill the gaps in affordable housing for those coming out of treatment programs. Last year we answered that call to action and opened a single 5 bedroom house and its running very smoothly, without a single incident. We have decades of experience running programs with great outcomes. We have plans to open several more because it deters recidivism and curbs homelessness. There is plenty of science to back this up. Evidence!

The state legislators should be helping us remove barriers to providing affordable housing to Hawaii's vulnerable populations. Instead, we are defending our right to even do so today.

Do we want to improve the homeless situation or not? Would you rather these people live in the parks? Or is it better to have them housed in a well structured, highly supervised setting, run by well know, licensed professionals? We are not sitting around talking about solutions, we are actively creating them.

I'm not sure why the legalities of these bills haven't been researched. Perhaps you don't have the time. Those of us actually doing the work really don't have time to fight frivolous bills that will

never stand up to federal scrutiny. This bill violates our rights as established by the ADA and the fair housing act. It will open the door to litigation. Perhaps in the future the legislative branch might consult with those of us who are knowledgeable about these issues. We would be thrilled to work with our representatives to help with these issues. HSAC has the most experienced people in the state. We are united against these bills that just make our work more difficult. If you have constituents concerned about our housing initiatives, we should all sit down and try and find solutions. Discrimination isn't a solution. This is decrimination by the very definition.

It has been my experience that some in the community just don't want us in the neighborhoods. Meanwhile, as quiet as its kept, we have been there for over 50 years anyway. People have to live somewhere. Relegating them to certain areas, requiring permission to reside in a neighborhood is discrimination.

I can provide case studies of similar issues around the country. There is plenty of precedent. You'll see there is a wide variety of failed attempts to discriminate against former substance users. Some of these litigated by the federal government.

Respectfully,

Jeff Nash-Habilitat, Inc.

Jeff Nash
EXECUTIVE DIRECTOR



Vincent C. Marino
FOUNDER

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Committee on Government Operations
Senator Sharon Y. Moriwaki, Chair
Senator Donovan M. Dela Cruz, Vice Chair

Committee on Health
Senator Jarrett Keohokalole, Chair
Senator Rosalyn H. Baker, Vice Chair

Becky Harrison
Habilitat
(808) 221-8550

Tuesday, February 10, 2022

Strong Opposition to SB2137

For over 50 years, Habilitat has been helping people overcome problems with substance abuse and houselessness. Our program is long-term, over 2.5 years, and our success rate is one of the highest in the United States. We are the largest capacity treatment program in the state of Hawaii. We help people who have lost hope change into hardworking, responsible, caring human beings who are a benefit to society. We do this by showing participants how to develop self-esteem, self-worth and self-discipline. Our unique approach incorporates modern evidence-based treatments including cognitive behavioral therapy, motivational interviewing, individualized treatment planning, group sessions, education, curriculum-based work force development programs, computer training, literacy programs, parenting classes, and many more wraparound services designed to teach people to become the best version of themselves possible. We truly empower people to live beyond their addictions and learn to make positive choices in their lives. Our program is designed to get to the root cause of substance use, then teach people how to thrive in a complicated world. Our vocational programs are designed to provide real life skills so that participants can attain gainful employment, at a living wage, in high demand fields. Habilitat is a self-supporting non-profit organization.

Last year we expanded our treatment to include a transitional house for graduates and staff. Upon opening, it was immediately filled to the legal capacity. Our house is highly structured and highly supervised. It has run smoothly, without incident. People who have spent over 2 years learning to lead a positive and successful lifestyle need a safe and affordable place to start their new life. We can't discriminate against them and make it harder for them to have a successful future.

I am testifying in strong opposition to SB2137. Requiring clean and sober homes to hold public informational meetings prior to being able to obtain a county permit and not allowing a clean and sober house to be within one-half mile of an existing public or private elementary or secondary school would create obstacles and make it very difficult to help a group of protected people. Drug and alcohol addictions, or substance use disorders are considered disabilities under Section 504 of the Rehabilitation Act, the Americans with Disabilities Act, and Section 1557 of the Affordable Care Act. SB2137 is a direct violation of the Fair Housing Act of 1968 and Americans with Disabilities Act of 1990 and would not be acceptable by the Federal Housing Association. Below are some case studies of similar issues from around the country. The municipality cannot restrict and regulate clean and sober houses in a manner that discriminates against this protected group of people. Thank you for this opportunity to testify.



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<https://www.justice.gov/crt/housing-cases-summary-page#middletown>

The case law is overwhelming that cities/states can not create undue burdens or zoning or code requirements for a protected class of people. They must make reasonable accommodations, they can not create restrictions different than they would for a family. They can not restrict us from our program activities.

****Overly Restrictive Fire Code Regulations****

United States v. City of Beaumont, Texas (E.D. Tex.)

On June 16, 2016, the court entered a [consent decree](#) in *United States v. City of Beaumont* (E.D. Tex.). The [complaint](#), which was filed on May 26, 2015, alleged that the City implemented and enforced spacing requirements and overly restrictive fire code regulations for small group homes for individuals with intellectual or developmental disabilities, in violation of the Fair Housing Act and the Americans with Disabilities Act. The consent decree requires the City to pay \$435,000 in monetary relief to 11 aggrieved individuals and a \$15,000 civil penalty. The City will also pay \$25,000 to Disability Rights Texas, the organization that represented the three individuals who filed the HUD complaints and intervened in the United States' lawsuit. In addition, the City consented to injunctive relief, including ceasing enforcement of its spacing requirements and overly restrictive fire code regulations, implementing a comprehensive reasonable accommodation policy, requiring its officials to attend fair housing training, and appointing a fair housing compliance officer.

****Unrelated Persons Occupancy Limits****

Avalon Residential Care, Homes, Inc. v. City of Dallas (N.D. Tex.)

On November 9, 2000, the United States filed an [amicus brief](#) that opposed the legal arguments made by the City of Dallas in its motion for summary judgment. The United States argued that the City violated the Fair Housing Act by improperly denying a reasonable accommodation when it refused to grant the plaintiff a variance to the City's 1000 foot spacing requirement and six person occupancy limit for group homes serving persons with disabilities.

United States v. City of Satsuma, Alabama (S.D. Ala.)

On September 16, 2010, the court entered a [consent decree](#) in *United States v. City of Satsuma* (S.D. Ala.) the city agreed to pay \$59,000 in damages to the operator of a group home for three women with intellectual disabilities and the trustees of the three residents, as well as a \$5,500 civil penalty to the government. As part of the settlement, the city also adopted amendments to its zoning laws. On April 30, 2009, the United States filed an [amended complaint](#) in a Fair Housing Act pattern or practice land use case that was referred by HUD. The amended complaint adds three additional causes of action. The original complaint, filed on May 7, 2008, alleged that defendants discriminated against three persons on the basis of their disabilities by refusing to allow them to reside together in a group home. The suit charges that Satsuma refused to make reasonable accommodations in its rules, policies, practices or services, which were necessary to afford the residents an opportunity to use and enjoy their home. The three adult residents lived in a single-family home with supportive services provided by professional care-givers. The City's zoning ordinance permits five unrelated persons to reside together in single-family homes in residential districts of the City. Under the consent decree the city agreed to pay \$59,000 in damages to the operator of a group home for three women with intellectual disabilities and the trustees of the three residents, as well as a \$5,500 civil penalty to the government. As part of the settlement, the city also adopted amendments to its zoning laws.

Groome and United States v. Jefferson Parrish (E.D. La.)

In June 1999, the United States District Court for the Eastern District of Louisiana held that Jefferson Parish violated the Fair Housing Act when it refused to permit the operation of a group residence for five adults with Alzheimer's Disease. The Parish zoning ordinance required the group home provider to seek an accommodation to house five persons instead of the permitted four. The court held that the Parish broke the law when it failed to act on the request because of opposition from neighborhood residents and a member of the Parish Board. The Parish appealed the decision to the Court of Appeals for the Fifth Circuit, arguing that the Fair Housing Act protections for persons with disabilities are unconstitutional. The Civil Rights Division intervened and filed a [brief](#) arguing that Congress had power to pass the legislation under both the Commerce Clause and the Fourteenth Amendment to the Constitution. The United States also filed an [amicus brief](#) in the district court. On November 20, 2000, a unanimous three-judge panel joined three other Courts of Appeal holding that the Commerce Clause authorizes Congress to regulate the housing market.

****Failure to Grant Reasonable Accommodations****

United States v. City of Fort Worth (N.D. Tex.)

On March 7, 2016, the United States filed a [consent decree](#) in *United States v. City of Fort Worth* (N.D. Tex.), a case alleging discrimination on the basis of disability in violation of the Fair Housing Act and the Americans with Disabilities Act based on the City's failure to grant a reasonable accommodation to Ebby's Place, a group home for persons recovering from drug and alcohol addiction. The [complaint](#), filed on February 22, 2015, originated as a HUD referral. The consent decree requires the City to pay \$135,000 to the sober home in monetary relief and a \$10,000 civil penalty. The City also agreed to standard injunctive relief,



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including fair housing training and reporting during of the consent decree, and passed a City ordinance adopting a reasonable accommodation policy.

United States v. City of Hanford (E.D. Cal.)

On October 14, 2004, the court entered a [consent decree](#) resolving *United States v. City of Hanford* (E.D. Cal.). The [complaint](#), filed on September 30, 2004, alleges the denial of a reasonable accommodation to the residents of a group home for persons with disabilities. The consent decree requires the city to allow the continued operation of the home in a single-family residential district; enjoins the city from further discrimination; incorporates a city ordinance setting forth procedures by which persons with disabilities may apply for reasonable accommodations and provides for a total of \$55,000 in compensatory damages for current and former residents of the home. The consent decree will remain in effect for five years. The case was referred to the Division by the Department of Housing and Urban Development (HUD).

United States v. Dalton Township, Michigan (W.D. Mich.)

On February 10, 2011, the court entered a [consent decree](#) resolving *United States v. Dalton Township* (W.D. Mich.). The [complaint](#), filed on alleged July 28, 2010, alleged that the Township violated the Fair Housing Act and the Americans with Disabilities Act when it refused to grant a reasonable accommodation permitting the operation of a group home for persons recovering from drug and alcohol addiction. Under the terms of the consent decree the sober home is allowed to operate. The decree also provides for \$55,000 in damages to the owner of the property and a \$7,500 civil penalty to the United States. The lawsuit arose as a result of a complaint filed with the U.S. Department of Housing and Urban Development (HUD) by the owner and operator of a group home known as "Serenity Shores."

United States v. Sarasota County Florida (M.D. Fla.)

On October 15, 2007, the court entered [settlement agreements](#) resolving *United States v. Sarasota County Florida* (M.D. Fla.). The [complaint](#), which was filed on June 30, 2006, alleged that the county discriminated against persons with disabilities when it refused to allow group homes for persons in recovery from alcohol and substance abuse to operate. The lawsuit also alleged that the county refused to grant a reasonable accommodation and retaliated against the operator of the homes, Renaissance Manor Inc., by refusing to award county grant funding. In April 2007, the government's lawsuit was consolidated with a private lawsuit filed by Renaissance Manor Inc. and four individual plaintiffs in May 2005. Coastal Behavioral Healthcare Inc., which co-owns Tammi House with Renaissance Manor, intervened in the government's lawsuit in September 2006. The private lawsuit were resolved simultaneously with the government's lawsuit. Under the two settlements, the county must pay a total of \$750,000 to Renaissance Manor, Coastal Behavioral Healthcare Inc., and three individual plaintiffs, and \$10,000 to the United States for the benefit of the public interest. The settlements also allow the group homes to continue to operate. The government's settlement prohibits future discrimination and requires the county to adopt policies to prevent future discrimination. The case was referred to the Division by HUD after it received a complaint, conducted an investigation, and issued a charge of discrimination.

****Restricting Group Homes from Being in Residential Areas** (Does this mean that there should be no "Conditional Use" requirements in SLC Zoning Code?）**

United States v. City of Jackson (S.D. Miss.)

On September 30, 2016, the United States filed a [complaint](#) in *United States v. City of Jackson* (S.D. Miss.). The complaint alleges that the city engaged in a pattern or practice of discrimination on the basis of disability in violation of the Fair Housing Act and Title II of the Americans with Disabilities Act by preventing persons in recovery from alcohol and substance abuse from living in group homes in most residential areas. The city enforced these restrictions against the operator of a group home, resulting in an order requiring the home to close and the residents to relocate.

****Group Home Distance Requirements****

United States v. City of Toledo, Ohio (N.D. Ohio)

In this case, we claimed that the City of Toledo, Ohio violated the Fair Housing Act by discriminating against persons with disabilities. Our [complaint](#), filed on September 2, 1998, contended that the city had enacted an ordinance, which sought to limit the number of group homes that could be located within a specified distance of each other. Under the [settlement agreement](#), filed on March 25, 1999, which resolved the litigation, the city agreed to repeal the challenged ordinance and to revise its zoning regulations. In addition, the city agreed pay \$95,500 in damages to the private plaintiffs in the companion actions as well as their attorneys' fees.

****DEMOLITION****

United States v. City of Lomita (C.D. Cal.)

On March 8, 2013, the United States filed a [complaint](#) and [agreed order](#) in *United States v. City of Lomita* (C.D. Cal.). The complaint alleges that the city violated the Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) when it denied the Islamic Center of the South Bay's application to tear down the aging and scattered structures on its property and construct a new mosque. The denial is alleged to have created a substantial burden on the religious exercise of the Islamic Center and its members. The agreed order



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requires the city to consider a renewed application by the Islamic Center on an expedited schedule contained in a separate agreement between the city and the Islamic Center. The settlement also contains recordkeeping, reporting, and training requirements for city officials. The court entered the agreed order on March 8, 2013.

****NON-PROFIT RULED AS COMMERCIAL ENTITY****

United States v. City of Payette, Idaho (D. Idaho)

On September 15, 2003, the court entered a [consent decree](#) resolving *United States v. City of Payette* (D. Idaho). The [complaint](#), filed on October 21, 2002, alleged the City violated the Fair Housing Act on the basis of disability by refusing to allow Harbor House, a group home for recovering alcoholics and recovering drug addicts to open in a residential neighborhood of the city. The city claimed that the group home was a "commercial" entity that didn't belong in a residential neighborhood, although the city had previously allowed other commercial businesses to open in residential neighborhoods. The consent decree requires the City to: allow the group home to open at its originally requested location; comply with the provisions of the Fair Housing Act; notify the United States of any applications for permits and zoning requests relating to group homes; and train city employees and officials on the requirements of the Act. The Defendant will also pay \$15,000 to the owner/operators of the facility, and a civil penalty of \$5,000 to the United States. The consent decree will remain in effect for three years. The case was referred to the Division by the Department of Housing and Urban Development.

****Imposing Unreasonable and Unlawful conditions on the building permit applications****

United States v. District of Columbia (D.D.C.)

On April 15, 2004, the United States filed a [complaint](#) in *United States v. District of Columbia* (D.D.C.) which alleged the District of Columbia violated the federal Fair Housing Act by refusing to approve four group homes for children in single family neighborhoods. Each group home would have served the needs of six abandoned or neglected children. The complaint alleges that the District unlawfully prevented Father Flanagan's Girls & Boys Town, a charitable organization, from operating the four group homes by imposing unreasonable and unlawful conditions on their building permit applications. On October 11, 2006, the Division filed a [brief](#) in support of plaintiff's summary judgment. This case, which was consolidated with *Father Flanagan's Boys Home v. The District of Columbia* (D.D.C.) ended in a mistrial on December 8, 2006, due to a hung jury. The jury trial did not include the United States' claims (1) that the District violated the Fair Housing Act by denying and delaying decisions on Boys Town's reasonable accommodation and related requests for building permits based on the disabilities of the prospective residents; and (2) that the District's municipal regulations include zoning classifications on the basis of disability that violate the Fair Housing Act. On June 29, 2007, the United States filed a [motion](#) for judgment on its non-jury claims for injunctive relief and civil penalties in *United States v. District of Columbia* (D.D.C.) addressing the non-jury issues.

****Amended Code to Preventing Group Home from using property****

United States v. Metro. Gov. of Nashville (M.D. Tenn.)

On January 30, 2009, the court entered a [consent decree](#) resolving *United States v. Metro. Gov. of Nashville* (M.D. Tenn.) The [complaint](#), filed on September 29, 2008, alleged that the Metropolitan Government of Nashville and Davidson County (Metropolitan Government) violated the Fair Housing Act (FHA) and the Religious Land Use and Institutionalized Persons Act (RLUIPA) by discriminating against Teen Challenge, a Christian substance abuse treatment program. The complaint alleged that the Metropolitan Government discriminated against individuals with disabilities in violation of the FHA and imposed a substantial burden on religious exercise in violation of RLUIPA. According to the complaint, the Metropolitan Government denied Teen Challenge a building permit to operate in Goodlettsville, Tennessee, and amended its zoning code in a manner that prevented Teen Challenge from using the property. The consent decree requires the Metropolitan Government to train nearly 100 employees and officials who make zoning and land use decisions on the requirements of the FHA and RLUIPA, to appoint a compliance officer to receive complaints and ensure compliance with the settlement, and to provide periodic reports to the Justice Department. As part of the settlement, the Metropolitan Government rescinded the amendment to its zoning code that affected Teen Challenge and adopted a reasonable accommodation policy for individuals with disabilities. The Metropolitan Government will also pay a \$20,000 civil penalty to the United States and \$50,000 to participants in Teen Challenge's program.

****Targeting Group Homes with Enforcement Actions by City Officials****

United States v. City of San Jacinto (C.D. Cal.)

On June 16, 2014, the court entered a [consent decree](#) in *United States v. City of San Jacinto* (C.D. Cal.), a Fair Housing Act (FHA) and Americans with Disabilities Act (ADA) [case](#) alleging that the City engaged in a pattern or practice of discrimination against the residents and providers of group homes for persons with disabilities when it passed an ordinance restricting the location and operation of such homes within the city and targeted those homes for enforcement actions. The City's enforcement efforts included an unannounced, early

Jeff Nash
EXECUTIVE DIRECTOR



Vincent C. Marino
FOUNDER

HABILITAT
THE PLACE OF CHANGE

morning sweep of unlicensed homes by city officials and Riverside County sheriff's deputies acting as agents for the city who interrogated the residents from a prepared questionnaire, asking them such questions as whether they were mentally ill, whether they were on "psych meds," whether they were currently using illegal drugs and whether they were registered sex offenders. The consent decree will require the city to pay a total of \$757,599, which includes compensatory damages to housing providers and former residents with disabilities, the attorney's fees and costs of the three private plaintiffs, whose suit was consolidated with that of the Division, and a \$10,000 civil penalty to the United States. As part of the settlement, the city rewrote its zoning code and created a new classification, "Group Homes for Persons with Disabilities," making such homes permitted uses in all residential zones. The city also revised its process for providing persons with disabilities exceptions to its zoning and land use requirements to comport with the FHA and ADA. In addition, the decree requires the city to pay for fair housing training of its officials, including council members and law enforcement officers acting as agents for the city; maintain records relating to future proposals for housing for persons with disabilities; and submit compliance reports to the Division for a period of five years.

SB-2137

Submitted on: 2/8/2022 5:12:44 PM

Testimony for GVO on 2/10/2022 3:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Jenifer S	Testifying for Habilitat	Oppose	No

Comments:

COMMITTEE ON GOVERNMENT OPERATIONS

Senator Sharon Y Moriwaki, Chair

Senator Donovan M Dela Cruz, Vice Chair

COMMITTEE ON HEALTH

Senator Jarrett Keohokaole, Chair

Senator Rosalyn H. Baker, Vice Chair

Jenifer S

I am representing Habilitat.

45-035 Kuhonu Pl. Kaneohe, HI 96744

Thursday February 10, 2022

I am opposing Bill SB2137 relating to transitional housing.

My name is Jenifer and I am 37 years old. I am currently a resident at Habilitat. I am testifying against passing Bill SB2137. I am from Michigan and I made the decision to come to Hawaii to receive the help I so desperately needed to get off drugs and alcohol. For me, it doesn't matter so much what happened to me prior to getting here, it's what I do moving forward that defines me. I am in the last phase of my treatment program and most would say that I am at the end of the road. I believe it is just the beginning. Upon leaving treatment, I plan on setting myself up for success. This plan includes choosing to reside in at a transitional home where it will provide me with the structure, accountability, and a safe environment. Choosing to live at this type of housing is my best option and will ensure a better chance at me remaining sober. This is an

important piece of my recovery puzzle. Without this opportunity it would be a struggle to find housing that promotes health, purpose, and a supportive and affordable environment among peers who are serious about recovery too.

If you're familiar with relapse statistics, you already know it's an uphill battle. Lack of a stable, alcohol and drug free living environment can be a serious obstacle. That's why these houses are essential for people such as myself who are transitioning from an addiction treatment center or who are new to recovery.

I am excited and extremely grateful to have an opportunity to move into transitional housing. This is where I put into practice all that I have learned throughout treatment. Recovery never stops. I am setting myself up for the best possible chance at staying sober.

In conclusion, I oppose bill SB2137. My life depends on it.

February 9, 2022

RE: SB2137, Hearing on February 9, 2022, 3:00 p.m.

I am writing to express my opposition to SB2137.

Aloha, I'm a father of 5, counselor, coach and youth mentor. I've coached Olympians and world champions. I've been a member of this community for over 20 years, however, in the eyes of some, you need to be "alerted" of my presence in your community because of some poor choices I made in my younger years. It's all so ironic.

Habilitat is and has been running fundraising campaigns at Hawaii's Elementary schools for decades, interacting with students and staff, raising money for the school. Habilitat has been cutting your lawns, building your fences, remodeling your homes, and interacting with your keiki for 50 years. If they're good enough to serve you, shouldn't they be good enough to be members of your community?

If one would take the time to look, they would see the levels of structure that exist along with a feeling of family and kuleana in these homes. I can't speak for other programs, but I do know Habilitat's is managed by qualified staff members and housing individuals that have been sober for over 2 years and held to very high standards. The moment those standards are not met, the individual will have to leave the house. Habilitat does not house violent or sexual offenders. It seems the actions being taken by the state are being made without much research.

My appeal is that you give them a chance and not pre-judge the individuals who have changed their lives. Not use a shotgun solution for a fly problem. Examine the laws that exist, I've added an image at the bottom of this document to illustrate the magnitude of your decision. If there are issues with these people, then act, form petitions, take a stand by all means, but not before. My intent is not to combat your concerns, it's to shed light over shade and hopefully ease your concerns. Mahalo for your time.



Scott Ryan, dedicated father, coach, mentor, Habilitat graduate and staff member.



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

TO: Honorable Senator Sharon Y. Moriwaki
Chair, Senate Committee on Government Operations

Honorable Senator Jarrett Keohokalole
Chair, Senate Committee on Health

FROM: Connie Mitchell MS, APRN, BC, Executive Director
IHS, The Institute for Human Services

SUBJECT: S.B. 2137 – RELATING TO TRANSITIONAL HOUSING.

HEARING: February 10, 2022, 3:00 pm Via Videoconference, State Capitol

POSITION: IHS opposes the passing of SB 2137.

IHS, Institute for Human Services, opposes the passing of SB2137 because it will limit the ability for those choosing to clean up their lives to do so in a dignified way. The bill would limit the availability of such sites and would jeopardize the privacy, safety and recovery process for individuals residing in halfway, clean and sober, and drug rehabilitation homes.

The restriction “No clean and sober home located within one-half mile of a public or private elementary or secondary school shall be included on the department's registry;” is discriminatory in nature and impedes the operation of current and future recovery homes. Below are maps of Department of Education school districts on the island of Oahu. Note the density of elementary and secondary schools throughout urban Honolulu and the Windward side. There are virtually no identifiable spaces that are beyond the half-mile radius this bill proposes. This “Not in my Backyard” approach will move recovery homes to rural or industrial areas with limited transportation or services – where infrastructure is not conducive to individuals’ rehabilitation, reintegration, or self-efficacy.

Residents of clean and sober homes are not criminals. They are in substance-free homes; they pose no more danger to neighbors or the community they reside in than other residents in their community. By announcing their presence, the connotation is that delinquent behaviors should be expected when the opposite is true for these homes.

The purpose of a clean and sober home is to give a person who struggles with substance abuse the chance to put their life back on track. If passed, this will add to the stigmatization of seeking care, and cause more hesitancy around enrolling in clean/sober housing programs. For those seeking treatment this adds to the fear that their struggle will become their identity and getting help will create an indelible record of their battle with addiction and make it harder to gain employment or find permanent housing. Lack of clean and sober environments to live in will also





contribute to more relapse and related costs that taxpayers will need to pay in the long term and our communities will not be as safe with more people engaged in unproductive substance use.

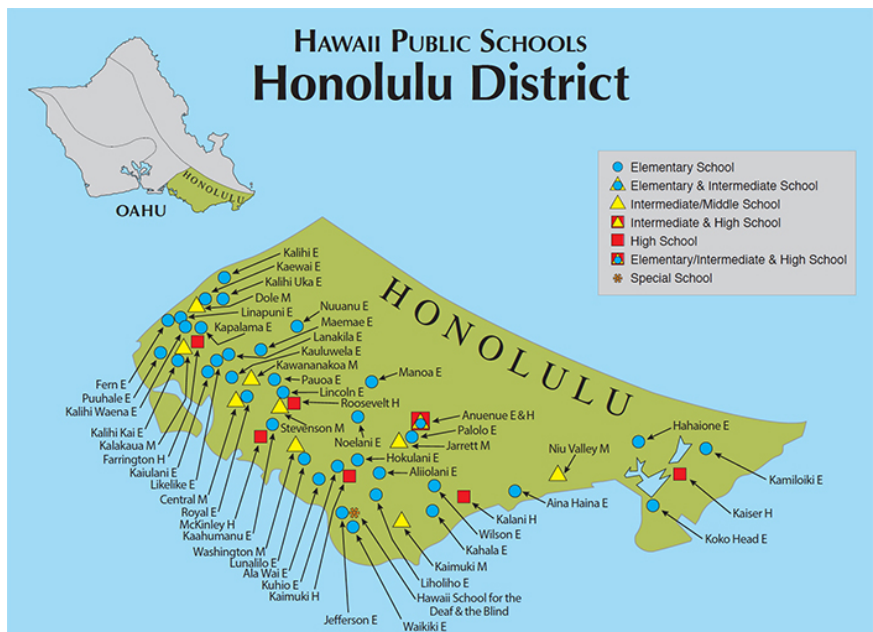


Image provided by Department of Education, 2020.

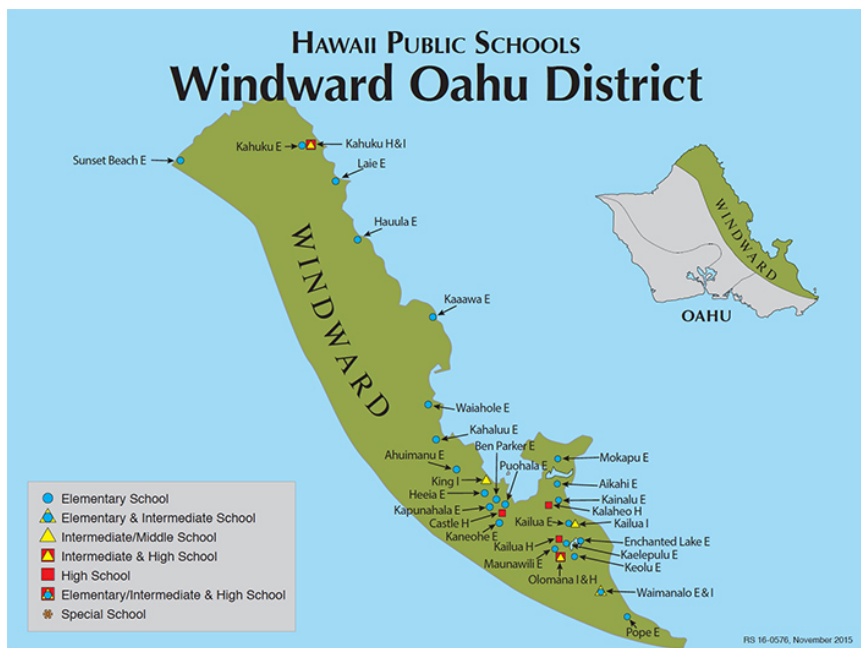


Image provided by Department of Education, 2015.



SB-2137

Submitted on: 2/7/2022 2:56:49 PM

Testimony for GVO on 2/10/2022 3:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Samuel Mitchell	Individual	Support	Yes

Comments:

When I worked at PHNSY. I use to represent the workers on the Aloha United Way Board that reviewed mental health issues. The rooming homes books were always up to date and they treated their employees, customers, and live-in residents kindly.

That is why I support SB2137. If you have any questions I will be standing by.

Sam Mitchell Makiki NB-10

SB-2137

Submitted on: 2/8/2022 1:44:51 PM

Testimony for GVO on 2/10/2022 3:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Trisha Glushenko	Individual	Oppose	No

Comments:

I am sharing my testimony today because I believe that living in a clean and sober house saved my life. I was addicted to drugs for over 20 years of my life. I've been to treatment many times and completed a few. Even so I still could not stay sober for too long. I have been in and out of jail many times. I had my own place in public housing for about 10 years. Trying to get sober in the environment or neighborhood that I live in was very hard. In 2016 I went to jail for the last time. While I was there I had lost my son to CPS and also my housing. From jail I went into a residential treatment program where I stayed for about 7 months. This is when I was able to move in to a clean and sober house. I still wasn't sure if I could stay sober. Little did I know that this sober house was the best place for me. Being able to have support from other women going through the same thing as me was really great. Before this I did not have any friends who are sober and now I did. There were women there cool have come before me who showed me how to live a clean and sober life. This is the place where I was able to build a strong foundation for my recovery with women like me who need help staying sober . I believe that if I did not move into a sober house I would not be sober today. On February 6 2022 I celebrated six years clean and sober. Since then I have moved into my own place. I have gotten my son back. I have completed treatment. I have completed my probation. I have a job and I have a car. People like me need places like clean and sober houses to start a new life where we can build new friendships with people who are also sober. Thank you for your time and letting me share my testimony. I hope you will take in consideration how important clean and sober houses are for people who feel like there is no hope of a better life, because I was once that person and look at me now.

SB-2137

Submitted on: 2/8/2022 9:21:15 PM

Testimony for GVO on 2/10/2022 3:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Mark gallegos	Individual	Oppose	No

Comments:

Committee On Government Operations

Senator Sharon Y. Moriwaki, Chair

Senator Donovan M. Dela Cruz, Vice Chair

Committee On Health

Senator Jarrett Keohokalole, Chair

Senator Rosalyn H. Baker, Vice Chair

Mark A. Gallegos

Habilitat Inc.

February 10th 2022 3PM

OPPOSE SB 2 1 3 7

My name is Mark Gallegos and I oppose this bill. I am a House resident at a Transition House that works directly with residents who have completed treatment for substance abuse and are working to further their goal in meeting the needs of what it takes to be a productive member of society and to stay the course of living a healthy lifestyle without the use of substances or criminal activities. The Transition house is very structured, and the people are closely monitored. I believe it is necessary to live in a house that not only supports healthy habits but also creates them. It is imperative that people who have completed treatment or rehabilitation, be provided safe and affordable housing options and not be forced to live on the streets or in substandard housing. I am very grateful to have been given a second chance at life and am on the right path to giving back to the community and becoming a productive member of society.

1. to see if someone or people are worthy of living in your neighborhood is discriminating. Instead of helping the process of change we push it somewhere else, making a difficult

situation even more difficult. We need more Transition Houses like the one that Habilitat provides. Passing a bill that requires people to decide on whether you qualify to live in their Neighborhood is not a good idea. Discrimination against people with disabilities is a violation of the **Fair Housing Act** and the **Americans with A Disabilities Act**. Thank you for your time.

SB-2137

Submitted on: 2/8/2022 9:38:38 PM

Testimony for GVO on 2/10/2022 3:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Shaughnaussey Apelu	Individual	Oppose	No

Comments:

Committee On Government Operations

Senator Sharon Y. Moriwaki, Chair

Senator Donovan M. Dela Cruz, Vice Chair

Committee On Health

Senator Jarrett Keohokalole, Chair

Senator Rosalyn H. Baker, Vice Chair

Shaughnaussey K. Apelu

Habilitat Inc.

February 10th 2022 3PM

OPPOSE SB 2 1 3 7

My name is Shaughnaussey Apelu and I oppose this bill. I have completed the residential portion of the Habilitat program and have been afforded the opportunity to become a participant in the Habilitat Transitional Housing Program. Habilitat has given me my life back and has done so for many others. With their housing program, I am able to slowly transition back into positive living habits with the help of structure and continual evaluation/support. This program does nothing but good work for their own and for the community. I have been an endangerment to this community and my family for too long and with Habilitat's help, I am becoming a contributing member to the state of Hawaii and my family. Thank you for your time and consideration.

Voting to see if someone or people are worthy of living in your neighborhood is discriminating. Instead of helping the process of change we push it somewhere else, making a difficult situation even more difficult. We need more Transition Houses like the one that Habilitat provides. Passing a bill that requires people to decide on whether you qualify to live in their Neighborhood

is not a good idea. Discrimination against people with disabilities is a violation of the **Fair Housing Act** and the **Americans with A Disabilities Act**. Thank you for your time.

SB-2137

Submitted on: 2/9/2022 2:21:07 PM

Testimony for GVO on 2/10/2022 3:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Ellen Godbey Carson	Individual	Oppose	No

Comments:

IHS, Institute for Human Services, opposes the passing of SB2137 because it will limit the ability for those choosing to clean up their lives to do so in a dignified way. The bill would limit the availability of such sites and would jeopardize the privacy, safety and recovery process for individuals residing in halfway, clean and sober, and drug rehabilitation homes.

I oppose this bill 2137. The restrictions on where a clean and sober home can be located are discriminatory, stigmatizing, and counterproductive. Due to the density of elementary and secondary schools throughout urban Honolulu and the Windward side, there would be virtually no appropriate places to locate a clean and sober house, except rural or industrial areas with limited transportation or services. That is not helpful for access, nor for individuals' rehabilitation and reintegration. We need more of these treatment houses, not fewer, and need to welcome those who are ready to be clean and sober.

Thank you for your consideration.

LATE

SB-2137

Submitted on: 2/9/2022 3:48:15 PM

Testimony for GVO on 2/10/2022 3:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Trillium Simington	Individual	Oppose	No

Comments:

SB2137 Relating to Recovery Homes Requiring Information Meetings and Restricting Locations

COMMITTEE ON GOVERNMENT OPERATIONS

Senator Sharon Y. Moriwaki, Chair

Senator Donovan M. Dela Cruz, Vice Chair

COMMITTEE ON HEALTH COMMITTEE

Senator Jarrett Keohokalole, Chair

Senator Jarrett Senator Rosalyn H. Baker, Vice Chair

Aloha,

My name is Trillium Simington, and I am the Program Care Coordinator of a non-profit organization that works with high-risk individuals with SUD issues and incarcerated individuals that are entering back into the community. I am writing in **strong opposition of SB2137**. The state has limited beds for treatment/recovery housing, and this bill would make it more difficult for non-profit agencies/ treatment facilities to open new homes to assist individuals in their healing process. Such programs help to reduce recidivism rates and enable successful reintegration into the community and are a major way to reduce costs to taxpayers and ensure greater public safety.

This bill is also in violation of Americans with Disabilities Act and Fair Housing Act laws. Federal courts strictly enforce rights for people in recovery.

Mahalo for this opportunity to testify.



**To: Committee on Health
Committee on Government Operations**

LATE

Hearing Date/Time: Thursday February 10 @ 3:00 PM

Re: Testimony in opposition of SB 2137

From: Heather Lusk, Hawaii Health and Harm Reduction Center

Dear Chair Keohokalole, Chair Moriwaki and members of the committee,

The Hawaii Health & Harm Reduction Center (HHRC) respectfully opposed SB 2137 which would require public informational meetings prior to operating clean and sober homes and other rehabilitative or transitional programs. HHRC understands the intent of this measure is to ensure collaboration and communication amongst neighbors and while we support that intent and hope that operators of these homes are doing as such, this requirement will result in stigma, discrimination and may be in violation of the Americans with Disabilities Act.

The Hawaii Department of Health (DOH), Alcohol and Drug Abuse Division has a registry and clean and sober homes that meet criteria to ensure safety and appropriate placements for people who are in treatment or otherwise trying to maintain their recovery. HHRC strongly supports this method for ensuring only quality recovery homes are listed and approved by the DOH. Research shows that discrimination and stigma is pervasive in people struggling with Substance Use Disorder and SB 2137 will make it even harder for those who need it to find safe, healing spaces for their recovery.

HHRC's mission is to *reduce harm, promote health, create wellness and fight stigma in Hawaii and the Pacific*. We focus our efforts on those disproportionately affected by social determinants of health, including but not limited to: people living with and/or affected by HIV, hepatitis, substance use, and the transgender, LGBTQ and the Native Hawaiian communities.

Thank you for the opportunity to testify.

Heather Lusk, Executive Director, Hawaii Health and Harm Reduction Center

SB-2137

Submitted on: 2/10/2022 12:03:21 PM

Testimony for GVO on 2/10/2022 3:00:00 PM

LATE

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Carrie Ann Shirota	Testifying for ACLU of Hawai'i	Oppose	No

Comments:

The ACLU of Hawai'i strongly opposes SB2137. We believe that this measure violates the Federal Fair Housing Act (Title VIII), Americans with Disabilities Act (ADA) and H.R.S. Chapter 515 Discrimination in Real Property Transactions. In addition, it negatively impacts the privacy interests of people with disabilities including people in recovery. Please hold this bill.

Oxford House Inc. – Hawaii

350 Ward Avenue Suite 106-9 Honolulu, Hawaii 96814 808.957.0324

ON THE FOLLOWING MEASURE:

S.B. NO. 2137, RELATING TO TRANSITIONAL HOUSING.

BEFORE THE: SENATE COMMITTEES ON GOVERNMENT OPERATIONS AND ON

HEALTH DATE: Thursday, February 10, 2022 TIME: 3:00 p.m.

LOCATION: State Capitol, Via Videoconference

TESTIFIER(S): Oxford House Inc. – HI

Oxford House Inc. stands in agreement with Hawaii Attorney General Shikada and Deputy Attorney General Nakata. This bill would mandate extensive public informational meeting requirements as well as geographic spacing requirements for clean and sober homes, drug rehabilitation homes, and halfway houses, that are not required for any other type of group living facility. Federal Housing Amendment Act 1988 (FHAA) prohibits discrimination against community-based group living homes for persons with disabilities. Persons recovering from substance abuse are protected from discrimination in housing by the federal Fair Housing Amendments Act of 1988 (FHAA)

Thank You.